

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.17148/2005**

% **Dated: 25.02.2009**

UNION OF INDIA & ANR. Petitioners

Through: Mr. U.L. Watwani with Ms. Kiran
Singh, Advocates

Versus

LAKHOO RAM & ANR. Respondents

Through: Mr. Varun Prasad, Advocate.

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

V. K. SHALI, J. (Oral)

1. The petitioner by virtue of the present petition has prayed for setting aside the award dated 30th June, 2004 passed in ID No.192/1997 in case titled Shri Lakhoo Ram, Plumber Vs. Superintending Engineer, CPWD. By virtue of the aforesaid award, the learned Labour Court has set aside the order of punishment of dismissal imposed on the respondent/workman on the ground that the same is arbitrary and discriminatory and the Labour Court has substituted the same with punishment of stoppage of 3 increments without cumulative effect as was imposed in the case of another co-delinquent, Mantoori.

2. Briefly stated, the facts leading to the present writ petition are that on 26th November, 1997, the following industrial dispute was referred to the Industrial Tribunal-cum-Labour Court for adjudication :

“Whether the action of the management of Superintending Engineer, Delhi Central Circle 9, CPWD, New Delhi in terminating the services of Shri Lakhoo Ram, is legal and justified? If not, what relief the workman is entitled to?”

3. The respondent/workman, Lakhoo Ram, was allegedly working as Plumber with the petitioner/management from 28th August, 1986, and his services were terminated w.e.f. 30th August, 1995 after conduct of a domestic inquiry against him. The allegations made against him were that on 13th May, 1989 at about 3.00 p.m., he along with co-delinquent, Ganga Prasad, Mason and one Mantoori, Chowkidar allegedly gave beating to Ram Chander, Junior Engineer while posted in the same Division. A show cause notice for proposed inquiry was issued to the respondents/workmen on 19.9.1989 and articles of charges were also given to them. Pursuant to this, an Inquiry Officer was appointed. The Inquiry Officer after conducting inquiry gave a report that the misconduct of the respondent/workman was duly established and accordingly, the report was sent to the Disciplinary Authority. The inquiry report was dated 30th June, 1994 and it may be pertinent to observe here that the Inquiry Officer, Mahesh Chandra, Superintending Engineer had observed that the respondent/workman, Lakhoo Ram along with Mr. Ganga Prasad, Mason and Mantoori, Chowkidar had beaten Ram Chandra, Junior Engineer severely and the

same has been established. On the basis of this inquiry report, the services of the respondent/workman were dismissed.

4. The learned Labour Court has set aside the punishment of dismissal from service on the ground that the punishment which was imposed on the respondent/workman was arbitrary and discriminatory inasmuch as the other co-delinquent, namely one Ganga Prasad, Mason was exonerated completely by the petitioner/management and so far as the other co-delinquent, Mantoori is concerned, in his case punishment of stoppage of two increments without cumulative effect was imposed and that too without holding inquiry. The learned Labour Court came to the conclusion that the punishment of termination which was imposed on the respondent/workman was accordingly discriminatory inasmuch as all of them were guilty of the same misconduct.

5. I have heard the learned counsel for the parties. It has been contended by the learned counsel for the petitioner that the Labour Court has grossly fallen into an error by setting aside the order of termination and substituting its punishment of stoppage of 3 increments without cumulative effect. It has been contended by the learned counsel that this finding of the learned Labour Court is in total derogation with the law laid down by the Supreme Court in the case titled ***M.P. Electricity Board Vs. Jagdish Chandra Sharma (2005) 3 SCC 401***. In this case, the Apex Court held that the punishment of dismissal on the workman was not shockingly disproportionate as the

charge proved against the delinquent was that he had hit his superior officer. It was observed by the Court that obedience to authority in work place is not slavery. It is a sine qua non for the efficient functioning of the organization. The facts of the case are distinguishable from the facts of the present case. In the case which is cited, the delinquent was alone thereby meaning that it was a case of a standalone delinquent while as in the present case, there is ample evidence and so is the case of the department that there were three associates of which the respondent was only one. Then in such a situation there has to be some amount of parity in the punishment which is imposed. As against this, one is completely exonerated, second is visited with a minor punishment of stoppage of increment and the third, the present petitioner is dismissed.

6. As against this, the respondent has contended that the learned Labour Court has rightly set aside the punishment of termination/dismissal on the ground of discrimination because there are catena of authorities by the Supreme Court that in case the allegations of misconduct against more than one co-delinquents are of the same nature, there has to be some amount of parity of punishment imposed on them. Reliance in this regard is placed on the following authorities :

Man Singh Vs. State of Haryana & Ors. 2008(7) SCALE, Tata Engineering & Locomotive Co. Ltd. (2001) 10 SCC 530, S.K. Bhattacharya Vs. State Industrial Court, M.P. Indore & Ors. 1996 LAB. I. C. 834, M/s Cooperative Store Ltd. Vs. Usha Kumar 1997 LAB. I. C.

833 and Akhilesh Kumar Singh Vs. State of Jharkhand & Ors. 2007(14) SCALE.

7. I have carefully considered the submissions made by the respective sides. I have also gone through the record. There is no dispute about the fact that so far as the respondent/workman is concerned, he was alleged to have misconducted himself along with two other co-delinquents, namely Ganga Prasad and Mantoori. It is also not in dispute that the allegation against all of them were the same. Though notice of proposed inquiry was issued against all the three delinquents, including the respondent/workman in the instant case, but curiously enough, so far as Ganga Prasad, Mason is concerned, no action seems to have been taken against him. It has been stated by the learned counsel for the respondent that Ganga Prasad was completely exonerated by the petitioner/management. As regards the Mantoori, he had filed reply to the show cause notice proposing to hold inquiry against him and on the basis of his reply itself, he was visited with a minor punishment of stoppage of two increments without cumulative effect. So far as the respondent/workman, Lakhoo Ram is concerned, against him the inquiry was conducted and he was found guilty of having misconducted himself. The said inquiry report was accepted by the petitioner/management. Thereafter, the Disciplinary Authority imposed the punishment of removal from service of the respondent/workman which was assailed by him by the aforesaid reference.

8. The learned Labour Court has rightly come to the conclusion that if there are more than one co-accused held guilty of similar or same misconduct, there has to be some amount of parity in the proposed punishment which was imposed on all the delinquents. While as in the instant case there is a complete variation of punishment imposed on the three co-delinquents. One Ganga Prasad has been completely exonerated and so far as the other co-delinquent, Mantoori is concerned, he has been visited with a minor punishment of stoppage of two increments while as the respondent/workman in the instant case has been visited with the major punishment of dismissal which is totally discriminatory apart from being excessively harsh for the proved misconduct against him.

9. The Apex Court has repeatedly held that the imposition of punishment is primarily the job of the Disciplinary Authority and in normal circumstances even if the Tribunal or the Court comes to a finding that the punishment imposed on a delinquent in a given case is excessively harsh, disproportionate to the proved misconduct or is the one which shocks the conscience of the Court, it may after setting aside the said punishment remand back the matter to the Tribunal or to the Disciplinary Authority for the imposition of punishment afresh. But at the same time, the Court has also observed that if the facts of the case are such which warrant substitution of punishment by the Court itself, it can do so in peculiar facts and circumstances of the case such circumstances. Reliance in this regard can be placed on ***Union of***

India Vs. B.C. Chaturvedi (1995) 6 SCC 497 wherein it was observed

as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have **exclusive power** to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in **exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.**”

10. In the light of the aforesaid legal position, I am of the opinion that this is a fit case where punishment was rightly substituted by the learned Labour Court by setting aside the punishment of dismissal from service and substituting the same with punishment of stoppage of 3 increments which is almost at par with the punishment with which the other co-accused has been given. I therefore find no infirmity with the award of the learned Labour Court. Accordingly, the writ petition is dismissed.

No order as to costs.

FEBRUARY 25, 2009

V.K. SHALI, J.

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