

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos 24295 and 25482 of 2010

Date :13.6.2017

WP 24295 of 2010

Between :

Md. Anjar Khan S/o late Mohd Mukhtar Khan
C/o Sri V Vishwanatham, Advocate
39/SRT, Municipal Colony, Old Malakpet,
Hyderabad

Petitioner

And

Labour Court III, Hyderabad
Rep by Presiding officer and others

Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos 24295 and 25482 of 2010

COMMON ORDER:

Md. Anjar Khan was working as Shift Incharge at the relevant point of time with M/s. Anjani Portland Cement Limited. As a consequence to the disciplinary action initiated against him, he was dismissed from service by order dated 9.2.2009. Aggrieved thereby, he raised an Industrial Dispute before the Labour Court-III, Hyderabad which was registered as I D No. 30 of 2009. Labour Court while upholding the disciplinary action taken against Md Anjar Khan, set aside the order of dismissal and directed to reinstate him afresh and denied all other benefits. Aggrieved by the said award, Md Anjar Khan as well as management of the company filed writ petitions i.e., W P 24295 of 2010 by Md Anjar Khan and W P 25482 of 2010 by management of the company.

2. Since issue involved in these two writ petitions is common, they are disposed of by common order. For convenience sake Md Anjar Khan is referred to as petitioner and management of the company is referred to as respondent.

3. While working as Shift Incharge, petitioner was allotted residential quarter No. 37 within the premises of the factory. On 4.10.2010, petitioner was suspended and simultaneously charge sheet was drawn. The sum and substance of the allegations leveled against the petitioner is on 3.10.2008, Security Guard by name Mr. Parusaram visited the house of the petitioner to inform the inmates that his relative is riding the two wheeler with high speed in the colony premises; wife of the petitioner shouted at him and asked him to get lost. At about 8.10 p.m, petitioner along with his son went to the security office and had an altercation with the security supervisor, pushed him, pulled out the security guard from the office and both of them assaulted the security guard Mr Parsuram

severely and when other security guards i.e., Santhosh and P Ravikumar, tried to stop the petitioner, he had also beaten them, abused them in filthy language and threatened them with dire consequences.

4. Not satisfied with the explanation submitted by the petitioner, domestic enquiry was ordered. Enquiry Officer submitted his report on 13.11.2008 observing that petitioner accepted and admitted the guilt, therefore charge is proved. Based on the report of the enquiry officer, show cause notice was issued on 17.11.2008 proposing to impose punishment of dismissal. Not accepting the explanation offered on the said show cause notice, petitioner was dismissed from service.

5. Heard Sri Mettu Goverdhan Reddy, learned counsel for petitioner and Sri C.Niranjan Rao, learned counsel for respondent company.

6.1 Learned counsel for petitioner sought to contend that whatever has happened on 3.10.2008 has to be seen in the back ground of past events. According to learned counsel, while performing the duty petitioner sustained injury to his testicles and had incurred heavy medical expenditure, whereas the company has only paid an amount of Rs.5,000/-; several times petitioner and his wife approached the competent authority for release of the treatment expenditure; on persisting to release the amount, the respondent authorities bore grudge against the petitioner and resorted to unfair practice.

6.2 He further submits that there is no truth in the allegation leveled against the petitioner; that petitioner was not involved in any altercation as alleged. He further submits that the allegation that his relative was riding two wheeler with high speed is also a false complaint. He submits that if there was any such rash driving by his relative within the colony, the residents of the colony would have complained, whereas, there was no such complaint and it was only invented by the security personnel in order to fix the petitioner.

6.3 He further submits that entire incidence has to be seen in the above background; there was no ill motive to the petitioner nor there was intention to harass or humiliate the security personnel; all that happened was in a fit of anger, as a false complaint was generated against his relative and that he was harassed and humiliated for claiming reimbursement of the medical expenditure incurred causing lot of agony to him and his family.

6.4 He further submits that for a solitary incident disregarding long service rendered by him, he could not have been dismissed throwing him and his family into dol-drums. Dismissal from service amounts to victimization.

6.5 The findings recorded by the Labour Court that the charge is proved is not valid. The Labour Court has erred in not appreciating the material evidence available on record. Thus, the finding of the Labour Court is liable to be set aside on this ground alone.

6.6 Learned counsel further submits that the Labour Court having found that what is alleged against him would only amount to minor misconduct and a solitary incident, erred in denying him continuity of service and backwages.

6.7 He would therefore urge that award of the Labour Court is liable to be set aside and petitioner is entitled for grant of all consequential benefits and continuity of service etc.

6.8 He further submits that so far Section 17-B of Industrial Disputes Act, 1947 (for short the Act, 1947) wages are not released to petitioner and they are still lying in Labour Court.

7.1 Learned counsel appearing for the respondents submits that the allegation against the petitioner is grave; petitioner could not have indulged in assaulting security guard and further assaulting other

security guards who tried to stop him and any act of assault and injury caused to the employees on duty has to be viewed as a grave misconduct. Even a solitary incident of such assault has to be viewed seriously. Such action of the petitioner was viewed very seriously by employer. Therefore petitioner is not entitled to reinstatement into service and continuation of service. Any amount of condonation of such act would give wrong signals to the employees and it may breed indiscipline in the employment.

7.2. Security guards are meant for proper watch and ward and protect the properties of the company. When security guard noticed that a relative of the petitioner was driving a two wheeler with high speed within the residential colony, he apprehended that it might result in injury to any of the colony residents and therefore informed the inmates of the petitioner's house.

7.3 For no justifiable reason and without any provocation, the petitioner and his son assaulted the security guards and caused grave injuries to them. The evidence on record supports the disciplinary action taken against the petitioner.

7.4. He further submits that the Labour Court having found that the disciplinary action was validly taken and that charge of assault is proved, erred in interfering with the punishment. Labour Court erred in viewing the allegation of assault and causing injuries to the employees as a minor misconduct and it erred in substituting the punishment. In all cases of assault and injury caused by an employee to another employee while on duty amounts to grave misconduct and can result only in imposing severe punishment as is imposed in the present case.

7.5. He further contended that petitioner has admitted his guilt after charge memo was served on him, during the course of domestic enquiry and in response to the final show cause notice.

7.6 In support of his contentions on scope of Labour Court in interfering with the quantum of punishment under Section 11-A of the Act, 1947 is very limited and Labour Court erroneously exercised such power in substituting the punishment, he placed reliance on the following decisions:

Employers, Management, Colliery M/s Bharat Coking Coal Ltd Vs. Bihar Colliery Kamgar Union through Workmen¹, Mahindra and Mahindra Ltd Vs N.B. Narawade², M.P. Electricity Board Vs Jagdish Chandra Sharma³ Karnataka Bank Ltd Vs. A.L. Mohan Rao⁴ and Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited⁵.

8. The basic facts are not in dispute. On 3.10.2008 there was altercation involving the petitioner with the security guards injuring security guards seriously. The allegation leveled against the petitioner is established. The three security guards were assaulted as a retaliation to security guard pointing out that a relative of petitioner was riding a bike on a very high speed within the colony premises. Petitioner admitted his mistake.

9. Having regard to these facts, the question for consideration is whether the Labour Court erred in not granting the full relief as sought for by the petitioner or Labour Court erred in granting limited relief to the petitioner, as contended by the counsel for respondents.

10. On the issue of unruly behavior of employee, there are several decisions rendered by the Supreme Court.

10.1 In **M/s Bharat Coking Coal Ltd** (supra), the concerned employees were involved in physical assault on the managing staff of the colliery

¹ AIR 2005 SC 2006

² (2005) 3 SCC 134

³ (2005)3 SCC 401

⁴ (2006) 1 SCC 63

⁵ (2008) 5 SCC 554

with deadly weapons and caused injuries to them. The order of dismissal by employer was interfered by the Tribunal on the ground that the employees were never intended to kill a person and the incident happened in the background of busting of a water tank and workmen were in agitation mood against the management and mob were guided by their own emotions and feelings, therefore the Tribunal felt that the workmen be reinstated without payment of backwages. Supreme Court observed as under:

“16. From the above it is clear that this Court has considered an act of violence as an act of grave misconduct calling for stringent punishment.

17. From the facts narrated hereinabove, the ratio laid down in two cases referred to hereinabove amply applies to the appeal in hand. The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case, withholding of one increment in our opinion is wholly disproportionate to the gravity of misconduct and is unsupportable.”

10.2 In **Mahindra and Mahindra Ltd** (supra), scope of Section 11-A vis a vis gravity of the misconduct was considered by the Supreme Court. In the said case the concerned employee used abusive and filthy language against his supervisor, Labour Court held that the punishment of dismissal was harsh and substituted the punishment with reinstatement and continuity of service by denying 1/3rd backwages, the same was upheld by the High Court. Supreme Court observed as under:

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence

of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. *Orissa Cement Ltd.* [(1960) 1 LLJ 518 (SC)] and *New Shorrock Mills* [(1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.

.....

23. Taking into consideration the overall fact situation and the law laid down by this Court and in spite of the fact that three courts have concurrently come to the conclusion that the punishment of dismissal would be disproportionate to the misconduct, we will have to disagree with those findings.

24. For the reasons stated above, this appeal succeeds. The order of the Division Bench, Single Judge of the High Court and that of the Labour Court to the extent that it sets aside the order of dismissal and directs the reinstatement, is quashed. We uphold the order of the disciplinary authority dismissing the respondent workman from service."

10.3 Similar view is taken in **M.P. Electricity Board** (supra). In the said case, employee was found hitting supervisor in the work place, Court observed that same amounted to breach of discipline and held that punishment of termination for hitting and injuring a superior officer cannot be said to be unjustified.

10.4 In **Karnataka Bank Ltd** (supra) Supreme Court observed that in exercise of power of judicial review on a punishment, sympathy as a factor, has very very limited role.

10.5 In **Usha Breco Mazdoor Sangh** supreme Court observed as under:

"38. Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a union leader. The Act does not encourage indiscipline. It will be a matter of some concern if the opinion of the enquiry officer can be totally ignored despite the fact that the management is precluded from adducing any fresh evidence before the Labour Court. A union leader does not enjoy immunity from being proceeded with in a case of misconduct.

39. The upshot of our discussion is that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn a decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinise and analyse the evidence but what is important is how it does so.”

11. The allegation leveled against the petitioner is established by material available on record and having regard to the fact that petitioner himself has accepted it on more than one occasion, it cannot be said that Tribunal’s finding that guilt is proved is erroneous.

12. From plethora of precedent decisions, few of which are noted above, it is clear that allegation of hitting a co-employee and causing injury to him, has to be viewed as very serious misconduct; assault and intimidation are penal offences and workman indulging in commission of criminal offences should not be spared. In the case on hand, petitioner has accepted the guilt of indulging in assault of the security guards. Thus when such a grave misconduct is committed by the petitioner, the action of the employer in dismissing the petitioner cannot be said as excessive. The Tribunal having found allegation leveled against the petitioner is proved, could not have substituted the punishment holding it as minor misconduct.

13. Having regard to the above findings, the award of the Tribunal to the extent of holding establishment of the charge is valid and substituting the punishment of removal to that of reinstatement as fresh employee is erroneous, and the same is set aside.

14. In the result, W P No. 24295 of 2010 is dismissed and W P No. 25482 of 2010 is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

15. It appears, consequent to interim orders granted in WP No. 25482 of 2010, wages as per Section 17-B of Act, 1947 were deposited in the Labour Court. However, petitioner has not

withdrawn the same. Since this amount belongs to petitioner, petitioner is entitled to withdraw the same not withstanding dismissal of writ petition filed by him i.e. WP 24295 of 2010 and allowing writ petition filed by management of the company i.e. WP No. 25482 of 2010.

P NAVEEN RAO,J

DATE:13.6.2017

TVK



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION Nos 24295 and 25482 of 2010

Date :13.6.2017