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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1582 of 2004

Steel Authority of India Limited, Through Managing Director,
Bhilai Steel Plant, Bhilai.

---- Petitioner

Versus

1. Smt. Sarojini, Qr.No.3D, St.No.16, Sector-2, Bhilai, Distt. Durg (C.G.)
2. Industrial Court Chhattisgarh, Raipur.
3. Labour Court, Durg.

---- Respondents

For Petitioner: Mr. Kashif Shakeel, Advocate.
For Respondent No.1: Mr. Rajeev Shrivastava and Mr. Gagan Tiwari,
Advocates.

AND

Writ Petition No.3128 of 2004

Smt. Sarojini, Wd/o Late B.N. Rao, Qr.No.3D, Street No.16,
Sector 2, Bhilai Nagar, Distt. Durg (C.G.)

---- Petitioner

Versus

1. Steel Authority of India Ltd., Bhilai Steel Plant, Bhilai, Through the Managing Director, Bhilai Steel Plant, Bhilai.
2. Industrial Court of Chhattisgarh at Raipur.
3. Labour Court, Durg.

---- Respondents

For Petitioner: Mr. Rajeev Shrivastava and Mr. Gagan Tiwari,
Advocates.
For Respondent No.1: Mr. Kashif Shakeel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/01/2017

1. These two petitions are directed against the order passed by the Industrial Court on 12-2-2004.
2. Since common question of fact and law is involved in both these cases, they are taken-up together, heard together and are being disposed of by this common order.
3. Shri B. Narayan Rao was husband of petitioner Smt. Sarojini. He was declared medically unfit pursuant to which the petitioner made application for appointment on compassionate basis and on 11-10-1985, she was appointed as School Attendant. She was terminated on 6-8-1986, however, accepting the representation, again fresh appointment was given to her on 17-12-1986 on the post of Peon. She was again terminated on 6-7-1987 from the post of Peon and again, she was appointed on 17-8-1991 as Staff Attendant. Police verification was done and she submitted attestation form in seven copies. Desirability Certificate was issued in favour of the petitioner on 1-4-1992. On 6-11-1996, charge-sheet was issued to the petitioner alleging that she is guilty of securing employment by impersonating herself as Sarojini, wife of B. Narayan Rao - the then Crane Operator, and she was also allegedly served with charge-sheet of voluntarily claiming LTC / LLTC in the name of

Shri B. Narayan Rao and Vijay Kumar. The petitioner denied all the allegations levelled in the charge-sheet and ultimately, after conducting enquiry, the petitioner was found guilty of charges and on 18-2-1998, her services were terminated on the post of Staff Attendant. The petitioner filed application under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 in which the Labour Court by order dated 7-11-2000 held domestic enquiry to be invalid and bad in law. Steel Authority of India Limited challenged the order of the Labour Court in appeal and the Industrial Court by order dated 20-3-2002 held the domestic enquiry to be valid and remanded the matter to the Labour Court with a direction to reassess the documents filed in the domestic enquiry and to take decision as to whether the charged misconduct is proved or not. The Labour Court by its order dated 12-8-2002 held that the misconduct is not proved and directed for reinstatement with 50% back-wages. Steel Authority of India Limited also preferred appeal before the Industrial Court and the workman also preferred appeal. By common order, the Industrial Court has allowed the appeal in part upholding the order of reinstatement, but set aside the order of 50% back-wages against which the workman and the employer Steel Authority of India Limited both have preferred writ petitions.

4. Mr. Kashif Shakeel, learned counsel appearing for Steel Authority of India Limited (SAIL), would submit that the Labour

Court as well as the Industrial Court both have committed grave legal error in holding that the misconduct as alleged against the workman has not been proved in the departmental enquiry. He would further submit that misconduct has been duly proved by proving the documents Exs.PD-1 to PD-39 and the Labour Court and the Industrial Court, both, have ignored the documents and have granted the application merely by recording a finding which is duly perverse and therefore the impugned order deserves to be set aside and the matter be remanded to the Labour Court for fresh consideration to the documents filed by the Management.

5. Mr. Rajeev Shrivastava, learned counsel appearing on behalf of the workman, while supporting the impugned order, would submit that the Industrial Court while setting aside the order of the Labour Court dated 7-11-2000 made it fully open to the Labour Court to find out as to whether the alleged misconduct is proved or not and that order has attained finality and therefore the Labour Court as well as the Industrial Court are absolutely justified in holding that the charged misconduct is not proved and the workman is entitled for reinstatement.
6. I have heard learned counsel for the parties and also considered their rival submissions and gone through the record with utmost circumspection.
7. It is not in dispute that on 17-8-1991, the petitioner / workman

was appointed on the post of Staff Attendant. Police verification of the petitioner was done and she also submitted attestation form in seven copies and Desirability Certificate was issued to the petitioner by Bhilai Steel Plant. The petitioner / workman was appointed on compassionate basis as she claims that her husband Shri B. Narayan Rao was declared medically unfit. It is also not in dispute that the petitioner was charge-sheeted on 6-11-1996 that she has impersonated herself as Sarojini, wife of Shri B. Narayan Rao, and is guilty of securing employment and is also guilty of voluntarily claiming LTC / LLTC in the name of Shri B. Narayan Rao and his son Vijay Kumar. The petitioner's services were terminated on 18-2-1998. It also appears from the record that the petitioner / workman did not cooperate in the enquiry and did not participate in the domestic enquiry which was held. The domestic enquiry held against the petitioner / workman by the employer / SAIL was held to be illegal by order dated 7-11-2000 by the Labour Court. SAIL challenged it before the Industrial Court and the Industrial Court by order dated 20-3-2002 held that domestic enquiry is illegal but made it open to the Labour Court by holding that the Labour Court would take decision after reassessing the evidence whether the charged misconduct is proved or not. Para 12 of the order of the Industrial Court dated 20-3-2002 states as under: -

"12. अतः विविध आवेदन स्वीकार किया जाता है । गृहजांच

को अवैध घोषित किया जाता है। प्रकरण इस निर्देश के साथ श्रम न्यायालय को वापिस भेजा जाता है कि वह गृहजांच में प्रस्तुत प्रमाण का मूल्यांकन करके तथा पक्षकारों को सुनकर यह निर्णय लेवे कि क्या आरोपित दुराचरण सिद्ध हुआ है ? तथा क्या दिया हुआ दण्ड उचित है ? पक्षकार श्रम न्यायालय में दिनांक 22.4.2002 को उपस्थित हो। वाद व्यय पक्षकार स्वयं वहन करेंगे। विविध आवेदन क्रमांक से कम हो।"

8. Now, the question is whether the domestic enquiry having been declared valid and proper, the Labour Court / Industrial Court is still empowered to come to the conclusion that the misconduct is not proved and to interfere with the quantum of punishment award by the employer.
9. 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."

10. 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.

11. A Division Bench of the M.P. High Court in the matter of **Devkinandan Tiwari v. State Industrial Court, Madhya Pradesh and others**¹ 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.

1 1990 M.P.L.J. 653

12. In the matter of **M.P. Electricity Board v. Jagdish Chandra Sharma**², 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."

13. Thereafter, in the matter of **Mavji C. Lakum v. Central Bank of**

2 (2005) 3 SCC 401

India³, 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 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."

3 (2008) 12 SCC 726

14. This would bring me back to the facts and circumstances of the present case and the order passed by the Labour Court confirmed by the Industrial Court.
15. The factual position apparent on the face of the record is that enquiry against the workman has been held to be valid and proper by the Industrial Court and it has been made open by the Industrial Court that the Labour Court will reassess / reappraise the material brought by the employer SAIL and come to conclusion whether the charged misconduct is proved against the workman or not in which the Labour Court has clearly held that the charges are not proved and the Labour Court basically rested its decision on the ground that the manner of concluding enquiry is not proper and the witnesses who have been examined, thereby date of death of B. Narayan Rao is also not proved and there is no complaint of any other Sarojini who was entitled for appointment. On appeal being preferred by the employer SAIL, the Industrial Court merely concurred with the view expressed by the Labour Court and did not record any cogent and sufficient reason to uphold the order of the Labour Court. SAIL in its domestic enquiry has brought evidence in the shape of Exs.PD-1 to PD-39 to demonstrate that the workman has impersonated herself as Sarojini and has obtained employment. It is the claim of SAIL that original Sarojini, wife of B. Narayan Rao, has been examined and son of B. Narayan Rao has also been examined. Village Sarpanch

of Village Satyawada from where B. Narayan Rao belongs has also been examined. But the Labour Court mainly interfered with the domestic enquiry on the ground that independent witness has not been examined and original complaint has not been made by any Sarojini and therefore the charged misconduct has not been proved. In fact, when the Industrial Court has made it open to the Labour Court to consider all the documents produced by SAIL for proving the misconduct, it ought to have considered the entire documents threadbare to come to a conclusion as to whether the charged misconduct has been proved or not which the Labour Court has not done. Merely on the basis of inferences drawn with regard to the manner of enquiry which has become final it has reached to a conclusion that the findings are perverse. The Labour Court was required to consider the documents in proper perspective so as to reach to a conclusion as to whether the charged misconduct is proved or not, especially when documents Exs.PD-1 to PD-39 have been brought on record. The Industrial Court has also not performed its duty by considering the evidence available on record. The documents produced and proved by SAIL to establish the charges were not considered either by the Labour Court or by the Industrial Court and finding has been recorded that they are perverse. Looking to the limited jurisdiction which the Labour Court has while considering the material of domestic enquiry as held by the

Supreme Court in above mentioned cases supra, I am of the considered opinion that it is a fit case whether the matter deserves to be remanded to the Labour Court for fresh consideration on the evidence on record as to whether the charged misconduct against the workman is proved or not.

16. Accordingly, the impugned orders passed by the Labour Court and the Industrial Court, both, are set aside and the matter is remitted back to the Labour Court for consideration afresh as to whether the documents produced by the Management and the charged allegations of misconduct are proved against the workman or not and whether the punishment awarded is just and fair in light of the judgment rendered by the Supreme Court in **Mavji C. Lakum** (supra). Such exercise shall be done within 45 days from the date of appearance of the parties before the Labour Court. Parties shall appear before the Labour Court, Durg on 20-2-2016. However, the workman would be entitled for compliance of Section 65(3) of the Chhattisgarh Industrial Relations Act, 1960 i.e. the last drawn salary, in accordance with law.

17. It is made clear that the finding, if any, recorded by this Court in this order or by the Labour Court or by the Industrial Court in their previous orders will not be considered as the same is only to decide the dispute in this case. The Labour Court shall independently assess the documents without being influenced by any of the observations made herein-above by this Court or

by any of the observations made in the earlier orders passed by the Labour Court / Industrial Court, and shall reach to an independent conclusion based on the material available on record.

18.The Labour Court shall decide the matter on or before 7-4-2017.

19.The writ petitions stand disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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