

(2010) 10 MAD CK 0347

In the Madras High Court

Case No : Writ Petition No. 6536 of 2006

V. Manoharan

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Industrial Disputes Act, 1947 — Section 11(A)

Citation : (2011) 3 LLJ 101

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : R. Krishnaswamy, for V. Ajoy Khose, for the Appellant; S. Ravindran, for T.S. Gopalan and Company, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Petitioner has sought for the issue of a Writ of Certiorarified Mandamus to quash the Award dated June 18, 2002 passed by the first Respondent in I.D. No. 109/98 and to consequently direct the second Respondent to reinstate the Petitioner with continuity of service, back-wages and other attendant benefits.

2. The Petitioner herein joined the services of the second Respondent company as early as 1978. The Petitioner states that he was one of the members of SRP Tools Employees' Union, which was the only recognised Union functioning in the second Respondent company. As regards the Petitioner's unauthorised absence in reporting to duty, proceedings were initiated by the Management by issuing show cause notice. Ultimately, charge memo was issued on April 20, 1996 stating that the Petitioner had stayed away from the work for 101 days and out of 101 days, the Petitioner had absented from work unauthorisedly for 66 days during the period April 1, 1995 to March 31, 1996. In view of the habitual absence from work without permission and in terms of the Tamil Nadu Industrial Establishment (Standing Orders) Rules, the same amounting to misconduct, the second

Respondent establishment, hence, called upon the Petitioner to show cause within 72 hours of receipt of the memo as to why appropriate disciplinary action, including termination of his service, should not be initiated against him. The Petitioner sent reply on April 27, 1996 stating that on account of family circumstances, which were unavoidable, the Petitioner had to take leave during the period April 1, 1995 to March 31, 1996. The Petitioner assured that in future, he would avoid taking leave. In the circumstances, the Petitioner expressed his regret as to what had happened. On May 25, 1996, notice of enquiry was issued to the Petitioner holding that the reply given by the Petitioner was not satisfactory. The Petitioner was called upon to appear for the enquiry. Subsequently, on July 10, 1996, a letter was issued by the second Respondent modifying the charge memo dated April 20, 1996 thereby restricting the unauthorised absence for 29 days for the period from January 1, 1996 to March 31, 1996. Ultimately, on a finding given in the domestic enquiry, as per the proceedings dated August 18, 1997, the second Respondent passed an order dismissing the Petitioner from the services with immediate effect. Aggrieved of the same, the Petitioner approached the Labour Court and sought for reinstatement. The Labour Court, by its proceedings dated June 18, 2002, passed an order confirming the decision of the Management to dismiss the Petitioner from service, thereby, rejecting the claim of the Petitioner for reinstatement. As against the same, the Petitioner has come forward with the above writ petition.

3. Learned Counsel for the Petitioner pointed out that while the first charge memo was issued on April 20, 1996 giving the period of unauthorised absence as 66 days, the second charge memo issued restricting the period to 29 days itself shows that the allegations are totally untrue. When the charge already made had undergone a change, further proceedings by the second charge memo is unsustainable.

4. Learned Counsel for the Petitioner pointed out that the Petitioner had gone only under medical leave; hence, the absence cannot be taken as an unauthorised absence. In any event, the punishment imposed on the Petitioner is totally disproportionate to the charges alleged against the Petitioner. Hence, on the doctrine of proportionality, the order of the Tribunal suffers patent illegality which calls for interference by this Court.

5. In support of his contention, he placed reliance on the decision in Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, , wherein while dealing with the jurisdiction of this Court under Article 226 of the Constitution of India, the Apex Court pointed out that where the award of punishment was grossly disproportionate to the allegations, it is open to this Court, to test the charges and the punishment as per the proportionality and interfere with the order of punishment. Learned Counsel for the Petitioner further referred to the decision in Union of India (UOI) Vs. Registrar, Industrial Tribunal and Another, , following the decision of the Apex

Court in *Chairman cum Managing Director, Coal India Limited and Anr. v. Mukul Kumar Choudhuri and Ors.* (supra) as well as the unreported decision rendered in W.P. No. 11943/1993 dated October 11, 1999.

6. Per contra, the Respondents had filed counter narrating the policy of the Management on the aspect of the grant of leave, which had been accepted by the employees too. Pointing out to the consistent absence of the Petitioner as an act of misconduct, the Respondent contends that in the interest of the Management, the dismissal order was passed. It is further pointed out that the Petitioner denied his absence without leave. To the specific allegations that as against the first charge memo issued on April 20, 1995, the second charge memo had restricted the total number of leave without permission to 26 days, the second Respondent pointed out that the original notice dated April 20, 1996 covered the absence of the Petitioner from April 1, 1995 to April 30, 1996, totalling to 66 days unauthorised absence. In respect of the period from April 1, 1995 (sic) to March 31, 1996, already the Petitioner was issued with notice on several times and was severely warned not to go on abstaining from work and to maintain regularity in attendance in future. Having regard to the warnings already given by the Management, the Management issued the second notice and restricted the leave without permission to 29 days from January 1, 1996 to March 31, 1996. The second charge memo had not undergone drastic change except in the number of days restricting it to 29 days. Having regard to the admitted fact of unauthorised absence consistently during the period covered in the second charge memo, the Tribunal rightly passed an order confirming the action taken by the Management in dismissing the Petitioner from service. Learned Counsel further reported that Section 11-A of the Industrial Disputes Act had been properly exercised by the Tribunal. In the circumstances, the question of interfering with the decision of the Tribunal does not arise.

7. Referring to the decision *State of Haryana v. Devi Dutt* (2006) 13 SCC 32 : 2007 I LLJ 569, learned Counsel pointed out the law declared by the Apex Court as to the scope of interference that given the fact that the discretion exercised by the Tribunal is just and fair, no exception could be taken. He also referred to the decision *Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*, particularly to para 17, wherein it is held as follows at p. 649:

77. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters,- the jurisdiction would ordinarily not be invoked when the misconduct stands proved.

8. Referring to the decision in *Delhi Transport Corporation Vs. Sardar Singh*, , wherein, the Apex Court held that unauthorised absence could be treated as misconduct, learned Counsel for the Respondents pointed out that having regard to the admitted fact as regards unauthorised absence, the question of

interference with the discretion exercised by the Tribunal on the strength of doctrine of proportionality does not arise. On the materials available the Tribunal considered the claim of the parties to confirm the order of dismissal. Hence, the same cannot be called as disproportionate punishment on the Petitioner.

9. A perusal of the order passed by the first Respondent shows that admittedly, the Petitioner was not attending the work regularly. A reading of the document filed before the Tribunal shows that ever since April 1, 1995, the Petitioner was irregular in his attendance, which initially ended in warnings. The Petitioner was directed to return to duty regularly.

10. In respect of policy of the Respondent company on "leave", learned Counsel pointed out that given the nature of the manufacturing activity and the obligations to the purchasers, the Management had been insisting on the workmen to return to duty diligently. In paragraph 3 of the counter filed by the Management before the Tribunal, it is stated that the Respondent granted to its workmen every year, privilege leave at the rate of one day for every 20 days of work performed, subject to the workman having worked for 240 days in the immediately preceding calendar year. The workmen were also allowed every year 9 days casual leave and 2 days special casual leave. It is stated that when any workman absented over and above his leave entitlement and that too without leave, disciplinary action is initiated. The second Respondent states that the risk purchase clause in the contract empowers the customers to cancel the contract apart from recovering loss that the contracting party may suffer in purchase of products from other sources. Apart from that, in case of ex parte order, the clauses are stringent. Hence, the Respondents attached great importance to maintain discipline among the workers attending their duty without fail. It is seen from the documents produced before the Tribunal as well as before this Court that the Petitioner was given several warnings starting from 1985. The series of documents marked before the Tribunal as well as before this Court shows that the Petitioner was habitually staying away from the work without any intimation. The documents dated June 4, 1992, June 6, 1992 and August 3, 1992 shows that the Petitioner was severely warned and was directed to correct himself and realise his responsibility towards work for which he was primarily employed. The documents thus enclosed clearly showed that in spite of warning, the attitude of the Petitioner continued, which ultimately led to notice issued on April 20, 1996 pointing out to the fact that the Petitioner had been irregular in his attendance and could not be relied on for any systematic routine work. Despite advices and gestures showing lenient action, the Petitioner had failed to correct himself and continued to indulge in habitual unauthorised absence. Admittedly, as the Petitioner expressed his regret by his letter dated April 27, 1996 and on July 10, 2006, the management modified the unauthorised absence to 29 days from January 1, 1996 to March 31, 1996. In the background of various facts, it is seen that while considering the issues, the Tribunal pointed out that the document filed clearly substantiated the allegations of the Petitioner having been habitually absenting from reporting to duty. The detailed manner in which the Tribunal had

gone into the documents clearly shows that the decision made by the Tribunal is not an erratic decision but in terms of Section 11-A of the Industrial Disputes Act.

11. Referring to the case relied on by the parties herein as to the need to exercise discretion u/s 11-A of the Act, based on the materials, the Tribunal came to the conclusion that the disciplinary action ultimately resulting in the dismissal of the Petitioner was justified. As regards the reliance on the other employees, who abstained from work without any leave, the first Respondent pointed out that by any standards, those cases were incomparable. The Petitioner thus having abstained himself from reporting to duty regularly and there is no explanation from the Petitioner, rightly, the Management came to the decision to dismiss the Petitioner from service. I do not find any justification in the contention of the Petitioner that applying the doctrine of proportionality, the punishment order is excessive. Given the fact that in spite of warnings several times, the Petitioner abstained from reporting to duty the doctrine of proportionality invoked in this case does not support the case of the Petitioner that the order suffered from excessive punishment; hence, the question of setting aside the dismissal order does not arise.

12. In paragraph 26 of the decision Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, at p. 681:

...One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment....The punishment is not only unduly harsh but grossly in excess to the allegations....

13. In the decision Charanjit Lamba v. Commanding Officer (2010) 7 MLJ 367, the Apex Court pointed out:

That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non discriminatory treatment which even those form quality of a misdemeanour are entitled to claim but the same is recognised as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the Courts in India have recognised the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee, the Writ Court would not assume the role of an appellate authority. It would not impose a lesser

punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same.

14. Referring to the scope of judicial review under Article 226 of the Constitution of India,- the Apex Court pointed out that "the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same."

15. When applying the decisions to the facts of the present case, I do not find that the order of the Labour Court could be held as either excessive or disproportionate to the circumstances in this case. As already noted, when the absence of this Petitioner on an earlier occasion have gone for warnings and in spite of warnings, the Petitioner continuously abstained from reporting to duty, taking note of the interest of the Management and the consistent "absence for reporting to duty in spite of warnings, the only course open to the Management is to terminate the Petitioner, which cannot be found to be harsh in this case.

16. It may be noted that the business of the company in meeting the contractual obligations depends on the employees' co-operation in reporting to duty that the manufacturing activity goes uninterrupted. Hence, if an (employee abstained from reporting to duty frequently and without any leave sought for and that in spite of warnings issued, continues to adopt the same course of conduct, conscious of the Business commitments, the decision taken to dismiss the Petitioner from service cannot be called as disproportionate or arbitrary. Rightly, the Tribunal confirmed the decision of the disciplinary authority.

17. As rightly pointed out by the learned Counsel for the second Respondent, given the fact that the jurisdiction of this Court under Article 226 of the Constitution of India is a limited one and that the facts herein show that the punishment meted out does not appear to be so outrageously disproportionate as to be suggestive of lack of good faith as held by the Apex Court in the decision in Charanjit Lamba v. Commanding Officer (supra), I have no hesitation in confirming the order of the first Respondent.

18. In the background of the said decision, I am satisfied that the award of the Labour Court is based on the materials and the circumstances which warranted extreme punishment to be imposed on the Petitioner. Consequently, the award stands confirmed. The writ petition is dismissed. No costs.