

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.2029 of 2005

Executive Engineer, Chhattisgarh State Power Distribution Co.
Ltd. (CSPDCL), Durg (C.G.)

---- Petitioner

Versus

1. Mohd. Anees, S/o Mohd. Wahid, Daily Wage Driver,
Stationpara, Ward No.1, Street No.4, Rajnandgaon, Presently
residing at M.P. Khan, M.P. Police, Pachripara, Durg (C.G.)

2. Industrial Court, Raipur (C.G.)

3. Labour Court, Durg (C.G.)

---- Respondents

For Petitioner: Mr. Abhishek Sinha and Mr. Ghanshyam
Patel, Advocates.

For Respondent No.1: Mr. Punit Ruparel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/11/2016

1. The respondent employee was appointed by the erstwhile M.P. Electricity Board on the post of Driver on daily wage basis. He remained absent from 15-8-1994 to 16-9-1994 and pursuant thereto, charge-sheet was issued to him on 5-10-1994 and departmental enquiry was instituted against him for unauthorised absence, disobeying the order of superior officer and suppression of material fact that prior to joining the services of M.P. Electricity Board, he was working with the Irrigation Department. Upon conclusion of enquiry, he was terminated by the erstwhile M.P. Electricity Board on 19-8-1995.

2. The respondent employee preferred an application under Section 31(3) read with Sections 61 and 107-A of the M.P. Industrial Relations Act, 1960 before the Labour Court stating inter alia that he is regular employee of the Board and his services have been illegally terminated by the Board. The Labour Court by its order dated 12-7-2000 while holding that domestic enquiry has been conducted fairly and it is valid interfered with the quantum of punishment and reinstated him in service with 50% back wages. Being aggrieved against the order of reinstatement and award of 50% back wages, the petitioner herein preferred appeal before the Industrial Court. By the impugned order, the Industrial Court partly set aside the order of the Labour Court granting back wages to the respondent employee, however, maintained the order of reinstatement granted by the Labour Court. The petitioner CSPDCL has now preferred this petition questioning the order of the Labour Court duly affirmed by the Industrial Court to the extent of reinstating the petitioner by interfering with the order of termination so passed against the respondent herein.
3. Mr. Abhishek Sinha, learned counsel appearing for the petitioner, would submit that the Labour Court having held that domestic enquiry has properly and validly been conducted consequent to which the respondent employee has been punished, legally erred in interfering with the quantum of punishment, as the punishment awarded is not shockingly disproportionate to the misconduct which has been proved against the respondent employee. He would rely upon the

order of the M.P. High Court in the matter of **Devkinandan Tiwari v. State Industrial Court, Madhya Pradesh and others**¹ and the judgment of the Supreme Court in the matter of **M.P. Electricity Board v. Jagdish Chandra Sharma**².

4. Mr. Punit Ruparel, learned counsel appearing for respondent No.1, would submit that even if domestic enquiry is held to be valid and proper, the Labour Court is empowered to interfere with the quantum of punishment as in this case the allegation against the respondent employee is only that he remained absent from 15-8-1994 to 16-9-1994 and there are some other charges which are said to have been proved and are not such, which warrant imposition of punishment of termination; therefore, punishment of termination from service is highly disproportionate and it has rightly been interfered with by the Labour Court and rightly confirmed by the Industrial Court.
5. I have heard learned counsel for the parties and also considered their rival submissions made herein-above and gone through the records with utmost circumspection.
6. The respondent was appointed as daily wager by the erstwhile M.P. Electricity Board and after concluding domestic enquiry instituted against the respondent employee, his services were terminated by order dated 19-8-1995. In an application filed by the respondent employee, the Labour Court framed three issues including issue No.1 as to whether the enquiry held against the respondent employee is valid and proper. The said

1 1990 M.P.L.J. 653

2 (2005) 3 SCC 401

issue regarding validity of domestic enquiry was considered as preliminary issue and on 7-6-2000, it has been held by the Labour Court that domestic enquiry held against the respondent employee is valid and proper. It is not in dispute that legality and validity of the order dated 7-6-2000 declaring domestic enquiry as valid and proper was not questioned by filing appeal or by filing any other proceeding by the respondent herein and that has attained finality.

7. Now, the question is whether the domestic enquiry having been declared valid and proper, the Industrial Court is still empowered to interfere with the quantum of punishment awarded by the employer.
8. In order to consider the plea so raised, it would be appropriate to notice Section 107-A of the Chhattisgarh Industrial Relations Act, 1960 which provides as under: -

"107-A. Power of Labour Court and Industrial Court to give appropriate relief in case of discharge or dismissal of employee.--Where industrial dispute relating to the discharge or dismissal of an employee has been referred to a Labour Court or the Industrial Court for decision under any of the provisions of this Act and in the course of the proceedings the Labour Court or the Industrial Court, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may set aside the order of discharge or dismissal and direct reinstatement of the employee on such terms and conditions, if any, as it thinks fit or give such other relief to the employee including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court or the Industrial Court, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in

relation to the matter."

9. A careful perusal of the aforesaid provision would show that the Labour Court or the Industrial Court, as the case may be, on reference being made is empowered to set aside the order of dismissal or discharge, if it is satisfied that the order of dismissal or discharge is not justified in the facts of the case, and direct reinstatement of the employee on such terms and conditions or give any other relief to the employee including the award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may warrant.
10. A Division Bench of the M.P. High Court in **Devkinandan Tiwari** (supra) had occasion to consider a case where in the domestic enquiry held against the employee, the enquiry was found to be fair and proper, question considered by the Court was whether the Labour Court should interfere with the punishment so awarded. It has been held that where in the domestic enquiry held against the employee, if enquiry is found to be fairly and properly conducted and same is not violative of principles of natural justice and in absence of justifiable reason to interfere with the punishment and termination by the management, the Labour Court should not interfere with the order of punishment where the charges having been found proved.
11. In **Jagdish Chandra Sharma's** case (supra), the Supreme Court has held that the Industrial Court / Tribunal cannot interfere with the quantum of punishment in case where the Labour Court finds that the charges are proved unless the

punishment of discharge or dismissal is shockingly disproportionate to nature of charge found proved. Paragraph 6 of the report states as under: -

"6. It is clear from the findings recorded and the materials available before us, that the charge against the employee of hitting a superior officer with an implement and causing him injury stood proved, as also his absence from duty without intimation. In fact, the Labour Court has found nothing wrong with the domestic enquiry wherein the charges were found to have been proved. The Labour Court also proceeded on the basis that the charges were proved. The Industrial Court in appeal accepted the finding that the charges against the employee were proved. The High Court also held that the charges against the employee stood proved on the facts of this case. The High Court also took note of the fact that the employee did not even challenge this part of the finding of the Labour Court in the appeal he filed before the Industrial Court. Thus, it is clear that there is no reason for this Court to interfere with the finding that the charges against the employee stood proved, even assuming that the employee, the appellant in Civil Appeal No. 1340 of 2003, is permitted to raise the question regarding the proving of the charges against him. We were taken through the relevant materials. The materials clearly disclose that the charges were proved. We have, therefore, only to ask ourselves whether in the face of the charges proved, it was proper for the Labour Court or for the High Court to interfere with the punishment imposed by the employer."

12. Thereafter, in the matter of **Mavji C. Lakum v. Central Bank of India**³, the Supreme Court has held that even if enquiry is held to be fair and proper, the Industrial Court can consider the question whether the punishment awarded is just and fair or whether it is shockingly disproportionate to the degree of guilt of the workman concerned, and it must record good reasons for interfering with the punishment. Paragraph 23 of the report

3 (2008) 12 SCC 726

states as follows: -

"23. ... So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under [Section 11-A](#) has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons."

13. This would bring me back to the facts and circumstances of the case and the order passed by the Labour Court. The Labour Court in its brief order (para 4) firstly held that enquiry against the respondent is proper and valid and thereafter, in last paragraph it has further held that in the enquiry, charges against the respondent have not been proved and directed for reinstatement with 50% back wages and no reasons much less valid and good reasons have been recorded for holding so. In

appeal, the Industrial Court in its brief order interfered with the back wages awarded to the respondent and directed for stoppage of one annual increment with cumulative effect. Neither the Labour Court nor the Industrial Court considered whether the punishment awarded to the respondent employee is disproportionate to the misconduct alleged and said to have been established by the petitioner herein. No reasons have been assigned even by the Industrial Court and it has been interfered with. Reasons much less good reasons ought to have assigned with reference to the charges levelled and brought by the management for the alleged misconduct which has not been done while considering the reasonableness of punishment awarded by the employer, whether it is commensurate with the misconduct committed by the delinquent employee or it is shockingly or strikingly disproportionate to his misconduct by assigning good and valid reasons in support of his reasoning particularly when he is interfering with the punishment imposed by the employer.

14. In view of the above, the impugned order passed by the Industrial Court and the Labour Court to the extent of directing reinstatement are set aside. The matter is remitted back to the Labour Court for consideration on the question of quantum of punishment with reference to the charges that have been found to be established against the respondent. The Labour Court would only consider the question what would be appropriate punishment on the charges so established by the order dated 7-6-2000. Same will be considered within three months from

the date of appearance of the parties before the Labour Court.

15. Parties are directed to appear before the Labour Court on 5-12-2016.

16. Records be sent back forthwith.

17. The writ petition is allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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