
(1993) 12 RAJ CK 0013
In the Rajasthan High Court
Case No : C.W.P. No. 2234 of 1988

Vidya Dhar

APPELLANT

Vs

Hindustan Copper Ltd. and Another

RESPONDENT

Date of Decision : 20-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 2

Citation : (1994) 2 LLJ 935

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; A.K. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Brief facts of the case are that the petitioner joined service of Hindustan Copper Limited at Khetri complex on his appointment as Smelter (C) by order dated October 5, 1973. On account of his alleged participation in the strike the employer invoked Clause 7 of the Model Standing Orders and terminated petitioner's service with effect from February 28, 1975. However, he was reappointed with effect from March 8, 1975 after he had tendered unqualified apology. Then he was promoted as Smelter (B).

2. A charge sheet dated November 27, 1984 was served upon the petitioner with the allegation of his having committed misconduct under Clauses 14(3) (b) and (h) of the Model Standing Orders. Petitioner submitted his reply and then an Enquiry Officer was appointed to conduct the enquiry. On the basis of the report of Enquiry Officer a show cause notice dated September 11, 1985 was served upon the petitioner and he was called upon to submit his explanation as to why he be not dismissed from Company's service. A reply to the show cause notice dated September 11, 1985 was submitted by the petitioner. The petitioner filed a suit for permanent injunction : in the Court of Munsiff & Judicial Magistrate, Khetri. An application for temporary injunction was also filed under Order 39

Rules 1 and 2 C.P.C. This application was decided by the learned Munsiff & Judicial Magistrate on October 11, 1985. On October 16, 1985 the employer passed the order of punishment whereby the petitioner was ordered to be removed from service. Against his removal from service the petitioner filed an appeal before the Executive Director of the respondent Company. This appeal was rejected by an order dated February 12, 1986 of the Executive Director.

3. Against the order of dismissal as well as; the order passed by the appellate authority, the petitioner filed writ petition before the High Court. His Writ Petition No. 1594/86 Vidya Dhar v. Hindustan Copper Limited was decided by the High Court on October 16, 1986. The High Court quashed the order passed by the appellate authority and directed the Company to place the appeal of petitioner before the competent authority. The Court also observed that the penalty of dismissal awarded against the petitioner, prima facie appeared to be disproportionate. However, the matter was left to be decided by the appellate authority even on the question of quantum of punishment.

4. After the decision of High Court, appeal of the petitioner has been decided by the Chairman-cum-Managing Director. His decision has been conveyed to the petitioner vide letter dated November 12, 1986. Appellate authority has rejected all the contentions advanced by the petitioner. On the question of quantum of punishment the appellate authority has observed that full facts had not been placed before the High Court. The appellate authority also observed that no extenuating circumstances existed which warranted review of the decision of disciplinary authority awarding punishment of dismissal on the petitioner.

5. The petitioner has assailed the order passed by the disciplinary authority and the appellate authority on various grounds set out in the writ petition. He has pleaded that the enquiry was held against him without compliance of the principles of natural justice. Petitioner's assertion is that the employer has penalised him because he happened to be an active member of Khetri Tamba Shramik Sangh. His further assertion is that even before the charge sheet dated November 27, 1984 had been served upon him, he had submitted application dated August 8, 1984 before the competent authority and had explained the circumstances in which he had submitted his claim for T.A./D.A. bill. He pointed out that his wife was suffering from cancer. He had taken her to Delhi and while returning to Khetri, he received injury when a box of another passenger fell on him. The petitioner pleaded that despite his candid admission of the mistake vide letter dated August 8, 1984, the employer proceeded against him by way of disciplinary action with an ulterior motive and for a minor lapse he has been visited with extreme penalty of dismissal from service. His past service of 12 years has been ignored by the employer while imposing the penalty of dismissal from service and even the High Court's observations made in its order dated October 16, 1986, have been ignored. Petitioner has prayed that order of punishment passed by the disciplinary authority be declared to be arbitrary and be quashed and he be ordered to be reinstated with consequential benefits.

6. In reply the respondents have raised a preliminary objection to the entertainability of the writ petition on the ground that an equally efficacious alternative remedy is available to him under the Industrial Disputes Act, 1947. Respondents have also raised objection regarding delay in filing of the writ petition. They have pleaded that the writ petition has been filed after three years of the passing of the order of punishment and over one year and six months of the passing of appellate order. He has not explained this long delay in the filing of writ petition. Yet another objection raised by the respondents is that Hindustan Copper Limited is not a State under Article 12 of the Constitution of India and, therefore, the petitioner cannot invoke provisions of Part III of the Constitution for getting relief.

7. On merits the respondents have admitted the date of initial appointment of the petitioner. They have pleaded that the petitioner was removed from service on account of serious misconduct. Thereafter he tendered unqualified apology and on compassionate ground he was given fresh appointment by order dated March 8, 1975. Allegations of annoyance and mala fide have been denied by the respondents. They have also refuted the petitioner's charge of harassment on account of trade union activities. Further plea of the respondents is that during the course of service, the petitioner has been punished on 15 different occasions in respect of different allegations. In respect of the impugned order of punishment, the respondents have stated that preliminary enquiry was held and on the basis of the fact finding report, charge sheet dated November 27, 1984 was served upon him. He was given full opportunity of defence. The petitioner admitted his guilt. Respondents have also stated that having regard to the fact that on 14 previous occasions the petitioner had been charge-sheeted and on several occasions he was punished and, the disciplinary authority was fully justified in taking the view that penalty of dismissal from service was warranted. Appellate authority has examined all the contentions advanced by the petitioner and has concluded that there was no ground for interfering with the order of punishment passed by the disciplinary authority.

8. Shri Rastogi, learned counsel for the petitioner, has raised manifold contentions in support of the writ petition. He has argued that the enquiry held against the petitioner on the basis of the memo dated November 27, 1984 suffers from service legal and other infirmities. Shri Rastogi submitted that his reply was not taken into consideration by the disciplinary authority before order for appointment of Enquiry Officer was issued. Petitioner was not given list of witnesses and/or the documents which were to be relied upon for making enquiry. He was not given reasonable opportunity of defence. Petitioner was not given opportunity to lead his evidence. Copy of enquiry report was not made available to him. Shri Rastogi further argued that the penalty imposed on the petitioner is shockingly disproportionate and is wholly arbitrary and unjust. Shri Bhandari, learned counsel for the respondents, controverted the submissions of Shri Rastogi and argued that penalty imposed on the petitioner is perfectly just and proper. Shri Bhandari pointed out that the petitioner's past record is highly

unsatisfactory. In respect of charge sheet dated November 27, 1984 the penalty has been imposed by the disciplinary authority taking note of the admission made by the petitioner, argued Shri Bhandari. Shri Bhandari further submitted that even if the enquiry is held to be vitiated on account violation of natural justice, the employer has a right to lead evidence to prove the charge and for this purpose appropriate remedy is under the Industrial Disputes Act, 1947.

9. Shri Bhandari has placed before the Court service record of the petitioner in support of his assertion that the petitioner has been punished on more than one occasion before the impugned proceedings were initiated against him.

10. Petitioner was holding the post of Smelter (B) when disciplinary enquiry was initiated against him vide memo dated November 27, 1984. It can, therefore, be said that he was a workman in the service of respondent Company. The respondent company is engaged in the manufacture and sale of copper and this is purely a commercial activity. Therefore, the respondent Company falls within the ambit of the term "industry" u/s 2(j) of the Industrial Disputes Act, 1947. Relationship of master and servant, which existed between the petitioner and the respondents, is certainly governed by the provisions of the Industrial Disputes Act, 1947. In umpteen number of cases it has been held by the Courts that in matters relating to dismissal/discharge from service, remedy is available to the workman under the Industrial Disputes Act, 1947 and in fact such a remedy at times prove to be more effective in view of the wider powers which vest in a Labour Court/Industrial Tribunal u/s 11A. Ambit and scope of Section 11A has been considered and explained in large number of decisions of the Supreme Court and of this Court. In recent decisions in *Instrumentation Limited v. Raj. Pradesh Hind Mazdoor Sabha* and *Anr. 1993 (1) WLC 318* and *Suttuj Cotton Mills v. Raj. Textile Mazdoor Panchayat 1993 (1 W.L.678)*, this Court has held that power u/s 11A is akin to appellate powers. The competent adjudicating authority have jurisdiction to interfere with the quantum of punishment even in cases where finding of guilt recorded by the employer is upheld or in the case of no enquiry or defective enquiry, such finding is recorded by the adjudicating body itself. When no enquiry is held by the employer, it can seek leave of the Labour Court/Industrial Tribunal to lead evidence for substantiating the charge against the workman. It is thus clear that remedy which is available under the Industrial Disputes Act is an effective remedy in the matters of dismissal and discharge from service.

11. In the face of availability of such an effective remedy, I am of the opinion that the petitioner's case is fit one in which he should be directed to avail that remedy and there is no justification for this Court to embark upon an enquiry as to whether having regard to the facts of the case the employer was justified in imposing the penalty of dismissal from service.

12. In the result, the writ petition is dismissed on the ground of availability of alternative remedy. The petitioner shall be free to raise a dispute against his dismissal from service and it will be for the competent adjudicating body to

examine various facets of the contentions which may be raised by the parties before it. If petitioners makes an application for making reference, it is expected of the Central Government that such reference would be made expeditiously.