

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 22.07.2014

+ **W.P.(C) 5053/2000**

MANAGEMENT OF ASHOK HOTEL

..... Petitioner

versus

GOVT. OF N.C.T. OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Counsel (appearance not given).

For the Respondents : Mr Vinay Sabharwal with Ms Neha Sabharwal
for R-3.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present writ petition has been filed by the petitioner challenging a award dated 14.10.1999 (hereinafter referred to as the 'impugned award') passed by the Labour Court, Delhi in I.D. No.179/91. By the impugned award, the Labour Court has set aside the termination of the services of respondent no.3 on the ground that the punishment is excessive and has directed reinstatement of respondent no.3 with the petitioner.

2. Brief facts of the case are that the respondent no.3/workman (Sohan Pal) was working as a Houseman with the petitioner. During the course of his employment, charges of misconduct were leveled against him; it was alleged that on 05.12.1986, respondent no.3 took ₹1000/- from a guest one Mr Yazaki who was staying at the hotel, for procuring a girl for immoral

reasons. Subsequently, on 09.12.1986, respondent no.3 was placed under suspension and a charge-sheet dated 30.12.1986 was served upon him for the following acts of misconduct under the certified standing orders of the hotel:-

"14(VIII) : Indecent behaviour within the Company's establishment;

(L) : Any act subversive of discipline, and all other acts prejudicial to the best interest and reputation of the Hotel."

3. The respondent workman offered no explanation for the charges leveled and on 31.01.1987, the petitioner ordered the institution of an enquiry into the charges and appointed an Enquiry Officer. In the course of the enquiry proceedings, he voluntarily gave his confessional statement and admitted the undernoted portions of the charge-sheet:-

- "1) he took Rs.1000/- from a guest Mr. Yazaki from room no.605 for bringing a girl for him for immoral purposes;
- 2) he took the help from the three wheeler scooter owner to procure a girl from GB Road and gave him Rs.600/- for the services;
- 3) the girl was caught by the security staff in the Hotel premises;
- 4) 4 x 100 currency notes, the number of which are given above were recovered from his person by the security staff on search."

4. The enquiry officer submitted his report on 25.07.1987, holding that the charges against the respondent workman stood established/proved. On 24.08.1987, a show cause notice was issued to respondent no.3 as to why

his service should not be terminated. No reply was received by the petitioner to the said show cause notice, the petitioner, accordingly, terminated the services of respondent no.3 by its letter dated 06.11.1987.

5. Aggrieved by the termination of service, respondent no.3 invoked the power of the Conciliation Officer under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). However, the Conciliation proceedings were not successful and a settlement did not fructify. Consequently, the Conciliation Officer sent a failure report to the Secretary (Labour), Delhi. Thereafter, the dispute was referred to the Labour Court for adjudication under the following terms of reference:-

"Whether the termination of services of Shri Sohan Pal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

6. The Labour Court, by the impugned award dated 04.10.1999, set-aside the termination of the services of respondent no. 3. The Court held that although the enquiry held was proper and the misconduct was proved, the punishment of termination from service was excessive in the given facts and circumstances and directed the re-instatement of respondent no.3 with the petitioner. Aggrieved by the same, the petitioner has challenged the impugned award in the present petition.

7. It was contended on behalf of the petitioner that it is not in dispute that the respondent workman was guilty of mis-conduct and, therefore termination of his services with the petitioner cannot be interfered with. It was contended that given the gravity of respondent workman's mis-conduct, the measure of removing him from service was neither

disproportionate nor unwarranted. It was further contended that the Labour Court exceeded its jurisdiction in setting aside the termination of services of respondent No.3 and directing his reinstatement. The learned counsel referred to the decision of this court in **ITDC Limited v. S.K. Roy: 2007 (140) DLT 336** in support of his contention that Industrial Courts are not required to sit in appeal over the decision of the employer, unless the decision of the disciplinary authority suffers from any procedural impropriety or is unconscionable. The learned counsel also relied upon the decision of the Supreme Court in **Bharat Heavy Electricals Limited v.M. Chandrasekhar Reddy: (2005) 2 SCC 481** whereby the Supreme Court had held that the discretion vested with the Labour Courts is not unfettered but has to be exercised judiciously.

8. The learned counsel for the respondent workman supported the impugned award and submitted that the impugned award was well reasoned and therefore did not warrant any interference by this Court under Article 226/227 of the Constitution of India. He referred to the decision of the Supreme Court in **Management of Hindustan Machine Tools Bangalore v. Mohd. Usman and Anr.: AIR 1984 SC 321** and contended that Section 11A of the Act confers a very wide power on the Labour Court which includes the power to evaluate the severity of mis-conduct and to assess whether punishment imposed is commensurate with the gravity of mis-conduct. He submitted that the scope of interference by a Labour Court is much wider than the scope of judicial review under Article 226 of the Constitution of India. He submitted that, in the present case, the Labour Court had examined the allegation of mis-conduct and had found the

punishment to be disproportionate for the reasons stated in the impugned award. According to the learned counsel, there were three reasons that persuaded the Labour Court to set aside the termination of services of respondent workman and reinstate him. He submitted that, first of all, the Labour Court had found that the respondent workman had an unblemished service record in the past and the incidence in question was a solitary incident. Secondly, according to the learned counsel for the respondent, the Labour Court had also noted that there was a discrepancy as to whether the girl in question had been brought into the premises of the hotel or had been told to wait outside the gate. He stated that the Labour Court was persuaded to take the view that the mis-conduct on the part of the respondent workman was not grave and the fact that he had asked the girl to wait outside, would also indicate that he was conscious of the reputation of the hotel and therefore part of the mis-conduct for which he is alleged did not take place in the premises of the hotel. Thirdly, he stated that the Labour Court took note of the fact that the respondent workman only earned ₹400/- from the exercise. Although, he had charged ₹1000/- for procuring a girl, ₹500 was paid to the girl and ₹100 was paid as Auto rickshaw fare. He submitted that the impugned award being reasoned one, ought not to be interfered with in these proceeding.

9. I have heard the learned counsel for the parties.

10. Before proceeding further, it would be necessary to examine the reasons that persuaded the Labour Court to set aside the petitioner's decision to terminate the services of the respondent workman. The Labour Court found that the enquiry into the mis-conduct of the respondent

workman was conducted in accordance with the principles of natural justice and was valid and legal. The appointment of the enquiry officer could also not be faulted. However, with respect of the punishment awarded to the respondent workman, the Labour Court noted the factual events and held that the punishment was excessive. The relevant extract from the decision of the Labour Court is quoted below:-

“12. I have carefully considered the argument advanced by Ld ARs of the parties. I have also gone through the pleadings and the evidence on record. As per pleadings of the parties and evidence on record the workman took Rs.1000/- from a guest namely Yazaki who was staying in room No.605 of Ashoka Hotel i.e. the management for procuring a girl for immoral purpose. Shri Sohan Pal workman brought the girl from G.B.Road in a three wheeler scooter. He paid Rs. 100/- to Scooterwala through whom that girl was called. It is also correct that the enquiry issue has been decided against the workman as he confessed his guilt before the Enquiry Officer. From the perusal of the documents on record it is found that the workman admitted on 5.12.86 on the date of alleged occurrence itself that he brought the girl in a scooter. The scooter was parked at the gate of the hotel. That girl was asked to stand at the gate. Japani guest was called from his room and he came out at the gate and on seeing the girl he refused to accept that girl. The statement of Yazaki was also recorded on that very date who also deposed to the effect that he came down at the entrance gate of the hotel. He did not like the girl and then he demanded back the money paid to the workman for the said purpose. Workman refused to give back that amount and then he went to the lobby and lodged the report to the Security Staff but the version of the security staff is that they caught the girl in the lobby when she was moving in suspicious circumstances and then they interrogated the girl and then the above facts came to their knowledge. Hence there is discrepancy in the version of the Security Staff of

the management and in the version as given by the workman and Shri Yazaki the guest so far as the apprehension of that girl is concerned. The workman allegedly paid Rs.500/- to the girl and Rs.100/- to the Scooterwala and the remaining Rs.400/- was recovered from him meaning thereby he earned Rs.400/- only. He had served with the management for about 7 years or more on the date of alleged occurrence. There is no adverse report against this workman earlier to it. In view of these circumstances the termination of the workman appears to be quite excessive.”

11. Apart from referring to a discrepancy in the version of the security staff of the petitioner, in respect of where the concerned girl was found, and the version of the workman and the hotel guest, the only reason that can be discerned from the impugned award is that the workman had served the petitioner management for seven years without any adverse report. I am unable to read the impugned award to indicate the other reasons that have been extensively canvassed by the learned counsel for the respondent workman. It is difficult to accept that there is any material relevance as to where the concerned girl was found. It is difficult to appreciate as to how the girl being asked to wait at the entrance of the hotel would in any manner mitigate the mis-conduct on the part of the respondent workman, as has been urged by the learned counsel for the respondent. The essential facts are not disputed. The respondent workman virtually acted as a pimp and admittedly had taken funds from a guest to procure a girl for immoral purposes. He had then brought the girl in an auto rickshaw and on her not being accepted by the guest, had refused to refund him the money. The gravamen of the mis-conduct is not that he had provided the girl in the lobby of the hotel but that he had transacted with the guest of the hotel for

an action that was clearly immoral and in any event could not be countenanced by any respectable establishment carrying on an undertaking of a luxury hotel. The learned counsel for the respondent workman has argued that the respondent workman only received a paltry sum of ₹400/- and this also weighed with the Labour Court in arriving at a conclusion that the punitive measure taken against the workman was excessive. Although the fact that the respondent workman managed to make only ₹400/- out of the exercise undertaken by him has been noted, it cannot be discerned whether that is one of the reasons that weighed with the Labour Court in granting relief to the respondent workman. Even if that be so, I am unable to appreciate as to how the quantum of money made by the workman would mitigate his conduct in any manner.

12. It is essential to understand that the provisions of the Act are meant to protect a workman from management's unreasonable actions or from taking advantage of their superior bargaining power. The provisions of the Act cannot be used to impose employees on the pay roll of an establishment with whom the management has decided to disassociate with for good reason. Employment is a matter of contract between an employer and an employee and just as an employee has an option whether to serve a particular employer, the employer also has a discretion whether to avail services of a person as an employee. However, given the unequal bargaining power between employer and employee and the limited opportunity of employment in our country, the discretion of an employer to dispense with the services of a specified class of employees has been restricted to ensure that an employer acts reasonably and does not abuse its

position of having a superior bargaining power. The provisions of the Act are to prevent unfair labour practices and to ensure that the employees are not victimized and are placed in a position to bargain for their fair share from the enterprise. This being the prime purpose of the Labour Legislation, any intrusion into the discretion of an employer to dispense with the services of an employee who has been found to have misconducted himself should be limited to ensure that the workman has not been unfairly treated, the enquiry against him has been held and in accordance with the principles of natural justice and there is no infirmity in the decision making process. A grossly disproportionate punitive action which is not commensurate with the gravity of the misconduct or is unconscionable would also fall foul of the test of reasonableness and, thus, warrant correction. The Supreme Court in **Coal India Ltd. v. Mukul Kumar Choudhari**: (2009) 15 SCC 620 while examining the doctrine of proportionality held as under:-

“19. The doctrine of proportionality is, thus, well recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. 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.”

13. Undisputedly, the Labour Court has powers under Section 11A of the Act to examine the decision of a Disciplinary Authority and as has been held by the Supreme Court in *Management of Hindustan Machine Tools Bangalore (supra)*, this includes the power to evaluate the severity of misconduct and assess whether punishment imposed by the employer is commensurate with the gravity of misconduct. However, it is equally well settled that the discretion under Section 11A of the Act is not unfettered and has to be exercised judiciously. The Supreme Court in the case of *Christian Medical College Hospital Employees’ Union v. Christian Medical College Vellore Assn.*: (1987) 4 SCC 691 has explained:

“14. Section 11-A of the Act.....cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision.”

14. In our view, the Labour Court ought to have acted in accordance with the principles enunciated by the Supreme Court above and considered the matter from the stand point of the employer. The Labour Court would have to address the question, whether in the given circumstances a reasonable employer would take the measure to terminate the services of an employee

who has been found guilty of the charges leveled. Whether the punishment meted out is grossly disproportionate, has to be considered keeping in view the concerns of the employer.

15. Applying the aforesaid principles in the facts of the present case, it is apparent that the Labour Court misdirected itself and the impugned award is not informed by good reasons. The respondent workman was undoubtedly guilty of the misconduct for which he was charged. The disciplinary authority had, obviously, concluded that such an employee ought not to be associated with the petitioner and it is not hard to imagine why. The petitioner could hardly be expected to continue with the employment of the respondent who contracted with a guest of the hotel to procure a girl for immoral purposes. Although the Labour Court, obviously felt that a lenient view ought to have been taken, the reason for this view is mainly the past record of the workman. As stated earlier, the other reasons as suggested by the learned counsel for the respondent workman are not readily discernible as reasons that persuaded the Labour court to upset the decision of the petitioner and in any view can at best be described as irrelevant.

16. Although the Labour Court may have a view differing from that of a Disciplinary Authority but that cannot be the reason for supplanting its view over that of the employer and setting aside the punitive measure taken by the management of the petitioner. The Labour Court could only interfere if it found that the punishment was grossly disproportionate and for sufficient reasons. In the present case, the reasons for the Labour Court taking a different view are not easily ascertainable but even if one was to

consider the same to be the ones contended by the learned counsel for respondent No.3, it is difficult to accept that the same would sustain a conclusion that the punishment was grossly disproportionate. In my view, the reasons for taking the view that termination of services of respondent No.3 was an excessive measure, are wholly inadequate. The doctrine of proportionality cannot be used by the Labour Court to supplant its view over that of the Disciplinary Authority unless it finds that the punitive measures are grossly excessive and for good reasons.

17. Before concluding, I must also address the contention of the learned counsel for the respondent workman that this Court under Article 226 should not interfere with the impugned award as the scope of judicial review under Article 226 of the Constitution of India is limited. It is settled law that this court in exercise of its jurisdiction under Article 226/227 will not ordinarily interfere with the decision of an authority unless it is found that such decision is capricious, mala fide, arbitrary, without jurisdiction or that the decision making process is flawed. This court also has jurisdiction of superintendence under Article 227 of the Constitution of India and in the present case it is apparent that the Labour Court has misdirected itself and it is clear that the approach adopted by the Labour Court was unwarranted and cannot be sustained. The discretion vested with the Labour Court to evaluate the punishment meted out to a workman in the context of the gravity of his misconduct must be exercised judiciously and on established principles. In my view, in the given facts and circumstances of the case, interference with the impugned award is called for as the impugned award is clearly arbitrary and the Labour Court has failed to adhere to the

principles as explained above. The impugned award holding that the action of the petitioner in terminating the services of the respondent workman was excessive, is wholly unreasonable and patently erroneous.

18. Accordingly, the impugned award is set aside and the decision of the Disciplinary Authority in terminating the services of the respondent workman is upheld. The writ petition is accordingly allowed with no further orders as to costs.

JULY 22, 2014
RK

VIBHU BAKHRU, J

