

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 8110 of 2013
Date of Decision: 03.02.2017

Ashok Kumar

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.N.K.Nagar, Advocate for the petitioner

Mr.Harkesh Manuja, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. Of the three charge-sheets issued by the UT Administration against the petitioner for committing major misconduct he was held guilty on two charges and was absolved of the third. The first charge was absence from duty for 12 days. The second charge was for absence from duty for one day and the third charge was for leaving station for one day without intimation or permission. The Labour Court found that there was virtually no evidence against the workman for willful absence from duty for the longer period from 23rd June, 1994 to 4th July, 1994. Absence from duty for 12 days was the most serious of the three charges which were not proved and the other two were minor in nature.

2. The disciplinary authority considered the enquiry report and called for reply. The reply was considered and on a cumulative basis the disciplinary authority was pleased to pass an order of dismissal from service, doling out the severest penalty. The petitioner was just a washing boy working with the

Chandigarh Transport Undertaking. The Labour Court found that during his
Md. Firoz Khan
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entire service, the workman had not shown any serious disrespect to discipline or remissness in attending to his duties. While concluding, the Labour Court held that the enquiry proceedings were conducted in a fair and proper manner in the procedure followed, but was dissatisfied with the choice of the disciplinary authority on the harsh quantum of punishment imposed. The labour court exercised its sense of proportion to the gravity of the offence by invoking authority conferred by Section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) to award lesser punishment.

3. The Labour Court reinstated the workman with continuity of service, but inflicted by way of punishment denial of back-wages as a lesser penalty. The period of back-wages, Mr. Nagra, learned counsel for the petitioner says is for five years i.e. from the date of termination on 27th February, 2006 till the date of the award i.e. 15th February, 2011. While quantifying wages for five years, it would come to lakhs of rupees and perhaps even more than if the disciplinary authority or the Labour Court had awarded any of the least stinging major punishments, say of withholding an increment with permanent effect, even then the damage done would not be as magnified and blown out of proportion in terms of the money. Not only this, the labour court added futher onerous burden to punishment of withholding back-wages directing *en passant* that the period will not earn annual increments during the period elapsing between dismissal and reinstatement.

4. The Labour Court has denied back-wages and annual grade increments in the pay scale for the period which falls between the dismissal of the workman from service till his reinstatement. This unholy amalgam of punishments, to my mind, is neither fair nor proper exercise of jurisdiction under Section 11-A of the Act. It appears to be in contradiction with granting

annual grade increments are taken away, that too, on mere *ipse dixit* without recording reasons as to why this combination was just and meet to the gravity of the misconduct. This actually means that the Labour Court in the garb of imposing lesser punishment, other than dismissal, has in reality imposed totally disproportionate amalgam of punishments for absence of only one day and one day by leaving town without informing the office, by denying back wages for five years and in addition withholding in effect five annual increments permanently. The labour court should have chosen a single punishment for each of the civil charges concurrently or consecutively, as the case may be.

5. It appears plainly to the naked eye that there has occurred dispensation of injustice to the petitioner at the hands of the Labour Court passing an award without due application of mind. Such exercise of power under Section 11-A of the Act cannot be judicially approved on review of the award. Power under Section 11-A of the Act has to be exercised reasonably like every other absolute power has to be curtailed by a sense of justice and a sense of proportion. The principle of causation must remain uppermost in the mind of the labour court while dealing with such matters where proportionality has to be judged, not on whims and caprice but on the anvil of judicial experience to place the finger closest to the point of justice balancing out carefully the competing interests of the parties. For this no rules can be laid down except to address mind and heart to a problem which searches a judicial resolution. The judge is the master of his pen filled with the ink of probity, justice, fairness and equity. Power under Section 11-A is equity based to be exercised in a judicious manner by balancing the causes and their effect.

6. The lesser punishment in this case is itself disproportionate punishment which shocks the conscience of this Court, and that too for mere

petitioner was held guilty. Leaving Station without permission may be misconduct but certainly would not justify either the extreme punishment dismissal which deprives livelihood for the wrong reason or the “lesser” punishment as imposed by the Industrial Tribunal-cum-Labour Court, UT Chandigarh. It must be remembered that power under Section 11-A is akin to appellate power over disciplinary authority. It is an appeal to reason. It can be exercised only when the labour court is convinced that enquiry is fair and some other punishment is deserved than the harsh one inflicted.

7. Accordingly, the impugned award is found to be illegal, arbitrary, irrational and wholly perverse which deserves to be interfered with. The award has been passed oppressively without understanding the scope of Section 11-A of the Act or the application of the *Wednesbury* principles which sets out the standard to be applied by Judicial Officers for dispensing justice in our labour courts. The punishment must suit the misconduct.

8. Accordingly, the question which now remains is that when two of the charges stand proved, then is it not that no punishment at all should be awarded. I do not think so. The petitioner cannot go scot-free where two charges, though minor in nature have been proven at a fair and proper enquiry. It is further to be noticed that the incidents which constituted misconduct were committed in the years 1998 and 2001. The enquiry report was submitted on 10th November, 2005 and the dismissal took place on 27th February, 2006. The petitioner was again reinstated in February, 2011. The petitioner was kept five years in wilderness on such trivial issues and for no serious fault or misdemeanour involving moral turpitude. Denying back wages and increments for two days absences in a career would ex facie appear to be a travesty of justice which no reasonable man of ordinary intelligence should support. It was

like using a cannon when a pinch or tweak would have sufficed as a warning or at best an expression of displeasure or at the most censure.

9. In order to resolve this issue of lesser punishment, the case can either be remanded to the Labour Court to select a punishment other than what has been imposed by it to choose any of the minor punishments prescribed in the rules. This course, if adopted, would inevitably lead to further delay and litigation and wastage of time of the courts. Therefore, this Court deems it fit that for two days absence, the UT Administration will consider treating it as leave of the kind due and for leaving station without permission, it will be appropriate to impose the minor punishment of “censure”, which may be conveyed to the petitioner and placed on his file.

10. As a result of the above discussion, this writ petition is partially allowed. The award dated 15th February, 2011 passed by the Labour Court, UT Chandigarh is set aside to the extent it denies back wages and withholds increments from dismissal to reinstatement. The petitioner is held entitled to full back wages and to restoration of his past annual increments to bring his pay on par with his juniors. The same be calculated and paid within 2 months.

3.2.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes