

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CIVIL WRIT PETITION NO.16286 of 2012

RESERVED ON: 23.02.2015

DATE OF DECISION: 22.04.2015

Managing Director, PRTC & others

... Petitioners

Vs.

Gurdev Singh & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Anupam Singla, Advocate for the petitioners.

Mr. B.S. Sidhu, Advocate for the respondents.

.....

TEJINDER SINGH DHINDSA, J.

The Pepsu Roadways Transport Corporation (hereinafter to be referred to as the 'Corporation') has filed the instant writ petition challenging the award dated 12.06.2012 (Annexure P-1) passed by the Industrial Tribunal, Bathinda to the extent that an order of termination of services of the respondent/workman has been converted to a lesser penalty of stoppage of five increments with cumulative effect.

Brief facts that would emerge from the pleadings on record may be noticed. Respondent No.1/workman joined service with the petitioner/Corporation as Driver in the year 1982. He was charge sheeted on 29.10.1998 on the following specific articles of charge:

(i) Absenting himself from duty w.e.f. 05.01.1998.

(ii) Act subversive of office discipline.

(iii) Negligence in the performance of duties.

Workman chose not to submit reply to the charge sheet.

On 18.03.1999, Inquiry Officer was duly appointed and the workman appeared before the Inquiry Officer and admitted the charges levelled against him. Inquiry report was duly furnished and on the basis thereof, a show cause notice contemplating the imposition of extreme penalty of termination of service was served upon the workman. In response to the show cause notice, workman admitted his guilt and pleaded for a lenient view. Vide order dated 22.07.1999, the Competent Authority passed an order terminating the services of the workman.

Respondent No.1/workman having raised an industrial dispute, the impugned award dated 12.06.2012 (Annexure P-1) has been passed, whereby the Tribunal, while exercising its powers under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the 'Act') has converted the punishment of termination of service to that of stoppage of five increments with cumulative effect. The Corporation has further been directed to reinstate the workman in service with 30% back wages.

Counsel for the parties have been heard.

Perusal of the impugned award would reveal that the Tribunal has returned a finding of fact that even though under the Pepsu Roadways Transport Corporation (Appointment and Service) Regulations, 1981, where an employee admits in writing the charges levelled against him and the employer is satisfied that such admission is voluntary, it would be open to proceed further without holding an inquiry, yet in the present case, a domestic inquiry inconsonance with the principles of natural justice had been held. The inquiry report was duly adduced on record as Ex.M3.

Thereafter, even a show cause notice had been served upon him for

imposition of major penalty of termination from service and workman moved an application dated 16.07.1999 for imposition of minor punishment. Finding recorded by the Tribunal is that the order of termination from service dated 22.07.1999 has been passed in pursuance to a fair and just domestic inquiry in which the charges levelled against the workman stood duly proved. It is thereafter that the Tribunal has proceeded in exercise of its powers under Section 11-A of the Act and has interfered with the quantum of punishment.

The scope of judicial review in matters of disciplinary proceedings and quantum of punishment came up for consideration before the Hon'ble Supreme Court of India in ***BC Chaturvedi v. Union of India and others, 1996 (1) SCT 617*** and it was observed as follows:

"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."

In ***Hombe Gowda Educational Trust and another V. State of karnataka and others, 2006 (1) SCT 197***, the Hon'ble Supreme Court had

observed as under:

“The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.”

In *State of Rajasthan & another V. Mohd. Ayub Naz, 2006 (1)*

SCT 445, the Apex Court has held as under:

“For the foregoing reasons, we are of the opinion that a Government servant who has willfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/retrial benefits during the period in question. The High Court has given all retrial benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was willfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent.”

The scope of powers vested with the labour Court/Industrial Tribunal as the case may be under Section 11-A of the Act came up for consideration before the Hon'ble Supreme Court of India in ***U.B.Gadhe and***

others v. G.M.Gujarat Ambuja Cement Pvt. Ltd. 2007 (4) SCT 458 and it was held as follows:

“It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

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 the 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.

Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment, it has to be done within

the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

These aspects were highlighted in Life Insurance Corporation of India v. R. Dhandapani, 2005 (4) SCT 842: (AIR 2006 SC 615).

Power and discretion conferred under the Section needless to say have to be exercised judicially and judiciously. The Court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or desirability to interfere with the punishment imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner.”

Similarly in the matter of ***Mahindra and Mahindra Limited v. N.B.Narawade, 2005 (3) SCC 134***, the Supreme Court has held that the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment awarded by the employer for proven misconduct.

Adverting back to the facts of the present case, the reasoning adopted by the Tribunal in the impugned award for exercise of power under Section 11-A of the Act is in the following terms:

“Now taking of the facts of the case in hand admittedly, the workman joined as driver in the year 1982 and performed more than 16 (sixteen) years of loyal service. With folded hands, he accepted the allegations against him and pleaded for taking a lenient view in the matter of punishment to be imposed upon him. Even, he did not opt for getting an inquiry conducted. However, in the case in hand, the management proceed to get an enquiry conducted. He attained the age of superannuation during the pendency of the present reference. So, all these factors coupled with each other disturb the

conscience of this Tribunal as the punishment awarded to the workman can be said to be shockingly disproportionate to the nature of the charges proved or admitted. This Tribunal of the considered view that there are mitigating in circumstances which require the reduction of the sentence. Accordingly, this Tribunal is of the view that the ends of justice would meet, if the punishment regarding stoppage of 5 (five) increments with cumulative effect is imposed in place of punishment for dismissal/termination of service. This issue is decided accordingly.”

Two aspects which have weighed with the Tribunal for imposition of a lesser penalty are that the workman had considerable length of service i.e. more than 16 years and secondly, that he had accepted the allegations against him and had pleaded with “folded hands” to take a lenient view.

The petitioner/Corporation is running a public utility service. The charge duly proved against the workman who was serving as a Driver was having remained absent from duty for a period of 1 year, 6 months and 17 days. The same would be construed as serious misconduct and gross dereliction of duty.

In ***BC Chaturvedi's case (supra)***, the Apex Court had not approved the action of reducing the penalty from termination to that of compulsory retirement on the basis of length of service.

The Tribunal while passing the impugned award apparently has been swayed by the fact that the workman had admitted his guilt and had prayed for leniency with “folded hands”. It is by way of sympathy that the punishment of termination has been reduced to that of stoppage of five increments with cumulative effect. The discretion vested with the Industrial Tribunal/labour Court under Section 11-A of the Act does not admit for

such benevolence. In the considered view of this Court, a serious misconduct of having absented from duty over a prolonged period of time having been duly proved, the punishment of termination from service could not be seen as grossly disproportionate or one that would shock the conscience of the Court. As such, in the facts of the present case, there was no occasion for the tribunal to have interfered and exercised its powers under Section 11-A of the Act.

For the reasons recorded above, the writ petition is allowed and the impugned award dated 12.06.2012 at Annexure P-1 is set aside.

22.04.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter? Yes