IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3189 of 2004
Date of decision: 12.05.2017

M/s Punjab Agro Industries Corporation Ltd. ... Petitioner

vs.

Bimla Kumari & ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. G.S.Thind, Advocate
for respondent No.1.

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RAJIV NARAIN RAINA, J.(ORAL)

1. This petition arises from an award of the Labour Court, Ludhiana made on November 18, 2003 reducing the punishment order from dismissal to stoppage of two annual increments with cumulative effect. The Labour Court has exercised its power under Section 11-A of the Industrial Disputes Act, 1947 (for short,"the ID Act"). This really means that the Labour Court has not faulted the inquiry report or the findings of guilt and the procedure adopted for inflicting punishment but has scaled it down on principles of proportionality.

2. The Presiding Officer has held that the extreme punishment of dismissal is shockingly disproportionate to the gravity of the misconduct levelled and proved against the workman and has applied the mitigating circumstance holding that as no loss was caused by the misconduct to the Punjab Agro Industries Corporation Ltd, the petitioner. The dismissal order was passed on April 16, 1999 which became subject matter of industrial

dispute and its adjudication upon a reference by the appropriate government which after trial led to the award passed in year 2003. The operation of the impugned award of the Labour Court was stayed by this Court on February 26, 2004.

3. What did the respondent do to deserve dismissal from service, is the question in judicial review of the selection of punishment by the Labour Court, which has led to reinstatement with full back wages but with the down scaled punishment as aforesaid.

4. The inquiry proceedings were based on a complaint made by one Raja Ram claiming that he never stood as a guarantor of claimant 1st respondent Bimla Kumari when she took a loan of ₹ 1,20,000/- from the LIC Housing Finance Ltd., a subsidiary company of the Life Insurance Corporation of India (hereinafter referred as 'LIC'). Raja Ram had procured a copy of guarantee deed furnished by Bimla Kumari from LIC on which his signatures were found by him to be forged. The only connection which the employer had with the incident was that Bimla Kumari had given a certificate, which is also allegedly forged bore the signatures of its Senior Manager (Works). The Senior Manager (Works) reported that the certificate was not issued by the office and was not signed by him. This complicated matters.

5. The case of Bimla Kumari was that she did not submit the alleged forged documents before the LIC to obtain loan since those documents were submitted by an agent. It was also stated by her that only the agent and the Area Manager would know who Raja Ram was as his signatures were obtained by them to be the guarantor. Raja Ram did not come forth to depose in the proceedings. Bimla Kumari also stated that she

had gone with her sister's husband as a guarantor but the dealing officials in LIC Housing Finance Ltd. told her that they would complete the papers themselves.

6. A few more facts may be noticed to help in concluding the case. Bimla Kumari was appointed as Clerk on compassionate grounds on account of death of her husband, who had served the Corporation. The present dispute arises out of a charge sheet issued to her on September 26, 1997. An inquiry was conducted. The inquiry officer concluded the proceedings and submitted his report holding Bimla Kumari guilty of charges levelled against her. The report was submitted in February 1999 and a show cause notice was issued to Bimla Kumari calling upon her to show cause against the proposed punishment of dismissal. Her reply was considered by the punishing authority and found unsatisfactory. Upon consideration of punishment Bimla Kumari was dismissed from service on April 16, 1999. Her statutory appeal before the Appellate Authority was turned down on July 13, 1999. This led to raising of a dispute under Section 2A of the ID Act by serving a demand notice on the management. The trial took place on the reference and the proceedings have concluded by the impugned award.

7. The loan, thought the Presiding Officer, had nothing to do directly with her employment except for obtaining loan for which an Employer Certificate of employment was necessary, which was alleged to contain the forged signature of the official of the petitioner Corporation. Bimla Kumari argued that she had not caused any loss to the Corporation. The authority which processed the loan made no complaint against her. The entire loan proceedings have nothing to do with the Corporation. The

previous charge-sheet which led to withholding of two increments with cumulative effect had no connection with the LIC loan but the old charge-sheet has been read by the disciplinary authority thought fit to be included in the dismissal order as a reason in addition to the present one to dismiss her from service.

8. It is the admitted position on file that the charge against Bimla Kumari was drawn on the basis of the complaint submitted by Raja Ram CCT of the Corporation, who was alleged to have been the guarantor of the loan. There is no doubt that even in the previous inquiry proceedings, which has led to major punishment, she was held guilty of obtaining a loan of ₹ 75,000/- from State Bank of India by producing documents with forged signatures, which on enquiry resulted in stoppage of two annual increments with cumulative effect. The previous charge sheet was dated November 04, 1996. There can be no doubt that obtaining loan on forged documents is a serious and grave matter.

9. Regarding procedure followed at the inquiry, the Labour Court came to the conclusion on the evidence that no prejudice was caused to Bimla Kumari if the inquiry officer or the punishing authority had not informed her that she was entitled to take assistance of a co-employee during the present inquiry as she did not claim the right and therefore, it was deemed to be waived. The Labour Court applied the law laid down in ***State Bank of Patiala and Ors. vs. S.K.Sharma*, (1996) 3 SCC 364** as to which actions cause prejudice per se and when are the defects curable or incurable found in the departmental proceedings. The Presiding Officer held that the inquiry was conducted in fair and proper manner. The Judicial Officer noticed in his award that a civil suit was pending against Bimla Kumari for

recovery of loan. Even a criminal case stands registered and was pending trial against her. But it was noticed that Bimla Kumari did not deny obtaining loan from LIC Housing Finance Ltd.

10. In these facts and circumstances, the Labour Court has converted the dismissal order by scaling it down to major punishment of stoppage of two annual increments with cumulative effect. The sum total of the reasons for scaling down the punishment is contained in para. 16 of the award, which read as follows:

> *"The services of the petitioner have been terminated w.e.f. 16.04.1999. No loss was caused to the respondent Corporation by the alleged misconduct of the petitioner. Civil Suit is admittedly, pending against the petitioner qua the loan which was obtained by her by submitting the alleged forged documents. Even a criminal case is stated to be pending against her in that regard. The petitioner has not denied the obtaining of the loan from the LIC. In this situation, it can be said that the punishment imposed upon her is shockingly disproportionate to the charges levelled against her as no loss was caused to the employer by her alleged misconduct. Therefore, it would be just and proper if two increments are ordered to be stopped with cumulative effect and this punishment is ordered to be imposed upon the petitioner. She is directed to join the respondent Corporation within 30 days when this award becomes enforceable. She is ordered to be reinstated with continuity of service will full back wages, but her two increments are stopped with cumulative effect. No order as to costs."*

11. To recapitulate material facts to make way for supervening events arising after passing of the award and the interim order staying the

operation of the award and thereafter are that: the dismissal took place in the year 1999. The award of reinstatement came in the year 2003. The award was stayed on February 26, 2004. Bimla Kumari presented an application under Section 17-B for last drawn wages on May 14, 2004. In the course of decision making on the application, the following order was passed by the division bench on March 3, 2005:

> *"This is an application under Section 17-B of the Industrial Disputes Act wherein it has been prayed that the management that the management be directed to pay the full wages last drawn by the respondent-workman.*
>
> *Mr. Vinod Sharma, learned counsel for the management states that the Corporation is ready and willing to take back the respondent in service subject to final decision of the writ petition.*
>
> *In view of the statement made by Sh. Vinod Sharma, the respondent-workman is directed appear before the Manager (Personnel) of the Corporation who shall take back the workman in job forthwith. The reinstatement of the respondent shall be subject to final decision of the writ petition.*
>
> *CM disposed of."*

12. In the above circumstances, Bimla Kumari rejoined the service on April 16, 2005 pursuant to the interim order dated March 03, 2005 subject to final decision of the writ petition. She retired on superannuation on December 31, 2007. Service of the Corporation, I am told, is non-pensionable. The Corporation having willingly taken back the respondent to service but with rider as above referred and without reason on the statement of counsel was apparently in avoidance of the pain of payment of last drawn wages. Corporation thought it fit to utilize her services and thereafter

allowed her to retire her from service on superannuation, then it would not lie in the mouth of the Corporation to press this petition vigorously on merits against the award when much of the wind is taken away from its sails. At that stage the Corporation did not view her presence in their office as a threat to discipline or danger to its functioning. In this I am not on the nature of the misconduct nor can I approve it. The view taken is purely legal on the facts while examining an award of a labour court.

13. Discretionary powers exercised by the Labour Court within its jurisdiction under Section 11A of the ID Act on appreciating the evidence when not perverse, irrational or capricious are not to be interfered with by the High Court only to substitute opinion. Ordinarily, an award is not liable to be tinkered with in writ jurisdiction and judicial review of awards of tribunals is limited to the matters indicated in a large number of judgments starting from guiding light in constitution bench ruling of the Supreme Court in ***Syed Yakoob vs. K.S.Radhakrishnan & ors., AIR 1964 SC 477***.

14. There is yet another quite possible an angle from where the entire case can be viewed holistically is from the standpoint of the similarity of the previous inquiry proceedings where the petitioner was punished with stoppage of two annual increments with cumulative effect and therefore, it appears to me as well that the extreme punishment of dismissal from service deserves to be mitigated enough to harmonize the severity of punishments but with both the charge sheets in hand and balance them in a fair and equitable manner. They are both cases of misconduct made of the same warp and woof, inasmuch as, they both relate to loans taken from third party institutions by Bimla Kumari and in neither was any loss caused to the Corporation arising out of the employment relationship.

15. The gravamen of the charges in the first case though reprehensible it may be but the fact remains that the punishing authority chose the major punishment of stoppage of two annual increments with cumulative effect while in the present case by visiting dismissal may appear somewhat unfair and discriminatory and thus deserve to be treated in the same fashion. This is in substance, I think, what the Presiding Officer has deemed fit to mould relief while exercising his special power under Section 11A of the ID Act to award lesser punishment while upholding the inquiry. Dismissal from service in the view of the Presiding Officer is shockingly disproportionate to the cause. I have no reason to superimpose any judgmental or personal opinion by an unwarranted interference in the relief granted. The view taken is possible and plausible in the facts and circumstances of the case.

16. Moreover, the course adopted on par would I think go a long way in maintaining parity of punishment and equal treatment in the matter of awarding civil penalties proportionate to each other. In both the cases, indisputably loan amount was taken by the widowed Bimla Kumari as a measure personal to her, which transaction had little to do with her employment status with the Corporation.

17. Accordingly, and for the reasons recorded above, the award is upheld and the present petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

12.05.2017
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1. Whether speaking/non-speaking? *Yes*
2. Whether reportable? *No*