

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.6815 of 2007

Order reserved on: 18-5-2017

Order delivered on: 22-5-2017

Poshanlal Verma, S/o Shri Jagatram Verma, age about 35 years, R/o Ravan, Thana Suhela, Teh. Simga, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. Chairman, State Industrial Court, Ghari Chauk, Raipur (C.G.)
2. Factory Manager, Grasim Cement, Post Ravan, Thana Suhela, Teh. Simga, Distt. Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Malay Kumar Bhaduri, Advocate.

For Respondent No.2: Mr. N.K. Vyas, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Grasim Cement, who is the employer of the petitioner herein, dismissed the services of the petitioner from the post of Machinery Attendant on 30-12-2002 after holding full-fledged domestic enquiry for remaining unauthorised absence for a period of 64 days, by order dated 30-12-2002.
2. The substantive charge against the petitioner was that he remained unauthorisedly absent for 64 days and that amounts to major misconduct and for that, the penalty of punishment of dismissal from service was inflicted to him which he challenged in the Labour Court by filing application under Section 31 (3) read with Section 61 of the Chhattisgarh Industrial Relations

Act, 1960. The Labour Court upheld the domestic enquiry to be legal on the basis of admission made by the petitioner, by order dated 18-9-2006, but ultimately, on final conclusion, interfered with the quantum of punishment holding that for absence of 64 days in service, dismissal from service is strikingly high and further warned the petitioner to be careful in future and not to repeat the misconduct which he is alleged to have committed.

3. The respondent Company carried the matter into the Industrial Court and the Industrial Court by its impugned order dated 7-9-2007 interfered with the order of the Labour Court and held that interference by the Labour Court in the quantum of punishment is uncalled for and is erroneous, and set aside the order of reinstatement.
4. Feeling aggrieved against the order of the Industrial Court, this writ petition has been filed by the petitioner workman stating inter alia that the learned Industrial Court has committed grave legal error in interfering with the exercise of discretion undertaken by the Labour Court in modifying the order of punishment, even without recording a finding that it is perverse and merely because it has simply held that the order is erroneous therefore liable to be set aside.
5. Mr. Malay Kumar Bhaduri, learned counsel appearing for the petitioner, in his usual vehemence, would submit that the punishment was shockingly high and it was not commensurate

with the misconduct alleged to have been proved by the petitioner as the only allegation is that he remained absent only for 64 days. Elaborating his submission, he would further submit that the Labour Court has not awarded back-wages which the petitioner has not claimed even till this date and the petitioner has also been warned by the Labour Court which he has accepted and even till today he is not claiming back-wages. Therefore, the petitioner had already suffered three penalties and the order of the Labour Court without recording the finding to be perverse is liable to be set aside.

6. Mr. N.K. Vyas, learned counsel appearing for the respondent Company, opposing the submissions of Mr. Bhaduri, would strongly submit that the learned Industrial Court is absolutely justified in interfering with the quantum of punishment awarded by the Labour Court, as the petitioner is a habitual absentee and he had earlier been warned to be careful by order dated 19-1-1998 and therefore the punishment of dismissal from service awarded by the respondent employer cannot be said to be on higher side which ought not to have been interfered with by the Labour Court and which was clearly illegal and arbitrary. Therefore, the Industrial Court is absolutely justified in interfering with the quantum of punishment that has been awarded by the Labour Court and as such, the impugned order deserves to be upheld. Mr. Vyas relied upon the decisions of the Supreme Court in the matters of **M/s. L & T Komatsu Ltd.**

v. N. Udayakumar¹ and **Chairman and MD, V.S.P & Ors. v. Goparaju Sri Prabhakara Hari Babu**² to buttress his submissions.

7. I have heard learned counsel for the parties and also considered their rival submissions made herein-above and gone through the record with utmost circumspection.
8. It is not in dispute that the petitioner was served with charge-sheet and domestic enquiry was conducted in which he admitted that he remained absent for 64 days from February, 2002 to September, 2002 and on the said basis, misconduct was found to be proved and he was inflicted the penalty of dismissal from service by order dated 30-12-2002. On challenge being made by the petitioner, the Labour Court upheld the order of dismissal holding that domestic enquiry was in accordance with law, but interfered with the penalty merely on the ground that it is harsh for remaining absent for 64 days and no back-wages were awarded by directing only reinstatement in service and warned the petitioner which has been interfered with by the Industrial Court. The Labour Court has clearly recorded a finding that the punishment is harsh and strikingly high holding that there is no other charge levelled against the petitioner and he has, in all fairness, admitted the guilt of remaining absent for 64 days and that was the reason for interfering with punishment of dismissal and on that ground

1 2007 AIR SCW 7906

2 2008 AIR SCW 2244

without granting back-wages and with a warning, the petitioner was directed to be reinstated.

9. A careful glance of the order of the Industrial Court would show that the Labour Court in paragraphs 1 to 7 recorded the submissions of the parties. In paragraph 8, the Labour Court relied upon a decision of the Bombay High Court and in paragraph 9 recorded the fact that charges have been proved and the order of dismissal has been passed and in the same breath has held that the order of dismissal cannot be said to be harsh. In paragraph 10, the Industrial Court has further recorded that the finding of the Labour Court is based on erroneous ground and the material on record has not been considered properly by the Labour Court. Since charges have been proved against the petitioner and looking to his previous misconduct, the order of dismissal cannot be said to be on the higher side and therefore the order of the Labour Court cannot be maintained as such, no findings have been recorded by the Industrial Court after considering the evidence on record that the order of dismissal is perverse and contrary to record which the Industrial Court was obliged to record being a court of appeal and which that court has failed to do so.
10. In a Full Bench decision of the M.P. High Court in the matter of **Nandkumar Singh v. State Industrial Court, Indore and others**³ the Full Bench held that if the findings of the Labour

3 1977 M.P.L.J. 438

Court are based on no material and/or are perverse or arbitrary, the Industrial Court has jurisdiction to interfere under Sections 66 and 67 of the M.P. Industrial Relations Act and set aside the order of the Labour Court. It was further held in paragraph 18 as under: -

“18. We do not consider it necessary to multiply authorities, as in our view, the law is well settled that perverse or arbitrary findings or findings based on no material fall within the ambit of the phrase “exercise of jurisdiction illegally and with material irregularity” justifying interference in revision. Similarly, if a Court illegally assumes jurisdiction by giving a patently erroneous decision on jurisdictional facts, the case would fall within the clause “exercised jurisdiction not vested in it by law”. ...”

11. Present is a case where the Industrial Court has interfered with the order of the Labour Court without holding that the order of the Labour Court is perverse or the findings recorded are based on no material so as to fall within the ambit of the jurisdiction exercised under Section 65 of the Chhattisgarh Industrial Relations Act, the Industrial Court has committed illegality in passing the impugned order.
12. This would bring me to the next question, whether the Labour Court is justified in interfering with punishment of dismissal inflicted for remaining unauthorised absence for 64 days.
13. In above connection reference may be made to a decision of the Supreme Court in the matter of **Krushnakant B. Parmar v. Union of India & Anr.**⁴ Their Lordships of the Supreme have held that in a departmental enquiry, if allegation of unauthorized

4 2012 AIR SCW 1633

absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct. Their Lordships further held that absence from duty without any application or prior permission may amount to unauthorized absence, but it would not be willful. Paragraphs 17 and 18 of the report read as follows: -

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.”

14. Similarly, in the matter of **Chhel Singh v. M.G.B. Gramin Bank Pali, and Ors.**⁵, the Supreme Court has held that in order to hold a person guilty for unauthorized absence from duty, the unauthorized absence from duty must be willful and deliberate. In paragraph 15 of the report, Their Lordships of the Supreme Court observed as under: -

“15. ... There was no allegation that the appellant’s unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant’s absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the

medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days delay.”

15. In the matter of **Ahmedabad Municipal Transport Service v.**

Dashrathbhai Balubhai Brahmakshatriya⁶, the Gujarat High Court has held that notwithstanding the past record of similar misconduct, once the Tribunal came to the conclusion that there was justifiable cause for the unauthorized absence for which charge-sheet was served and penalty was imposed, the post record of unauthorized absence would lose its significance.

16. If the facts of the present case are examined, it would appear that even there are no charges levelled against the petitioner in charge No.12 (q) that unauthorized absence is deliberate and willful and no finding has been recorded by the disciplinary authority while passing the order dated 30-12-2002 that the unauthorized absence is deliberate and willful, whereas the petitioner has also stated that in absence period he was ill and he had duly intimated the fact of his illness to his employer. In absence of charge having been framed that unauthorized absence of the petitioner is willful and deliberate and no finding having been recorded that absence of the petitioner for 64 days was willful and deliberate, particularly when explanation was

6 1996 II L.L.J. 544

offered by the petitioner for his absence on account of his illness, interference made by the learned Industrial Court in the discretion exercised by the Labour Court holding that the penalty of dismissal from service for unauthorized absence for 64 days is in teeth of the decisions rendered by the Supreme Court in **Krushnakant B. Parmar** (supra) and **Chhel Singh** (supra), as the Supreme Court in **Chhel Singh** (supra) for absence of 10 and ½ months held that since there is no allegation that the workman's unauthorized absence from duty was willful and deliberate, Their Lordships were pleased to direct reinstatement by interfering with the order passed by the High Court. However, the judgments relied upon by learned counsel for respondent No.2 are clearly inapplicable and distinguishable to the facts of the case.

17. As a fallout and consequence of the above-discussion, the order of the Industrial Court cannot be upheld and it is accordingly set aside and the order of the Labour Court directing reinstatement of the petitioner is restored. Respondent No.2 is directed to reinstate the petitioner forthwith.

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

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge