

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.21612 OF 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner Company is directed against the Award, dated 25.11.2005, of the learned Chairman, Industrial Tribunal-II, Hyderabad, (for short, 'the Tribunal'), passed in I.D.No.68 of 2004, (Old I.D.No.60 of 2002 of Labour Court-II, Hyderabad).

2. I have heard the submissions of Ms.Y.Archana, learned counsel representing Sri S.S.Bhatt, learned counsel for the petitioner. Though the respondent/workman is served with notice, he did not enter appearance. I have perused the material record.

3. The facts of the case, which are necessary to be stated as prelude to this order, in brief, are as follows:

The respondent joined the service of the petitioner Company, on 01.07.1993, as a Helper. On account of un-authorised absence for 44 days during the period from 24.07.2001 to 14.12.2001, the petitioner issued a charge sheet, dated 15.12.2001, to the respondent. Not being satisfied with the explanation, dated 16.12.2001, of the respondent, a domestic enquiry was ordered by proceedings, dated 19.12.2001, and an Enquiry Officer was appointed. After due enquiry, the Enquiry Officer found that the charge levelled against the respondent is proved; and, submitted a report, dated 24.12.2001. By a letter, dated 23.01.2002, the

petitioner called for the explanation of the respondent and also issued a show cause notice, dated 18.02.2002. As the submissions and the comments in the reply of the respondent are not satisfactory and convincing, the management passed an order, dated 20.03.2002, dismissing the respondent from service. When the said order was refused to be accepted by the respondent in the presence of two witnesses, a letter, dated 21.03.2002, along with cheque, dated 22.02.2002, for Rs.3,019/- drawn in favour of the respondent payable at State Bank of Hyderabad, Zaheerabad, was sent to the respondent; however, the respondent refused to accept the said letter. Hence, the petitioner sent another letter, dated 01.04.2002, by registered post. The respondent acknowledged receipt of the same *vide* acknowledgement, dated 10.04.2002. The respondent sent a letter, dated 15.04.2002, for his reinstatement; however, by letter, dated 18.04.2002, the petitioner refused the request of the respondent for reinstatement. The respondent addressed further letters for setting aside the dismissal order from service. Eventually, the respondent raised an industrial dispute and filed a claim petition before the Tribunal. The claim of the respondent was resisted by the petitioner Company. After elaborate enquiry, the learned Chairman of the Tribunal, while holding that the charge related to unauthorised absence for 44 days during the period from 24.07.2001 to 14.12.2001 is proved, went on to examine the proportionality of the punishment to the proved charge and came to the conclusion that the punishment of dismissal is

disproportionate and, therefore, set aside the said punishment and imposed a lesser punishment of deferment of two annual increments with cumulative effect. Aggrieved thereof, the petitioner company filed this writ petition.

4. Learned counsel for the petitioner while submitting the chronology of events *inter alia* contended as follows:

The respondent was a habitual absentee. An enquiry was duly held and he was removed from service. In his explanation, the respondent stated that he was un-well for 44 days; however, his explanation was not supported by any documentary evidence; and, he failed to produce a doctor's certificate to show that he was un-well during the said period. His further explanation was that he received treatment in a hospital at Bidar of Karnataka State. Even that explanation was not established by producing any documentary evidence. The stock reason for his absence is always ill-health. He received 16 memos for not attending to duties for periods ranging from 36 to 45 days in different spells. Not even on a single occasion, he informed his superiors about his ill-health and absence, either before or after his absence. The domestic enquiry clearly revealed that his explanation is un-acceptable as on account of his frequent absenteeism, the petitioner Company sustained huge losses as the Company was forced to employ a qualified worker in his place during the period of his absence and as his conduct set a bad precedent for other workers in the organisation. On earlier occasions, the petitioner did not think of imposing the penalty of

dismissal from service and gave opportunities to improve his performance and attendance; but, the respondent failed to take advantage of such lenience shown by the Company. He even refused to receive the dismissal order. Therefore, the same was sent by registered post. On several occasions, he stated that he suffered ill-health and sometimes he even stated that he missed the bus and therefore could not attend to duties. When the Tribunal also found that the charge related to absenteeism for 44 days was proved, it ought not to have interfered with the measure of punishment imposed by the disciplinary authority as the opinion of the disciplinary authority, as regards quantum of punishment, is having primacy. In a number of decisions the Supreme Court time and again held that when once charges are held proved, interference with the punishment imposed by the disciplinary authority is un-called for. Therefore, the award is liable to be set aside and punishment imposed by the disciplinary authority has to be restored.

5. As already noted, the respondent workman did not enter appearance despite service of notice.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. There is no dispute with regard to the fact that after a detailed enquiry the enquiry officer found that the charge related to absence from duty for 44 days during the period from 24.07.2001 to

14.12.2001 is proved and that the disciplinary authority imposed a punishment of dismissal from service. Aggrieved thereof, the workman filed a claim petition before the Tribunal and raised an industrial dispute. The learned Chairman of the Tribunal examined the facts and the oral & documentary evidence at length; and, after analysing the facts correctly and the evidence in proper perspective, he came to the conclusion that the findings of the enquiry officer that the charge formulated against the respondent is proved is correct; but, he *inter alia* held that the further contentions and stand of the petitioner Company, regarding the respondent's absence from duty for 433.5 days during the period from July, 1993 to 14.12.2001 on several occasions, could not be appreciated because the said aspect was beyond the scope of the charge framed. The Tribunal, thus held that the charge related to absenteeism for 44 days for the period from 24.07.2001 to 14.12.2001 is sufficiently proved.

8. This Court in the facts and circumstances of the case does not find any grounds much less valid grounds calling for interference with the said concurrent finding of fact recorded by the Enquiry Officer and the Chairman of the Tribunal. When once conclusions arrived at by the Tribunal are found to be sustainable on facts, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the learned Chairman of the Tribunal.

9. In the decision in Union Bank of India v.P.Gunasekharan¹, the Hon'ble Supreme Court dealt with the scope of the interference of this Court under Articles 226 and 227 of the Constitution of India and *inter alia* held as under:

"In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/ 227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence."

Further, in Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh, the Supreme Court held as follows:-

In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there

¹ (2015) 2 SCC

is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti, (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

10. Now, coming to the quantum of punishment in the case on hand, the learned Chairman of the Tribunal having found that the punishment of dismissal from service imposed by the disciplinary authority is highly disproportionate to the proved charge of absenteeism for 44 days, exercised his discretion judiciously, by invoking the provision of Section 11A of the Industrial Disputes Act, 1947, and modified the punishment to deferment of two annual increments with cumulative effect after setting aside the punishment of dismissal from service. It is no doubt true that when once it was held that the charge is proved, generally the Chairman of the Tribunal is not supposed to interfere with the quantum of punishment, but, in the case on hand, the charge framed and held proved has nothing to do with any financial irregularities or any serious misconduct; therefore the learned Chairman of the Tribunal was of the view that it did not warrant imposition of the extreme penalty of dismissal of the workman from the service. This Court having examined the matter, in detail, finds that the said modified

punishment at this distance of time does not call for interference, more particularly, as it cannot be said that the absenteeism for 44 days resulted in loss of trust and faith in the respondent, who is a helper. Further, it is not brought to the notice of this Court that after the reinstatement pursuant to the orders of the Tribunal, the respondent indulged in further acts of absenteeism or that his performance is not to the satisfaction of his superiors or that there are any serious complaints from any quarter.

11. Viewed thus, this Court finds that the award of the Tribunal brooks no interference and that the Writ Petition is liable to be dismissed being devoid of merit.

12. In the result, the Writ Petition is dismissed.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

Date: 09.03.2017
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