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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 09th May, 2019**
+ W.P.(C) 1049/2014 & CM APPLN. 2164/2014 & 14734/2014

M/S ASSOCIATED SERVICE STATION Petitioner
Through: Mr. A. Maitri and Ms. Radhika
Chander, Advocates.

versus

JAI KISHEN SHARMA Respondent
Through: Mr. Varun Singh, Mr. Abhutosh
Pratap Singh and Mr. Mohit Gupta,
Advocates.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the award of the Labour Court whereby the Labour Court awarded reinstatement with full back wages along with other service benefits to the respondent.
2. The petitioner appointed the respondent as a Petrol Pump Attendant in the year 1980 and his last wages drawn were Rs.3,488/- per month. According to the petitioner, on 06th July, 2005 at 02:30 P.M., there was rush of three-wheelers outside the petrol pump which blocked the entry of the customers to the petrol pump; the General Manager of the petrol pump rang the bell several times which was not attended to by the respondent; the Manager of the petrol pump called the respondent to the office of the General Manager where the respondent talked loudly and misbehaved with dirty and filthy language; and the petrol pump was stopped for 10-15 minutes. The petitioner terminated the respondent after an inquiry on 13th

March, 2006 whereupon the respondent raised an industrial dispute which resulted in the impugned award.

3. The respondent challenged the termination on the grounds that the respondent was not allowed to be represented by his representative in the inquiry; the proceeding sheets were not supplied to the respondent to enable him to defend the case; he was not allowed to cross-examine the witness of the management; he was not supplied the enquiry report; there is gross violation of principles of natural justice; the inquiry was sham and bogus; and the Enquiry Officer was biased against the workman.

4. The Labour Court held that there was no evidence on record to suggest that the respondent was sitting idle or was not doing job properly or that the petrol pump was over crowded due to any act of the respondent. The learned Labour Court observed that the entire episode revealed that the matter flaired up at the spur of the moment due to the rush of the auto rickshaws at the filling station and such incidents happen due to work pressure but the conduct of the respondent was not so grave to entail the punishment of dismissal. The Labour Court relied upon **Workmen v. Bharat Fritz Werner (P) Limited**, AIR 1990 SC 1054. The findings of the learned Labour Court are reproduced hereunder:-

“ 10. Heard. File perused. In case Workmen v/s Bharat Fritz Werner (P) Ltd. AIR 1990 SC 1054

“The misconduct that has been found established against these five workmen involves threatening the highest executive, viz; The President of Company, with dire consequences, wrongfully confirming him in his room and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen

had acted at the instigation of somebody. Taking into consideration the facts and the circumstances of the case, we are of the opinion that, keeping in view that interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment.”

11. *Coming to the present matter, the allegations against the workman are that he has misbehaved with the General Manager of the management. But as per own contention of the management on the relevant day and time, there was huge rush of auto rickshaws on the pump station which was required to be cleared. There is nothing on record which suggest that the workman was pre determined to misbehave with the General Manager or the workman was sitting idly or was not doing his job properly of filling gas in the vehicles. Even there is no evidence which shows that the pump station was over crowded due to any act of the workman or any great capital loss caused to the management due to act of the workman. The entire episode took place on the spot reveals that the matter flared up at the spur of the moment due to rush of the auto rickshaws at the filling station. Due to work pressure, such type of incidents are bound to happen which can be easily termed as ordinary wears and tears of the job work. In the light of this discussions and findings in case **Workmen V/S Bharat Fritz Werner (P) Ltd.(supra)**, the conduct of the workman was found to be not so grave to impose punishment of dismissal except the advisory to behave properly in future.*

12. *This discussion lead to the conclusion that penalty of dismissal of workman by the management vide order dt. 13.03.06 was illegal and unjustified. Therefore, the same stands set aside and it is held that the workman is entitled for reinstatement with full back wages alongwith other services benefits.”*

(Emphasis supplied)

5. Learned counsel for the petitioner urged at the time of hearing that the respondent indulged in gross misconduct and he has been rightly awarded the punishment of termination of service after a valid inquiry.
6. Learned counsel for the respondent urged at the time of hearing that the petitioner has not proved any misconduct of the respondent. It is further submitted that a proper and fair inquiry was not conducted in this matter. Without prejudice, it is submitted that the punishment imposed is not commensurate with the alleged misconduct.
7. Learned counsel for the petitioner submits that the respondent expired on 27th May, 2016 and was substituted by his widow and two daughters. The recovery of reinstatement has become infructuous due to the death of the respondent during the pendency of this appeal.
8. This Court is of the view that the alleged misconduct of the respondent does not entail the punishment of dismissal. This Court concurs the findings of the learned Labour Court recorded in paras-11 and 12 of the impugned award. The petitioner is liable to make payment of the full back wages along with other service benefits to the legal representatives of the deceased.
9. There is no merit in this petition which is hereby dismissed. Pending applications are disposed of.
10. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 09, 2019/ak