

GAHC010009372011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5846/2011

THE WORKMAN OF BORJAN TEA ESTATE
REP. BY THE SECY., ASSAM CHAH KARMACHARI SANGHA, GOLAGHAT
CIRCLE, DIST. GOLAGHAT, ASSAM.

VERSUS

THE MANAGEMENT OF BORJAN TEA ESTATE and ANR
PO. BORJAN, DIST. GOLAGHAT, ASSAM.

2:THE PRESIDING OFFICER

LABOUR COURT
DIBRUGARH
ASSAM
PIN-78600

Advocate for the Petitioners : Ms. A. Bhattacharyya, Advocate
Mr. Phanindra Kalita, Advocate

Advocate for the Respondents : Mr. B. Baruah, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 08.08.2023

Date of Judgment : 08.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed challenging the award dated 27.12.2010 passed by the learned Labour Court, Dibrugarh in Reference Case No.1/2009 whereby the learned Labour Court decided the Reference Case by upholding the decision of the Management of Borjan Tea Estate to dismiss the delinquent workman.

2. The facts involved in the instant case as would appear from the perusal of the writ petition as well as the LCR are that one Shri Badan Gogoi (hereinafter referred to as the 'delinquent workman') was a Store Clerk w.e.f. 01.04.2001. On 01.04.2007, one Sri Rana Raruah joined the post of the Manager of Borjan Tea Estate. It reveals from the records that after joining, the said Manager received information from the Head Office that there were some irregularities in respect to the sale of scrap of Borjan Tea Estate. Accordingly, he held an enquiry. During the course of enquiry, the delinquent workman who was also the Store Clerk was called and upon him, various enquiries were made as regards certain sale of scrap on 21.02.2007 by the then Manager and Assistant Manager of Borjan Tea Estate. During the said course of enquiry, the purchaser of the scrap one Sri Dasarath Shaw was also enquired into who admitted purchase of scrap as well as payment of Rs.75,000/- in lieu thereof. Upon the preliminary enquiry being done, the Manager of Borjan Tea Estate, being not satisfied with the explanation so given by the delinquent workman, issued a show cause notice to him on 13.08.2007 alleging inter-alia that the delinquent workman had collected an amount of Rs.75,000/- from Sri Dasarath Shaw as the proceed of the scrap sale but had deposited only an amount of Rs.1,932/- with the Head Clerk. It was alleged in the said show cause notice that the said delinquent workman has been sending out Company's property from the factory premises under his signature without the knowledge of the

Management. Further to that, seven more instances were mentioned in the said show cause notice whereby there were sale of scrap, but the entire amount of the sale was not deposited. It is under such circumstances, the delinquent workman was asked to submit a written explanation as to why action should not be taken, taking into account that the delinquent workman had committed a serious offence under Clause 10 (A) (2) of the Standing Orders. The delinquent workman was also suspended on the basis of the said show cause notice. It further appears that the delinquent workman submitted a detail reply on 20.08.2007.

3. From a perusal of the said reply, it is clear that there is no denial that the delinquent workman received the amount from the said Dasarath Shaw totaling to Rs.75,000/- as well as the delinquent workman had only deposited an amount of Rs.1,932/- before the Head Clerk against the sale of the scrap. However, it is the specific case of the delinquent workman that the sale amount of Rs,75,000/- was given to the then Manger of the Tea Estate who handed it over to the Factory Manager and the Factory Manager gave him an amount of Rs.1,932/- to be deposited before the Head Clerk. The Management of the Tea Estate in question having found that the reply submitted by the delinquent workman was not satisfactory initiated a proceedings by appointing an Enquiry Officer. In the said Enquiry Proceedings, the Management adduced evidence of 5 witnesses. However, the delinquent workman did not adduce any evidence. The Enquiry Officer, on the basis of the documents as well as the evidence on record, framed nine points for consideration. It is, however, relevant to take note of that in the said enquiry proceedings, the delinquent workman did not raise any issue as regards non-receipt of the list of witnesses as well as also had taken any steps for calling the then Manager whom the delinquent workman alleged had misappropriate the amount of Rs.73,068/-.

4. Be that as it may, the Enquiry Officer submitted a report on 05.01.2008

whereby it was opined that the delinquent workman was guilty of misconduct. This Court finds it relevant to observe that in the said enquiry proceedings, the Enquiry Officer had also opined that he has reason to believe that the entire sale matter was wrapped in the shroud of mystery taking into account the evidence so produced which shows some involvement of not only the delinquent workman but also the Assistant Manager Sri Ankurjyoti Sarma and the then Manager Sri S. Das. It is relevant however to mention that during the said enquiry proceedings, the then Assistant Manager denied the stand of the delinquent workman and deposed before the Enquiry Officer.

5. This Court has also perused the cross-examination of Sri Ankurjyoti Sarma, the then Assistant Manager before the Enquiry Officer. The delinquent workman could not bring out anything to substantiate his allegations that the Assistant Manager as well as the Senior Manager had any role in the non-depositing of Rs.75,000/- to the Head Clerk.

6. It further reveals from the record that upon the said enquiry report being submitted on 05.02.2008, the said enquiry report was furnished to the delinquent workman and the second show cause notice was issued. The delinquent workman, however, did not reply to the same. The Management of the respondent No.1, i.e. Management of Borjan Tea Estate through its Manager vide communication dated 07.03.2008 dismissed the delinquent workman w.e.f. 07.03.2008 and further informed the delinquent workman that he shall not be entitled to any benefit and facility of the Company taking into account that he is no longer in service.

7. Pursuant to the dismissal of the delinquent workman, the Government of Assam referred the dispute to the learned Labour Court of Assam at Dibrugarh vide notification No.GLR/2015/2008/13 dated 18.12.2008 for adjudication of the following terms of reference which are reproduced herein under:-

(i) Whether the management of Borjan Tea Estate, P.O. Borjan, District Golaghat is justified in dismissing the services of Shri Badan Gogoi, workman with effect from 07.03.2008?

(ii) If not, is the said workman entitled to reinstatement with full back wages or any other relief in lieu of reinstatement?

8. It further reveals from the LCR that the petitioner filed the written statement on behalf of the delinquent workman and the respondent No.1 had also filed the written statement. Before further proceeding, this Court deems it proper to take note of that in the written statement filed by the petitioner, the enquiry proceedings were questioned on the ground that the Management failed to enclose the list of witnesses to be examined in the enquiry and also that the enquiry was bad for non-examination of the ex-Manager of the Garden Sri S Das and the production of the original records (gate, Pass Book etc.). It was alleged in the said written statement that the ex-Manager of the Garden Sri S. Das was a material witness and the production of the original records (gate, Pass Book etc.) were not allowed by the Enquiry Officer for best reasons known to the Management. Further to that, the enquiry report was also assailed on the ground that the findings arrived at were perverse as there were no materials on record on the basis of which the Enquiry Officer could have arrived at the said finding.

9. During the Reference Proceedings, the Management adduced the evidence of seven witnesses and the delinquent workman was the sole witness on behalf of the petitioner. The learned Labour Court vide the award dated 27.12.2010 answered the Reference in favour of the respondent No.1 thereby upholding the dismissal of the delinquent workman. In doing so, the learned Labour Court decided the question as regards the fairness of the enquiry and as regards the perversity in findings of the Enquiry Officer and came to a definitive conclusion that the enquiry was held by following the due procedure and there was no perversity in the

findings of the enquiry Officer. As regards the list of the witnesses not being supplied, the learned Labour Court taking into account the pleadings as well as the evidence of the delinquent workman came to an opinion that no prejudice was shown by the delinquent workman for the non-supply of the list of witnesses, and accordingly, applying the law as laid down by this Court as well as the Supreme Court held that the delinquent workman was not prejudiced for non-supply of the list of witnesses.

10. On the question as regards the non-examination of the material witness, Mr. S. Das, the then Manager as a witness as well as some original documents were not placed, the learned Labour Court came to an opinion that the delinquent workman during the proceedings before the Enquiry Officer did not cite the then Manager as a witness as well as also could not show the relevancy as regards the original gate pass. The learned Labour Court further taking into account that the allegations against the petitioner constituted misappropriation of the Company's property which was a grave misconduct entailing loss of confidence of the employer did not find any reason to interfere with the order of the dismissal of the delinquent workman. The petitioner herein, being aggrieved by the said award dated 27.12.2010 had approached this court by filing the present writ petition on 15.09.2011.

11. It is relevant from the records that vide an order dated 21.11.2011, this Court had issued Rule. It further reveals that the respondent No.1 had also filed an affidavit-in-opposition on 09.08.2018 supporting the Award so impugned in the instant proceedings. This Court has duly perused the materials on record and heard the learned counsels for the parties.

12. Before proceeding to deal with the respective contentions so submitted by the learned counsels for the parties, this Court finds it proper to take note of the

judgment of the Supreme Court in the case of **A.P. SRTC vs. Raghuda Siva Sankar Prasad**, reported in (**2007**) **1 SCC 222** wherein the contours of the jurisdiction under Article 226 of the Constitution in respect to departmental proceedings and challenge to awards passed by the learned Labour Court was dealt with. Paragraph Nos.20 to 23 of the said judgment, being relevant, is reproduced herein under:-

“

20. *The learned Judges of the High Court have also failed to appreciate that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service. The punishment, imposed by the management in the facts and circumstances of the case, is not disproportionate and that the punishment of removal from service is just and reasonable and proportionate to the proved misconduct.*

21. *In our view, the theft committed by the respondent amounts to misconduct and, therefore, we have no hesitation to set aside the orders passed by the learned Single Judge and also of the Division Bench and restore the order of removal of the respondent from service. When the Labour Court has proved the charges, no interference by the learned Single Judge or by the Division Bench of the High Court was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised judiciously and fairly. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement, continuity of service was shockingly disproportionate to the nature of charges already proved which is in the nature of theft.*

22. *It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify*

the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. *Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment."*

13. In the backdrop of the above law as laid down, let this Court, therefore, consider as to whether the impugned Award dated 27.12.2010 required an interference by this Court.

14. The facts as stated herein above shows that there are clear admissions on the part of the delinquent workman that the scrap of value of Rs.75,000/- was sold to one Dasarath Shaw and the said Dasarath Shaw had paid the said amount to the delinquent workman and that the delinquent workman only deposited Rs.1,932/- to the Head Clerk. It is the case of the delinquent workman that he, upon receipt of the said amount of Rs.75,000/-, handed it over to then Manager along with the Assistant Manager misappropriated the amount and only handed to him an amount of Rs.1,932/- which the delinquent workman deposited to the Head Clerk. The fact that the delinquent workman had only deposited Rs.1,932/- pursuant to the receipt of Rs.75,000/- is an admitted fact as could be seen from the show cause reply submitted by the delinquent workman himself. The question, therefore, is as to whether the delinquent workman could prove that the amount of Rs.75,000/- was handed over to the then Manager who along with the Assistant Manager

misappropriated the said amount save and except the amount of Rs,1,932/- which was handed over to the delinquent workman.

15. This Court has duly perused the evidence so taken during the enquiry proceedings as well as the evidence before the learned Labour Court. The delinquent workman as well as the petitioner herein completely failed to prove that the delinquent workman handed over the amount of Rs.75,000/- to the then Manager and that he was only given Rs.1,932/- to be deposited before the Head Clerk. Under such circumstances, the submission so made by Mrs. A. Bhattacharyya, the learned counsel for the petitioner to the effect that the report of the Domestic Enquiry as well as the award passed by the learned Labour Court is perverse in the opinion of this Court is misconceived.

16. This Court further finds it relevant to take note of the Award wherein also the learned Labour Court had in detail discussed the question of fairness of the Domestic Enquiry and came to a finding that the Domestic Enquiry was held as per the procedure of law and by following due fairness. Taking into account the said, which this Court upon perusal of the records, finds no reason to defer, it is the opinion of this Court that the Domestic Enquiry so held was also fair by giving due opportunity to the delinquent workman.

17. The next aspect of the matter which also requires to be taken note of as to whether the charges proved were proportionate to the punishment of dismissal upon the delinquent workman. The learned Labour Court had also taken note of the same in the impugned Award wherein it has been observed that as the charges of misconduct, i.e. misappropriation has been proved against the delinquent workman, it would result in loss of confidence, and as such, the question of interfering with the dismissal of the workman vide order dated 07.03.2008 was not warranted. This Court also taking into account the charges which have been proved

and this Court finding no perversity in the same, is of the opinion that on account of the loss of confidence, the Management of Borjan Tea Estate, i.e. the respondent No.1 was justified in dismissing the delinquent workman vide the order dated 07.03.2008

18. In that view of the matter, this Court finds no reason to interfere with the award dated 27.12.2010 for which the instant petition stands dismissed.

19. The Registry is directed to forthwith return the records to the learned Labour Court.

JUDGE

Comparing Assistant