
(2015) 08 GAU CK 0055
In the Gauhati High Court
Case No : W.P. (C) No. 4896 of 2007

Workman

APPELLANT

Vs

Management of Kharjan Tea Estate and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2016) 148 FLR 158 : (2015) 4 LLJ 264 : (2016) LLR 152

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : A. Bhattacharyya and P. Kalita, Advocates, for the Appellant; P. Mahanta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Ms. A. Bhattacharyya, the learned Counsel appearing for the Trade Union representing the workman Jolsing Chetri. Also heard Mr. P. Mahanta, the learned advocate appearing for the management of the Kharjan Tea Estate (T.E). The matter arise out of the disciplinary proceeding drawn through the Charge Memo dated 9.11.2002 (Annexure-1), wherein the T.E. labourer was charged with willful subordination, negligence of duty and riotous conduct. The specific charge being relevant is extracted here in below for ready reference:

"That on 23.10.2002 at about 11:00 a.m. you left your worksite at Sec. No. 1E and appeared with your wife Smt. Lolita Joishing at Sec. No. 4B with a sharpened Dao. You abused the Sirdar Nakul Nanda who was performing his duty at Sec. No. 4B and at times you became violent. At the intervention of the workers present there you disappeared from the site.

....."

2. In his reply dated 12.11.2002 (Annexure-2), the workman explained that he was rebuked by the complainant Nakul Nanda in English in a loud voice and at

that time, the workman was agitated since his wives were not paid their wages and accordingly alleging conspiracy of few but reposing faith on the T.E. manager the workman prayed for revocation of suspension and his reinstatement in service.

3. Dissatisfied with the reply, an enquiry was ordered which was conducted by the advocate Ms. Kiran Borthakur. On the basis of the adverse conclusion reached by the Enquiry Officer, the workman was dismissed from service w.e.f. 1.3.2002. When conciliation failed, reference was drawn up under Section 10 of the Industrial Disputes Act, 1947 for a decision of the Labour Court as to whether the management was justified in dismissing the workman and if not, whether reinstatement with back wages should be ordered.

4. The learned Labour Court, Dibrugarh found that the domestic enquiry was vitiated and accordingly the parties were allowed to adduce evidence on the merit of the case. The 4 (four) management witnesses stated that the workman was engaged for duty in Section IE of the T.E. but without any permission from his superior, the workman went to Section 4B carrying a Kalam Dao and there he abused the complainant Nakul Nanda and meted out threat and indulged in riotous conduct. But in the written complaint of Nakul Nanda (M.W. 3) given to the Garden Manager on 25.10.2002 ascribes only a verbal role to the workman who was complaining about non-payment of wages of his wives and was arguing with the complainant. Of course he was carrying a Kalam Dao during the incident.

5. The written complaint given at the first instance, when compared with the oral evidence given by the complainant Nakul Nanda (M.W. 3) and the witness Dobin Gogoi (M.W. 4), the discrepancies become visible and it becomes apparent that embellishment was made in the oral version when brandishing the Kalam Dao with threat to kill is mentioned. But without considering the significant inconsistencies in the written complaint (Exbt. 1) and the oral evidence, the learned Labour Court considered the workman to have committed willful insubordination, riotous conduct and on that basis, the dismissal of the workman was held to be justified.

6. Assailing the conclusion in the Award and the proportionality of the punishment, Ms. A. Bhattacharyya the learned Counsel submits that the workman may have verbally quarrelled with the complainant since his wives were not paid their wages but this by itself may not be such a grave misconduct, unless the Kalam Dao is shown to have been brandished with threat to kill the complainant. She further submits that a Kalam Dao is normally carried by all the T.E. workers and in the absence of any evidence to show that the Kalam Dao was used to threaten the complainant, harsher conclusion shouldn't be drawn for the Kalam Dao carried by the workman as this should be understood as essential accessory of a T.E. worker on duty.

7. On the other hand, Mr. P. Mahanta, the learned Counsel submits that when a workman quarrels with his superior and abuses him, the management's loss of

confidence is a natural consequence against such workman and in that event, the punishment of dismissal can't be said to be disproportionate.

8. On the fateful day, the workman was disturbed as his wives were not paid their due wages and that is how after his assigned task was completed, he went to Section 4B where he was addressing his grievances to his superior. In the process, a verbal quarrel occurred between the workman and the complainant. Significantly in the written complaint (Exbt. 1), it was not alleged that the workman threatened to kill by brandishing the Kalam Dao and the allegation was confined to being angry and a verbal quarrel. It must also be noted that the charged worker is a long serving employee of the Kharjan T.E. and had a blemishless service record of 25 years. In fact his reply letter of 12.11.2002 shows his reverence for the T.E. manager.

9. In Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., the dismissal of an employee on charge of abusing his superior in filthy language was considered to be victimization and unfair labour practice and this decision is cited by Ms. A. Bhattacharyya to contend that disproportionate punishment is inflicted against the workman.

10. When we consider the Kalam Dao to be natural accessory of the T.E. worker and the Kalam Dao wasn't brandished by the workman during the quarrel, its mere possession shouldn't aggravate the nature of the misconduct and from this perspective, it is difficult to accept that the workman was guilty of riotous conduct as was alleged. Consequently this Court feels that the workman was involved in argument and verbal quarrel with his superior and the aggravating charges are not established. Proceeding on this basis, this Court finds that the penalty of dismissal is shockingly disproportionate and the same is held to be unsustainable. In view of the above finding, the contrary conclusion in the impugned Award dated 3.11.2005 (Reference Case No. 31/2003) for the workman Jolsing Chetri reached by the learned Labour Court, Dibrugarh is found to be unjustified and the same is accordingly quashed. In so far as his back wages is concerned, although the workman is a permanent worker but is paid on the basis of daily output, Rs. 1 Lakh is ordered to be paid upon reinstatement. But the management needn't pay any other benefits, as the workman stayed in the T.E. quarter with his wives who continue to serve under the same management. With this order, the writ petition stands allowed to the extent indicated without any order on cost.