

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal Nos.289, 290 and 292 of 2019

Date: 11.09.2019

Between:

W.A.No.289 of 2019

M/s.Supermax Personal Care Pvt.Ltd.

..Appellant

And

Labour Court-I,
Rep.by its Presiding Officer,
And another

...Respondents

W.A.No.290 of 2019

M/s.Supermax Personal Care Pvt.Ltd.

..Appellant

And

Labour Court-I,
Rep.by its Presiding Officer,
And another

...Respondents

W.A.No.292 of 2019

M/s.Supermax Personal Care Pvt.Ltd.

..Appellant

And

Labour Court-I,
Rep.by its Presiding Officer,
And another

...Respondents

Standing Counsel for the appellants : Mr.Vedula Srinivas

Counsel for the respondents No.2 : Mr.S. Ravindranath

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

All these three Writ Appeals are disposed of by this common Judgment as the facts involved are same.

2) The appellant, the employer, (M/s.Supermax Personal Care Pvt.Ltd., successor of RCC (Sales) Pvt.Ltd.), has filed the present Writ Appeals against the common order of the learned Single Judge, passed in W.P.Nos.22767, 22769 and 22783 of 2004, dated 28.04.2018. The learned Single Judge while upholding the Award passed by the Labour Court in exercise of powers under Section 11-A of the Industrial Disputes Act, has dismissed the Writ Petitions filed by the appellant herein.

3) The brief facts of the case are that aggrieved by the order of dismissal from the services of the appellant herein, the respondent-employees had raised an Industrial Dispute before the Labour Court. The respondent-employees were dismissed on the ground that they have stolen the blades manufactured by the appellant-employer, and they were caught red-handed by the police while they were trying to sell the same. In fact, a criminal case was registered against them. The contention of the Management being that this act of theft and the subsequent recovery form the basis to entertain a doubt about the integrity, honesty and character of the employee. Pursuant to a show cause notice issued by the Management, an Enquiry Officer was appointed, who submitted a report, dated 28.01.1995. Duly following the procedure, vide order dated 28.11.2000, the Management terminated the services of the respondent-employees. Aggrieved by the dismissal order, dated 21.11.2000,

the respondent-employees had preferred an Industrial Dispute under Section 2-A (2) of the Industrial Disputes Act before the Labour Court.

4) Vide order, dated 28.06.2004, the Labour Court allowed the I.Ds. filed by the employees, holding that the termination of the employees from service by the appellant-employer on 17.06.2000 as illegal. While setting aside the said termination order, the Labour Court had directed the appellant herein to reinstate the employees within one month from the date of publication of the Award, and also to pay 50% of backwages within one month, failing which, to pay interest @ 12% per annum.

5) Aggrieved by the order of the Labour Court, the appellant herein had preferred W.P.Nos.22767, 22769 and 22783 of 2004 before the learned Single Judge. But the learned Single Judge, while upholding the order of the Labour Court, has dismissed the Writ petitions. The learned Single Judge has held that neither in the enquiry, nor in the charges, the expression 'lost confidence' was used by the appellant herein. Thus, the stand taken by the appellant herein that they had 'lost confidence' was an afterthought which was not taken when the employees challenged the order of termination before the Labour Court.

6) Heard Sri Vedula Srinivas, the learned Counsel appearing for the appellant-employer, and Sri S. Ravindranath,

the learned Counsel appearing for the respondents-employees, and the learned Government Pleader for Labour.

7) It is the contention of the appellant that the delinquent employees were removed on the ground that they have committed theft of the property (Blades). Even though in the criminal case they were acquitted of the charges framed against them, the appellant-employer has “lost confidence” in the said employees. Hence, it would not be prudent to reinstate them into service. Therefore, the direction of the Labour Court to reinstate them with backwages is not only undesirable, but the same is also unwarranted. The learned Counsel has further contended that the employer has every right to initiate disciplinary proceedings against the delinquent employees even if they are acquitted by the Criminal Court. Thus, the initiation of domestic enquiry and the order of dismissal ought not to have been interfered with by the Labour Court. Learned counsel would further contend that in the charges framed against the delinquent employees even though the words “loss of confidence” were not specifically used, the charge-sheet does say “entertain doubt about your integrity, honesty and character”. Pointing out the same, he further argued that once the employer loses confidence in a particular employee, who was involved in causing loss of property to the employer, the employer has every right to terminate his service, and no prudent employer would like to re-engage the services of the employee who was involved in a theft. In support of his contention, the learned Counsel has relied on the decisions of

the Hon'ble Supreme Court reported in Divisional Controller, Karnataka State Road Transport Corporation v. M.G.Vittal Rao¹, Air India Corpn. V. V.A.Ebellow² and Kanhiyalal Agarwal v. Gwalior Sugar Co. Ltd.³. Placing reliance on the judgments of the Hon'ble Supreme Court, referred above, the learned Counsel for the appellant has strenuously argued that the order of the learned Single Judge confirming the Award of the Labour Court cannot be sustained and the same is liable to be set aside.

8) Per contra, the learned Counsel for the respondents-employees has argued that once the employees were honourably acquitted by the criminal Court of the charges levelled against them, the very same charges cannot be made the basis for initiation of the disciplinary proceedings and the order of termination, was bad and cannot be sustained. As such, the Labour Court has rightly passed the Award directing reinstatement of the employees along with 50% back-wages. As there were no compelling grounds for setting aside the Awards passed by the Labour Court, the learned Single Judge has rightly dismissed the writ petitions. Hence, the same does not warrant any interference by this Court.

9) Having gone through the record and the case laws relied upon the learned counsel for the appellant, we are of the opinion that both the orders, namely, the Awards of the Labour

¹ (2012) 1 SCC 442

² AIR 1972 S.C., 1343

³ (2001) 9 SCC 609

Court as well as the Order of the learned single Judge have to be set aside by allowing the appeals for the following reasons:

i) Though the employees were acquitted by the Criminal Court in C.C.No.577 of 1993 of the charges levelled against them, the respondents-employees while replying to the show cause notice issued by the management have not denied the charges levelled against them. Instead, they have merely reiterated that they were acquitted by the criminal court and as such the initiation of disciplinary proceedings is not legal. The employees have neither pleaded that the Enquiry Officer had not followed the procedure, nor conducted the enquiry in a fair and reasonable manner, or that no opportunity was given to them to participate in the said enquiry.

ii) In catena of decisions, this Court as well as the Hon'ble Supreme Court have held that mere acquittal by the Criminal Court, of the charges levelled against the delinquent employee, cannot be construed as giving a clean chit to the employee; the managements/department is well within its right to initiate disciplinary proceedings and conduct departmental enquiry for the same misconduct. For, the reason that the standard of proof in a criminal trial is different from that of a departmental enquiry, where strict proof of misconduct is not required.

iii) The Hon'ble Supreme Court in State of AP. v. K.Allabaksh⁴ observed "*that acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for*

⁴ (2000) 10 SCC 177

the allegations call for departmental proceedings, if not already initiated, against him.”

iv) In the case of *Ajit Kumar Nag v. Indian Oil Corpn. Ltd.*⁵ the Apex Court held as under:

11.....In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The Two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused ‘beyond reasonable doubt’, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of ‘preponderance of probability.

v) In *M.G.Vittal Rao*, the Hon’ble Supreme Court was dealing with the case of an employee who was involved in theft

⁵ (2005) 7 SCC 764

and dismissed from service by the Corporation. Aggrieved by the said dismissal order, the employee raised an Industrial Dispute before the Labour Court. The Labour Court held that the departmental enquiry conducted against the said employee was fair and proper and thereby dismissed the said Industrial Dispute. Aggrieved by the same, the employee preferred a Writ Petition before the High Court, which was allowed by the Single Judge vide order, dated 27.01.2009, modifying the order of dismissal into an order of termination and the Corporation was directed to pay the terminal benefits. Aggrieved by the order of the Single Judge, the Corporation had filed Writ Appeal; vide order, dated 27.10.2009, the Division Bench of the High Court allowed the appeal quashing the Award of the Labour Court, and reversing the order of the Single Judge. The Division Bench further proceeded to hold that the employee was entitled to be reinstated into service with all consequential benefits, but on the ground that he has retired from service he is entitled to 50% of the back-wages from the date of dismissal till the date of his retirement and consequential benefit on retirement. The Hon'ble Supreme Court while reversing the order of the Division Bench has confirmed the order of the Single Judge as the employee had not preferred any appeal and held as under:

The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the disciplinary authority and there is no grievance on behalf of the respondent workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The disciplinary authority imposed the punishment of

dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of the respondent workman that once he stood acquitted he was entitled to all reliefs including reinstatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of the delinquent employee and nothing else.

In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges levelled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled to the said relief.

vi) In V.A.Ebellow, the Hon'ble Supreme Court has held that once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.

vii) In Kanhiyalal Agarwal, the Hon'ble Supreme Court has laid down the test for loss of confidence to find out as to whether there was *bona fide* loss of confidence in the employee, observing *that (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment.*

Therefore, the initiation of the disciplinary proceedings by the employer in the case on hand cannot be faulted. For, they are well within their power to initiate the same.

viii) For any employer while engaging the services of any person, an element of trust and confidence will be imposed initially without any proof. But in the course of time, depending on the behaviour and work done by the employee, he will start gaining the confidence of the employer. However, once that confidence is lost, the employer will hesitate to continue/re-engage the services of the said employee. In this particular case, the employees were charged for causing loss of property to the company. Therefore, the employer cannot be faulted for dismissing the employees from their services. Loss of confidence in an employee is always subjective to the satisfaction of the employer, based on facts and circumstances. Thus, it is not for the Court to impose its views on such dismissal.

10) During the course of arguments, it was stated by the learned Counsel for the respondents-employees that during the pendency of the writ petitions, the employees were already paid backwages, and stated that it would put the employees into untold misery and hardship if they are directed to repay the backwages. Hence, we are of the opinion that the backwages already paid should not be recovered from the respondents-employees. In all fairness, the learned Counsel for the appellant has agreed to abide by this direction.

11) With the above observations, all the appeals are hereby allowed to the extent indicated. The order of the learned Single Judge as well as the Awards passed by the Labour Court are hereby set aside.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

11th September, 2019
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