

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.21527 OF 2001

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of certiorari calling for the records relating to and connected with I.D.No.102 of 1999 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam, and to quash the award dated 2.7.2001 passed therein, by holding it as arbitrary and illegal.

2. Heard Smt. G. Sudha, learned Counsel for the petitioner and Sri P.B. Vijay Kumar, learned Counsel for the 2nd respondent-workman.

3. It is the case of the petitioner that it is a limited company established under the Companies Act for manufacture of Aluminium Fluoride and Hydro Fluorosilicic Acid. The 2nd respondent-workman was appointed as a welder-cum-technician on 12.6.1994. While the 2nd respondent-workman was working as such, he became office bearer of Alufluoride Workers' Union, which was established in the year 1998. The 2nd respondent-workman used to spend most of the time on union activities without discharging regular duties and he did not concentrate on his duties. On 21.7.1998, the 2nd respondent-workman assaulted and threatened one V. Eswar Rao Supervisor (Mechanical) with dire consequences in the

premises of G. Srinu Babu, Senior Engineer (Mechanical) and also used abusive language with violent postures. The petitioner construed the said acts as misconduct and placed him under suspension on the same day i.e., on 21.7.1998. The 2nd respondent refused to receive suspension orders. In those set of circumstances, the suspension order was displayed on the notice board and a police complaint was also given in view of the changed atmosphere created by the 2nd respondent and as there was threat for security of men and machinery. Thereafter, the petitioner issued charge sheet to the 2nd respondent-workman on 24.7.1998 under clause 20(a)(k)(x) and (z) of the A.P. Model Standing Order, and called for explanation from him. The 2nd respondent submitted his explanation denying the charges. Being not satisfied with the same, the petitioner-company appointed Smt. Padma as enquiry officer to conduct enquiry. In the enquiry, the 2nd respondent was given full and fair opportunity as per the law and extended the principles of natural justice also. The enquiry Officer after conducting enquiry held that the charges levelled against the petitioner were proved. Basing on the said report, the petitioner issued a show cause notice to the 2nd respondent on 3.6.1999. After considering the entire case, the petitioner dismissed the 2nd respondent from service vide order dated 9.6.1999. Aggrieved by the same, the 2nd respondent-workman filed I.D.No.102 of 1999 under Section 2-A(2) of the Industrial

Disputes Act. The learned Tribunal passed award on 2.7.2001 setting aside the order of dismissal dated 9.6.1999; modifying the punishment of dismissal to that of stoppage of one increment with cumulative effect and ordering reinstatement of the 2nd respondent-workman into service with full back wages and other attendant benefits. Aggrieved by the same, the petitioner-company filed this writ petition.

4. The principal contention raised by the learned Counsel for the petitioner is that the learned Tribunal erred in passing the award in favour of the 2nd respondent-workman despite holding that the enquiry conducted by the petitioner is valid, and whenever any workman indulged in criminal acts and assaulted any superior officer or co-worker, the learned Tribunal ought not have interfered with the punishment of dismissal and ought not have ordered reinstatement of the 2nd respondent-workman with full back wages.

5. The learned Counsel for the petitioner contended that the Hon'ble Supreme Court in a catena of judgments held that whenever any workman indulges in grave act of criminal assault, the Tribunal/Labour Court cannot exercise its power under Section 11-A of the I.D. Act and grant relief of reinstatement to such workman. To strengthen her argument, she relied upon the judgment of the Hon'ble Supreme Court in

U.P. State Road Transport Corporation Vs. Subhash***Chandra Sharma and others***¹, wherein it is held as follows:

“The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.”

She also relied upon another judgment of the Hon'ble Supreme Court in ***M.P. Electricity Board Vs. Jagdish Chandra Sharma***², wherein it was discussed as follows:

“Learned counsel for the employer submitted that the High Court and the Labour Court have totally misunderstood the nature of their jurisdiction under Section 107-A of the Act. Learned counsel submitted that the charge proved against the employee was a serious one affecting the discipline in the entire organization. Even otherwise, inflicting of a grave injury on a superior officer while at work, could not be countenanced by any organization and this coupled with the unauthorized absence by the employee, clearly

¹ (2000) 3 SCC 324

² (2005) 3 SCC 401

justified the order of termination. Learned Counsel relied on the decisions of this Court rendered on Section 11A of the Industrial Disputes Act to contend that the interference with the punishment under the circumstances was clearly unjustified and the decision of the High Court calls for interference. He also pointed out that the fact that an interim stay was granted while admitting the Writ Petition filed by the employer, was not at all a ground to interfere with the punishment of termination. Learned counsel for the employee submitted that the Labour Court had taken note of the circumstances as a whole to come to the conclusion that the punishment imposed was punitive in nature and called for interference in exercise of its jurisdiction under Section 107A of the Act and that there was no reason to interfere with the award of such punishment upheld by the High Court. Learned counsel also relied on some of the decisions of this Court in support of his contention. He also made an attempt to argue that the charge against the employee had not been proved though the employee had not filed an appeal against that part of the decision of the Labour Court in the Industrial Court and had confined himself to challenging the refusal to award back wages.”

Further, she relied upon the judgment of the Hon'ble Supreme Court in ***Muriadih Colliery of Bharat Coking Coal Limited Vs. Bihar Colliery Kamgar Union***³, wherein a Division Bench noticing an earlier judgment in *Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and another* [(2004) 8 SCC 200] opined as follows:

17. The courts below by condoning an act of physical violence have undermined the discipline in the organization, 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 opinions

³ (2005) 3 SCC 331

wholly disproportionate to the gravity of misconduct and is unsupportable.”

6. The learned Counsel for the 2nd respondent-workman contended that the workman belongs to lower class and his language itself is very rough and is not polished and polite. He further contended that while the 2nd respondent-workman was agitating for the rights of the fellow-workmen, the persons who were in high managerial level provoked and irritated, which made him to loose his temper for a short period and he has not assaulted anybody, and only in a fit of anger, he threatened and that mere threat does not amount to physical assault and the learned Tribunal has rightly passed orders in his favour in I.D.No.102 of 1999 by exercising the powers under Section 11-A of the Industrial Disputes Act and by interfering with the punishment of dismissal on the ground of proportionality theory i.e., Wednesbury principle as the punishment is shockingly disproportionate to the charges levelled against the 2nd respondent-workman, and that the 2nd respondent-workman was also acquitted in criminal case and therefore, the award impugned does not warrant any interference.

7. The learned Counsel appearing for the 2nd respondent-workman relied upon the judgment of the Hon'ble Supreme

Court in ***Ved Prakash Gupta Vs. M/s Delton Cable India (P)***

Limited⁴, wherein it is held as follows:

“The finding of the Labour Court that the enquiry was fair and proper in the light of its own finding that the enquiry officer failed to summon the necessary witnesses and rejected the request of the appellant for challenging the witnesses could not be stated to be correct. On the merits some witnesses were examined on the side of the management before the Labour Court and they are S.K. Bagga, MW-2, Hira Lal, MW-3, Deep Chand, MW-4 and Laxmi Chand, MW-5 an Accountant of M/s. Gurumukh Dass, MW-2 has deposed about the appellant abusing Durg Singh who according to the appellant was the Secretary of a Labour Union while the appellant and others were trying to canvass membership for a rival trade union. MW-3 and 4 are stated to have corroborated the evidence of MW-2. MW-5 is the only independent witness examined on the side of the management. It is seen from the judgment of the Labour Court relating to the merits of the case that MW-5 who has deposed about the challans Exts. M-7 and M-8 having been returned to the person who accompanied him from the maintenance department had not supported the management that the appellant abused Durg Singh or any other person within the premises of the factory. It is also seen from the judgment of the Labour Court that though the appellant had produced before the Enquiry officer 5 sheets of papers with the signatures of about 100 workmen of the factory in support of the statement that the appellant had not abused anyone in the factory during the course of his service and the management had produced Exts. M-6, a list of 90 persons before the Enquiry officer, he had not called any of those persons to ascertain the truth regarding the alleged abuse of Durg Singh and S.K. Bagga by the appellant. It is also seen from the judgment of the Labour Court that the appellant has not given a list of the management's witnesses

⁴ (1984) 2 SCC 569

before the commencement of the domestic enquiry. In these circumstances, we are of the opinion that the conclusion of the Labour Court that the Enquiry officer had not acted properly in the proceedings and that he had not given full opportunity to the appellant as required by law does not call for any interference. The charge levelled against the appellant is not a serious one and it is not known-how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of A abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service."

The learned Counsel for the 2nd respondent-workman has also relied upon the judgment of the Hon'ble Supreme Court in

Management of Aurofood Private Limited Vs. S. Rajulu⁵,

wherein it is held as follows:

“We are of the opinion that consequent upon the bitter relations between the parties and as even the High Court has found the charges proved though 'trivial' and the fact that the respondent has not been on duty with the appellant-management since the year 1981, it would be inappropriate to foist a cantankerous and abrasive workman on it. We accordingly dismiss the appeal but direct that instead of reinstatement the respondent would be entitled to the payment of Rs.10,00,000/- as compensation as full and final settlement with respect to his entire claim.”

8. Relying upon the above judgments, the learned Counsel for the 2nd respondent-workman contended that in the instant case only threat of assault took place but no physical assault took place and that the 2nd respondent-workman only threatened the fellow workmen, who were discharging their duties along with him, and that the fellow workmen pulled the 2nd respondent-workman and the managerial staff away even before assault took place. He further contended that the 2nd respondent is entitled atleast for compensation in lieu of reinstatement as it was done by the Hon'ble Supreme Court in the case (5th cited) referred to supra.

9. This Court has considered the rival submissions made by the parties and perused the material available on record. From the material on record, it is obvious that no physical assault

⁵ (2008) 14 SCC 608

took place in the instant case. It is the case of the management that the 2nd respondent-workman threatened to assault and also used abusive language against the fellow-workmen. In all the cases relied upon by the learned Counsel for the petitioner, the workman indulged in physical assault.

10. The following misconduct was alleged against the 2nd respondent-workman:

- (i) Willful insubordination or disobedience, whether or not in combination with another, of any lawful or reasonable order of the superior;
- (ii) Riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline;
- (iii) Threatening, abusing or assaulting any superior or co-worker;
- (iv) Preaching of inciting violence, in relation to matters.

The enquiry officer after conducting enquiry observed as follows:

- (a) Attempting to assault superiors with violent postures;
- (b) Riotous disorderly behavior;
- (c) Threatening and abusing superiors and others;
- (d) Preaching and instigating of co-workers for resorting to violence;
- (e) Disobedience and insubordination;
- (f) Indifferent and inconsistency attribute of D.E. have all been established with corroborated evidence.

Perusal of the report itself would establish that no assault took place, and only attempt to assault superiors was held proved. The judgments of the Hon'ble Supreme Court, on which reliance was placed by the learned Counsel for the petitioner as

stated supra, are the cases where the workman had indulged in physical assault. In the instant case, no such physical assault took place but only there was an attempt to assault. There is lot of difference among attempt to assault; threaten to assault and physical assault. Therefore, this Court is of the view that the learned Tribunal has rightly passed orders in I.D.No.102 of 1999 dated 2.7.2001, by interfering with the punishment of dismissal as it was shockingly disproportionate, in exercise of the powers under Section 11-A of the Industrial Disputes Act. No illegality or irregularity has been pointed out by the learned Counsel for the petitioner in the award passed by the Tribunal. Therefore, it is difficult for this Court to reverse the findings of the learned Tribunal, which passed the award in favour of the 2nd respondent-workman.

11. At this stage, it is pertinent to note that on 16.10.2001, while admitting this writ petition, this Court granted interim stay on condition of the petitioner complying with Section 17-B of the I.D. Act. Now, the petitioner is resisting for reinstating the 2nd respondent-workman into service in terms of the award passed by the learned Tribunal. In the cases where there are bitter relations between the employer and employee and whenever managements are resisting for reinstatement, the method adopted by the Hon'ble Supreme Court is to modify the order of the Tribunal by ordering compensation of Rs.10 lakhs as full

and final settlement. In the instant case also, there is resistance of reinstatement even though the order was passed by the Tribunal way back in 2.7.2001.

12. Having regard to the above circumstances, this Court is of the view that ends of justice would be met if the order of Tribunal passed in I.D.No.102 of 1999 dated 2.7.2001 is modified by awarding compensation in lieu of reinstatement of the 2nd respondent-workman.

13. Accordingly, the Writ Petition is disposed of directing the petitioner to pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the 2nd respondent-workman as full and final settlement in lieu of reinstatement, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated:20th September, 2018
nn

THE HON'BLE SRI ABHINAND KUMAR SHAVILI



WRIT PETITION NO. 21527 OF 2001

20th September, 2018

nn