

(2011) 05 AHC CK 0213
In the Allahabad High Court
Case No : Writ Petition No. 428 (M/S) of 2009

Uttarakhand Transport Corporation through its Regional
Manager, District Dehradun

APPELLANT

Vs

Dhani Ram S/o Sri Hulas Rai

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 12(8)

Citation : (2011) 05 AHC CK 0213

Hon'ble Judges : B.S.Verma, J

Final Decision : Partly Allowed

Judgement

B.S. Verma, J.

By means of this petition the petitioner has sought a writ in the nature of certiorari quashing the award dated 25.10.2008, passed by the Presiding Officer, Labour Court, Dehradun in Adjudication Case No. 177 of 2007, under Section 4(k) of Industrial Disputes Act, 1947, Annexure No.5 to the writ petition.

Briefly stated the facts of the case giving rise to the instant writ petition, according to the petitioner, are that the respondent Dhani Ram was appointed with Transport Corporation (in short "Corporation") as back as on 191988 on temporary basis by virtue of order No. B.R./I8810065A dated 31.8.1988. He continued to work in the said capacity till 10101988. From service records of the respondent it is apparent that during his service on 24.12.2008, now and then was availing leaves and had voluntarily absented often. On an earlier occasion also the respondent had absented without intimation w.e.f. 1.3.1995 to 7.3.1995 and in pursuance to the order passed by Regional Manager, Pilibhit vide its order dated 25.3.1995 curtailed the traveling allowance of the respondent. The entire service records of the respondent reveals that his tenure of service has passed away on the basis of several leaves which he had taken without due intimation. Ultimately the corporation after due opportunity of hearing and after affording adequate opportunity to lead evidence proceeded to pass an order No. 73 dated

16.2.2006 whereby the services of the respondent were dispensed with. Being aggrieved by the order dated 16.2.2006 the respondent moved application for making reference to the State Government, who passed the Government Order No. 3064 68/DehradunC.P. 15/6 dated 7.5.2007 whereby the dispute which was sought to be referred was as to whether the dismissal of the services of respondent w.e.f. 16.2.2006 were just and valid?, if not, what relief he is entitled to receive from the Labour Court.

On issuance of notices the petitioner filed its written statement contending therein that after being regularly appointed w.e.f. 1.9.1989, in June, 1999, the respondent was transferred to Rishikesh and thereafter on 18.11.2003. Since it was an absence without prior intimation and not against the sanctioned leave the respondent was issued with a charge sheet for his absence from duty w.e.f. 1052003 to 1552003 and 1652003 to 1282003. In reply of charge sheet the workman filed written statement and contended that he had gone to his home at Bareilly and he could not join his duties, as he was ailing. In support of his contention the respondent had submitted medical certificates issued by Government Hospital. In the written statement the workman further stated that the explanation given by him was satisfactory and the order of dispensing his services is too harsh, even if it is presumed that he has absented from duty the aforesaid period could be treated as to be a leave without pay.

The petitioner Corporation also filed another written statement before the Labour Court alleging therein that the workman always absented from duty without intimation and, thus, the charge sheet dated 18.11.2003 was just and valid and since due and adequate opportunity of hearing in inquiry proceeding was provided to him, hence no interference was called for by the Labour Court. It was further pleaded that noncompliance of Rule 12(8) of U.P. Industrial Dispute Rules, 1957 the written statement filed by the workman could not be accepted on record and deserves rejection. The petitioner Corporation also filed detailed written statement before the Labour Court which is Annexure No.4 to the writ petition.

After hearing parties and considering the material available on record, the Labour Court passed the impugned award dated 25.10.2008, directing the reinstatement of respondent/workman along with 50% back wages. The impugned award has been challenged by the Corporation on the ground that since the respondent/workman has worked for last 18 to 19 years and one stray incident of absence for three months his services cannot be dispensed with due to disproportionality of the punishment. The ratio of Korala Bhaskar Rao would not be applicable because the respondent was requested by the employer to join his services during the period of his absence do not mean that the credentials of the service misconduct of the respondent was flawless, mere absence of request to rejoin does not disentitle the respondent to be reinstated. When an employee without any reason voluntarily abandons the job and remains absent then as per Regulation 28(3) his services could be dispensed with. The view taken by Labour

Court that the maximum period of absence as prescribed is of 3 years is misconceived. The award of 50% backwages is also without basis.

The petitioner also filed supplementary affidavit and alleged that the services of respondent were terminated in pursuance to order dated 16.2.2006 issued by the office of Regional Manager, U.K.S.R.T.C. Dehradun and the termination order was annexed with supplementary affidavit as Annexure S.A.1.

The respondent/workman filed counter affidavit in the writ petition and denied the contents of writ petition. With regard to contents of para No.4 of the writ petition, it has been alleged that for the absence of the period 1.3.1995 to 7.3.1995 was neither pleaded before the Labour Court nor the same was part of the charge sheet hence such allegation has no substance. The respondent further alleged that neither in enquiry report nor before the Labour Court even a single instance except that of his being absent from duty for the period 16.5.2003 till 12.8.2003 was referred. The absence from duty without sanction of leave for the period 16.5.2003 to 12.8.2003 was admitted by the respondent and the explanation was given by him that he was already on leave since 10.5.2003 to 15.5.2003 as he got information about the illness of his wife and hence he went to his native place. Thereafter since his wife was not getting well and her health was deteriorating hence he remained attending her, meanwhile he also felt ill due to exertions and hence he himself recovered and after recovery of his wife he joined his services on 13.8.2003 and produced medical certificates pertaining to illness of his wife as well as himself. He also alleged that since he is resident of a village he could not give information in time but when he called his office about after a week, he informed one Sri Nepal Singh Rathi, who told him that since Senior Centre Incharge is not present he will be informed about the difficulty of respondent as and when he will be back. The grounds taken in writ petition are totally wrong, misleading, false, frivolous, misconceived and hence are denied.

I have heard Mr. Sharad Sharma, Senior Advocate assisted by Mr. Bhuwan Bhatt, Advocate for petitioner and Mr. Pankaj Miglani, Advocate for the respondent.

The first submission of learned counsel for the petitioner is that the workman has filed written statement before the Labour Court without verifying its contents by an affidavit, which is against the spirit of Sub Rule (8) of Rule 12 of U.P. Industrial Dispute Rules, 1957, therefore, the learned Tribunal should not have considered the same.

Learned counsel appearing on behalf of the workman has vehemently submitted that the petitioner also did not file affidavit along with the written statement filed before the Labour Court. Sub Rule (8) of Rule 12 of U.P. Industrial Dispute Rules, 1957, reads as below

“(8) the written statement filed by the Union or the workman shall state the grounds on which the claim of the concerned workman is based and the written statement shall be accompanied by an affidavit in which the contents of the written statement are sworn to.”

It is quite clear that in above Sub Rule (8) procedure has been laid down that the written statement shall be accompanied with an affidavit and it is a mandatory provision. However, looking to the facts that both the parties did not file affidavit along with the written statement and both the parties are in the same boat, as well as the written statement filed by the workman contain the facts which are not disputed and have come in the enquiry report, on which the Tribunal has adjudicated the dispute, therefore, the irregularity committed on this point do not affect adversely the veracity of this particular case.

The learned counsel for the petitioner next submitted that the dismissal of the respondent/workman was based on report of enquiry officer. The respondent/workman remained unauthorizedly absent from duty. He also remained unauthorizedly absent on several occasions. Therefore, misconduct committed cannot be treated as minor and the punishment of dismissal was not disproportionate and the learned Labour Court has committed a manifest error by reinstating the respondent in service. In support of his contention learned counsel has cited before me the case of North Eastern Karnataka R.T. Corpn. V. Ashappa & Anr. reported in AIR 2006 Supreme Court 2164.

Learned Senior Advocate appearing on behalf of petitioner further submitted that the Tribunal has ordinarily no power to interfere with punishment awarded by competent authority in departmental proceedings on ground of the penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse. In support of his contention learned counsel has cited before me the case of Union of India Vs. Parma Nanda, reported in (1989) 2 Supreme Court Cases 177 and the case of Mavji C. Lakum Vs. Central Bank of India, reported in (2008) 12 Supreme Court Cases 726,. On the other hand learned counsel appearing on behalf of the respondent has vehemently refuted the above contentions and submitted that the misconduct committed by the respondent cannot be termed as grave misconduct and the punishment of dismissal from service passed by the Corporation is disproportionate and the learned Labour Court has rightly reinstated the respondent in service.

In context of rival contentions of counsel for parties, I have perused the record. The allegation of the Corporation is that the Workman often used to remain absent from his duty without prior permission. The department served charge sheet against the workman on the ground that he remained absent from his duty for the period 10.5.2005 to 15.5.2003 and again w.e.f. 16.5.2003 to 12.8.2003 and for this absence he neither gave prior information nor moved any application. The further assertion of the Corporation is that the workman had been given full opportunity to defend during inquiry proceeding but he had not been successful in proving himself to be innocent. On receipt of inquiry report the workman was issued show cause notice and in reply the workman has repeated the facts as stated during inquiry proceeding.

The respondent/workman has submitted in reply of charge sheet that he

remained absent due to the reason that he had gone to his home at Bareilly and could not join his duties as his wife was ailing and in support of illness he had submitted medical certificates issued by Government Hospital. In reply to charge sheet, the workman has specifically mentioned that he had gone to his home for the period 10.5.2003 to 15.5.2003 after obtaining prior sanction of the department, as he had received a telephonic message that his wife was suffering from ailment. His further allegation is that on 22.5.2003 he had telephonic talk with Naipal Singh Rath B.C. who had told the workman that at that time Senior Center Incharge is not available, he would inform him about the whole situation of the workman. The further allegation of the workman is that after coming to normal condition from ailment of his wife, he joined his duty on 13.8.2003 and submitted medical certificate regarding the treatment of his wife. The Corporation has not specifically denied this fact that the workman was not sanctioned leave for the period 10.5.2003 to 15.5.2003. This fact is also not specifically denied that the workman after returning to his duty had submitted medical certificate of Government Hospital regarding the illness of his wife. The Corporation also alleged that the workman remained absent on several other occasions without prior permission/sanction, but neither such a charge was framed in the charge sheet nor the same has been proved by filing evidence in this regard. Therefore, the period on which the workman remained absent is 16.5.2003 to 12.8.2003, i.e. 89 days. It is therefore clear that the Corporation has been successful in establishing the misconduct of remaining absent from duty against the workman only once, and that too when the respondent had gone to his home after getting sanctioned his leave for the period 10.5.2003 to 15.5.2003, but he could not join his duties due to illness of his wife, in proof of which he had submitted medical certificate of Government Hospital. Therefore, in the above facts and circumstances of the case, the absence of the respondent/workman cannot be termed as grave misconduct and the punishment of dismissal from service was certainly arbitrary and disproportionate. The Punishing Authority has not dealt with this aspect in his order whether the workman was sanctioned leave for the period 10.5.2003 to 15.5.2003 before he left for Bareilly and he had also informed the department by telephone that he cannot attend his duties due to the illness of his wife, whereas these pleas had been taken by him in reply to charge sheet submitted against him. Therefore, the punishment order is arbitrary.

I have also gone through the ruling cited by learned counsel for petitioner North Eastern Karnataka R.T. Corpn. V. Ashappa & Anr. reported in AIR 2006 Supreme Court 2164. In this cited case the Corporation had established not only that the delinquent workmen remained unauthorisedly absent for a period of more than three years but also remained unauthorisedly absent on several occasions and that was the reason that Hon''ble Apex Court has held that the punishment of dismissal was not disproportionate and cannot be substituted with reinstatement. Therefore, the facts of the above cited case do not apply to the case in hand.

So far as the second limb of submission of learned Senior Advocate appearing for

the petitioner on the point of Tribunal's power not to interfere with punishment awarded by competent authority in departmental proceedings is concerned, I do not find any force in it. As has been held above by this court, that the punishment of dismissal of the workman was arbitrary, therefore, the Tribunal had power to interfere with it. The Hon''ble Apex Court in the above cited case of Union of India Vs. Parma Nanda, reported in (1989) Supreme Court Cases 177, has held that Tribunal has ordinarily no power to interfere with punishment awarded by competent authority in departmental proceedings on ground of the penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse. But the 8 Tribunal can interfere with the apparently unreasonable punishment where it is imposed on the basis of conviction by criminal court dispensing with departmental enquiry under second proviso (a) to Article 311 (2), Articles 311(2), 14 and 136 of the Constitution of India.

In the another above cited case of Mavji C. Lakum Vs. Central Bank of India, reported in (2008) 12 Supreme Court Cases 726, the Apex Court has dealt with the scope of Industrial Tribunal's power U/S 11A of Industrial Disputes Act, 1947 and has held that power U/S 11A is to be exercised judiciously and interference is permissible only when the Tribunal is not satisfied with the findings of domestic enquiry and punishment imposed is disproportionate. The Hon''ble Apex Court has further held in the cited case that absence of certain days and being of argumentative nature, the Industrial Tribunal rightly reduced punishment from discharge to stoppage of one increment. Provisions of Section 11A of Central Act have been made under Sub Section 2(A) of Section 6 of U.P. Industrial Act, 1947, therefore, the Labour Court has power of interference when the Tribunal is not satisfied with the findings of domestic enquiry and punishment is disproportionate. In the case in hand the learned Labour Court has recorded a categorical finding that the punishment awarded to the workman was disproportionate.

Further, in the case in hand, the specific allegation of the respondent workman is that he, on receiving telephonic message from his home that his wife is ill, had gone to his home after getting sanctioned leave for the period 1052003 to 1552003 and could not return due to illness of his wife and on 2252003 he had explained his case to Naipal Singh B.C., who had assured him to narrate the facts to Center Incharge. This is also not denied by the Corporation that the workman on joining his duty had submitted medical certificate of illness and treatment of his wife issued by Government Hospital. The Corporation has also not proved this fact that the workman remained absent on several other occasions without prior permission. Therefore, in the above circumstances the punishment of dismissal was certainly arbitrary and the learned Labour Court had power to interfere with the punishment awarded by the Corporation in departmental proceedings.

The learned Labour Court has also recorded a categorical finding that U.P. State Road Transport Corporation has framed The U.P. Road Transport Corporation

Employees Service Regulation, 1981 and Sub Rule (7) of Rule 62, brings the absence without leave or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation, in the category of misconduct, but it has not been defined therein which punishment should be given to such a misconduct, although there is provision of minor and major penalties in Rule 63. Further the Tribunal while considering the case of North Eastern Karnataka R.T. Corpn. V. Ashappa & Anr. reported in AIR 2006 Supreme Court 2164, has mentioned in the award that the Hon''ble Apex Court had observed that the workman not only remained absent for more than three years but on other occasions also he remained absent and has not taken the view that the maximum period of absence as prescribed is of three years. Further, while considering the case law Korala Bhaskar Rai Vs. Superintending Engineer, Andhra Pradesh Electricity Board, reported in F.L.R. 2002 page 320, it has been observed by the Labour Court that, if a workman does not join his duty on being asked, then his services can be dispensed with under Regulation 28(3), but in the instant case the workman was asked to join his duties after his absence and the facts of the above case were not applicable to the case in hand. Therefore, the grounds taken by the petitioner in the writ petition are misconceived.

So far as the payment of backwages is concerned, the learned Labour Court has awarded 50% back wages to the workman. The Hon''ble Apex Court in the case of Depot Manager, A.P.S.R.T.C. and another Vs. V. Surrender, reported in [2008(118) FLR 825] has held that the workman not entitled for any back wages for unauthorized absence from duty. In this particular case also the workman remained unauthorized absent for about 89 days, therefore, he is not entitled to any back wages.

With the above modification in the impugned award, the writ petition is liable to be allowed partly.

The writ petition is allowed partly. The workman/respondent shall not be entitled to any back wages. The order for reinstatement of the workman/respondent in service passed by the Labour Court is upheld.