

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.15580 of 2000

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Between :

M/s.Indo National Ltd., Tada,
Nellore District,
Rep. by Asst. General Manager (HR)
Mr.C.V.S.R.Sharma

... Petitioner

AND

The Labour Court, Guntur,
Rep. by its Presiding officer
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE S. RAVI KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.15580 of 2000

ORDER:

This writ petition is filed to issue writ of certiorari or any other appropriate order or writ to quash the Award of the 1st respondent in I.D.No.311 of 1989 dated 21.03.2000 and pass such other order or orders that are deem fit and proper in the circumstances of the case.

2. The petitioner herein is a manufacturer of Dry Cell Batteries and it is a Company having Japanese collaboration. Its factories are situated at Tada and Nellore. In the factory at Tada, there were about 310 employees and there is a recognized union in the factory affiliated to INTUC upto the year 1994 and Management was entering into settlements with that union. The 2nd respondent was working as an operator from 10.03.1982 and he underwent training for two years and thereafter kept under probation for one year and shortly after his confirmation, he started mis-behaving with co-workers and picking up quarrels with them. The petitioner entered into a settlement with the majority union on 06.12.1985 keeping in view the demands and welfare of the workmen. The 2nd respondent has threatened the office bearers and members of the majority union by going to their houses for having entered into such agreement with the management. These incidents occurred on 10.12.1985 and

12.12.1985. Added to that, the 2nd respondent threatened several workmen and their families with dire consequences if they attend the Republic Day celebrations in the factory to be held on 26.01.1986. In view of those acts of mis-conduct, the 2nd respondent was placed under suspension on 23.12.1985 and a charge sheet was served on 17.03.1986. The 2nd respondent again committed mis-conduct by sending message to the management on 06.03.1986 through another member of his union by name D.Venkateswarlu, threatening that if suspension order is not withdrawn direct action will follow from 07.03.1986. There was a proposal of visit of Japanese team to the factory on 07.03.1986 and the 2nd respondent wanted to pressurize the management on that occasion and to take undue advantage. Another charge sheet for the acts of mis-conduct was given to the 2nd respondent and these were subjected to two enquiries. During the course of enquiry and on the basis of evidence, the Enquiry Officer held that the charges are proved in both the enquiries. After issuing show-cause notice and following the procedure, an order of dismissal from the service is passed on 30.05.1989 and thereafter the 2nd respondent raised I.D.No.311 of 1989 before the 1st respondent and the 1st respondent passed an Award on 21.03.2000 granting relief of re-employment without back wages and without continuity of service in favour of the 2nd respondent while upholding the charges proved in the domestic enquiries. Challenging the said order of the 1st respondent, present writ is filed.

3. Advocate for petitioner submitted that the charge of mis-conduct was duly proved against the 2nd respondent and the Labour Court while confirming the same, passed the impugned order of reinstatement though there is no plea of victimization and having rejected the contention of the 2nd respondent for subsistence allowance of 100%. It is further submitted that the Award is passed eleven years after the order of the dismissal and granting such relief is contrary to the principles of natural justice and also contrary to the

law laid down by the Hon'ble Supreme Court. It is submitted that the discretion exercised by the Labour Court is not a reasonable one and interference of punishment in view of clear case of mis-conduct is not warranted. It is further submitted that the 2nd respondent joined in the establishment in the year 1982 and the first charge is dated 17.03.1986 and the 2nd charge is dated 11.04.1986 and if two years training period is removed, the 2nd respondent committed acts of mis-conduct after putting one year service after confirmation. He further submitted that petitioner management is not in a sound financial condition as Dry Cell Batteries are not used now-a-days.

4. In spite of posting the matter under the caption 'for orders', none appeared for the 2nd respondent and as seen from the material, even counter is not filed disputing the affidavit of the Assistant General Manager of Petitioner Company, which is filed in support of the writ petition.

5. Now the point that would arise for my consideration in this writ petition is:

Whether the 1st respondent has properly exercised its discretion in ordering reinstatement of the 2nd respondent?

POINT :

6. The 2nd respondent herein approached Labour Court by invoking the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act') contending that he joined in the Company of petitioner herein as operator on 10.03.1982 and after completion of training on 23.12.1985 about a year, thereafter he was kept under suspension and served with two charge sheets. It appears that 2nd respondent herein submitted his explanation for the charges framed against him and an enquiry was conducted, in which the 2nd respondent herein was found guilty of the charges leveled against him. It is also evident from the record that a show-cause notice was issued before imposing

punishment and the 2nd respondent submitted his explanation to the said show-cause notice and on considering the explanation, management dismissed the 2nd respondent from service. As rightly pointed out by advocate for petitioner, Labour Court in toto accepted the findings of the Enquiry Officer with reference to the charges leveled and proved against the 2nd respondent. The Labour Court also did not accept the contention of the 2nd respondent that the charges of mis-conduct leveled against him do not constitute codified mis-conduct as per the Model Standing Orders. As seen from the material, there is no victimization. It is clear from the record that 2nd respondent has not questioned the findings of the Enquiry Officer nor the validity of the domestic enquiry or the procedure followed by Enquiry Officer. In respect of the 2nd charge, the management has examined as many as five witnesses who have stated about the acts of the 2nd respondent preventing those witnesses and others from attending Republic Day celebrations on 26.01.1986 and the Labour Court upheld that finding of the Enquiry Officer with regard to mis-conduct. Besides the charge of mis-conduct, there is also another charge that the 2nd respondent was doing business in the name of his wife and making money and this charge was also proved during enquiry and the Labour Court confirmed the same. Advocate for petitioner placed reliance on decision of Supreme Court in **Shriji Vidyalaya and another v. Patel Anil Kumar Lalubhai and another**. In that case Tribunal reduced order of the dismissal into stoppage of two increments for a period of one year and that order was upheld by the High Court, but, the Supreme Court while setting aside the order of the High Court, observed at para 6 as follows:

“We do not think that the above said Section enables the Tribunal to exercise such powers. This Court has consistently held that the Tribunal/Court normally cannot substitute its punishment in the place of punishment given by the disciplinary authority vide *Union of India v. Parama Nanda*, (1989-II-LLJ-57) and *B.C. Chaturvedi v. Union of India*, (1996-I-LLJ-1231). Applying the said principle, we allow the appeal and set aside the order of the High Court

which confirmed the order of the Tribunal. No costs.”

7. In **Kerala Solvent Extractions Ltd. v. A.Unnikrishnan and another** , the Hon’ble Supreme Court while allowing the appeal and setting aside the order of the Labour Court and High Court observed as follows:

“In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”

8. It is clear from the above two decisions while exercising the powers for reducing the punishment, the Labour Court has to consider the nature of charges and the conduct of the employee. In this case, as rightly pointed out by advocate for petitioner, the nature of misconduct proved is a serious one and the acts of the 2nd respondent in preventing the employees and their families in participating in the Republic Day celebrations is a grave mis-conduct effecting the discipline. Further, the 2nd respondent is also doing business in the name of his wife and making money, which is also established through documentary evidence. Considering these aspects, I am of the view that interfering with the punishment imposed by the 1st respondent is unwarranted and therefore, the Award to that extent is liable to be quashed.

9. Accordingly, this writ petition is allowed. No costs.

10. Miscellaneous Petitions, if any, shall stand closed.

S. RAVI KUMAR, J

6th August 2015.

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