

(1996) 09 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21316 of 1996

U.P.State Textile Corporation Spinning Mills,Jhansi

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1996) 09 AHC CK 0057

Hon'ble Judges : M.Katju, J

Final Decision : Dismissed

Judgement

M. Katju, J.

1. This writ petition No. 21316 of 1996 and Writ Petition No. 28153 of 1996 have challenged the same award of the Industrial Tribunal, Agra, dated 29.2.96 and hence they are being disposed of by a common judgment.

2. The petitioner in Writ Petition No. 21316 of 1996 is a Government company and the respondent No. 3 was an employee in the said concern. He was chargesheeted on 27.1.84. True copy of the chargesheet is annexure 1 to the writ petition. A perusal of the chargesheet shows that the allegations against him was that on 26.4.94 he went to the canteen at 8.30 AM. and did not return for work till 9.45 A.M. When he was called for work by Sri A. K. Srivastava, Assistant Engineer he said when he was told by the engineers to come out and do his work, he went to the lathe machine and picked up an iron rod and stood in the office and told the officers that

The same day at 3.20 P.M. when Sri A.K. Srivastava, Assistant Engineer was sitting in his office, the petitioner came there and started beating him with steel rod which resulted in injuries on his hand and fingers. True copy of the chargesheet is Annexure 1 to the writ petition. The respondent gave his reply in chargesheet which was found unsatisfactory and then an enquiry was held in which full opportunity of hearing was given to the respondent No. 3 and

thereafter the dismissal order dated 9.11.84 was passed.

3. Since a dispute regarding bonus was pending before Industrial Tribunal, Agra, the petitioner applied for approval under Section 6E(2) (a) which was granted by order dated 5.1.95 Annexure 2 to the writ petition.

4. The respondent No. 3 then raised an Industrial Dispute which was referred to the Tribunal, The Industrial Tribunal held that domestic enquiry was fair and proper vide order dated 24.11.92 and thereafter the Tribunal gave the award dated 29.2.96 by which the respondent No. 3 was reinstated without payment of back wages. This award has been challenged in Writ Petition No. 21316 of 1996 by the petitioner while the workman concerned has challenged the award claiming that he should have been granted back wages also apart from reinstatement;

5. In my opinion, the allegations against the respondent workman, which have been found to be correct by the enquiry officer (whose finding has not been disturbed by the Tribunal), are so serious that the punishment of dismissal was the only correct punishment and hence the Tribunal was wrong in interfering with the same.

6. Sri K. P. Agarwal appearing for the respondent workman has relied on the decision of the Supreme Court in *Ramakant Misra v. State of U.P.*, A.I.R. 1982, SC, 1552 and has contended that merely abusing a superior or giving him threats is not a misconduct. I can not agree with this contention. The judgment of the Supreme Court in the aforesaid case must be confined to the facts of that particular case and it can not be said to have laid down a universal legal proposition that giving threats or abuses to a superior can in no circumstances be regarded as a misconduct. It all depends on

the facts of each case and the Tribunal had to see the circumstances e.g. what was the exact words used while giving the abuse or threat, in what circumstances the same was done, to whom the threat or abuse given and when and where, etc. vide *Ram Kishan v. Union of India*, 1995(6) S.C.C. 157 para 11.

7. In my opinion, one fact should never be forgotten namely that the industry must be allowed to run and no industry can run if there is indiscipline. In the present case, the respondent No. 3 has not only given abuses and threats but he has actually gone further and committed acts of violence. In my opinion, the industry can not run if a person like the respondent workman is reinstated. No organisation can run when a person like the respondent No. 3 is its employee and hence the only punishment called for was dismissal. The Tribunal, in my opinion, acted arbitrarily in interfering with the punishment of dismissal on the sentimental ground that such dismissal would mean economic death. A person like the respondent No. 3 who behaves like a hooligan has to be dismissed, otherwise the industry can not run.

8. Sri K.P. Agrawal relied on the decision of the Supreme Court in *Ved Prakash*

Gupta v. Delton Cable India (P) Limited, A.I.R. 1984, S.C.C914. In that case, it was held that the dismissal of the petitioner for abusing the Secretary of the Labour Union was shockingly disproportionate to the offence. As I have held above, in the case of abuses, it will all depends on the facts and circumstances of each case. In VedPrakash's case (supra) the abuse was given to the Secretary of the Labour Union and not to a superior officer. As I have held above, all the surrounding circumstances have to be seen and no universal rule can be enunciated that abusing can never be held to be a misconduct whatever be the circumstances. For Example, abusing a superior officer in the presence of other employees will certainly be subversive of discipline because it will encourage other employees to behave in the same fashion. In the present case, not only the petitioner give abuses but he even resorted to violence which amounted to gross indiscipline and cannot be condoned".

9. Sri K. P. Agrawal then submitted that it is the discretion of the Tribunal as to what punishment to impose and this Court can not interfere. It is true that normally this court does not interfere in the quantum of punishment, but in my opinion in exceptional circumstance this Court can interfere. Sri Agrawal submitted that in view of the Section 11A of the Industrial Dispute Act, it is for the Tribunal to consider the quantum of punishment. He has relied on the decision of the Supreme Court in the case of Workman of Fire Stone Type and Rubber Company v. The Management, A.I.R. 1973, SC, 1227 and Scooters India Limited v. Labour Court, A.I.R. 1989, SC, 149. As already stated above, this Court in writ jurisdiction does not normally interfere with the quantum of punishment, but at the same time it is open to this Court in appropriate cases to interfere. In the present case, I am of the opinion, that the reinstatement of the respondent workman will seriously prejudice the discipline in the concern as it will set a very bad example that employees can behave in this manner and yet remain in service. In my opinion, the Tribunal acted arbitrarily in granting reinstatement for the respondent workman.

10. Hence, I set aside the impugned award and direct that the punishment of the dismissal awarded to the respondent workman by the employer shall stand. Both the writ petitions are disposed of accordingly. Petition disposed of accordingly.