

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 717 OF 2015

With

I.A. No. CAN 2 of 2015(Old CAN 2083 of 2015)

Supreme and Company

Vs.

Netai Bhaduri & Anr.

For the Appellant : Mr. Arunava Ghosh, Ld. Senior Counsel
Mr. Anant Kr. Shaw,
Mr. Ravi Kumar Dubey
..... Advocates

For the Respondent : Mr. Rananeesh Guha Thakurta,
Ms. S. Sengupta,
.....Advocates

Heard on : 24.11.2021

Judgment on : 11.01.2022

Hiranmay Bhattacharyya, J.:-

1. This intra-court mandamus appeal is at the instance of the writ petitioner/employer and is directed against an order dated August 1, 2014 passed by a learned Single Judge in WP 13544 (W) of 2002 with CAN 2334 of 2014 thereby

refusing to interfere with the award dated May 29, 2002 passed by the learned judge 8th Industrial Tribunal, West Bengal (for short “the Tribunal”) in case no. VIII-52/99.

2. The appellant/ management dismissed the respondent no. 1 from service vide letter dated 22.02.96. The respondent no. 1 protested against such alleged illegal termination before the Labour Department, Government of West Bengal. The Governor in exercise of power conferred by Section 10 read with Section 2(A) of the Industrial Disputes Act, 1947 (for short “the 1947 Act”) referred the dispute before the Tribunal for adjudicating as to whether the termination is justified.
3. The respondent no. 1 filed his written statement before the Tribunal contending that he was a permanent employee under the appellant. He went to the factory premises on January 6, 1996 to collect his outstanding dues as per the instruction of the management. When he was about to leave the factory premises, the durwans checked the tool box of his motorcycle and found one dice which is alleged to be used for the purpose of the factory. It was alleged that the said dice was kept by the durwans at the insistence of the management. It was further stated that on January 7, 1996 he was compelled to sign on a blank paper under undue force and coercion.

4. The appellant in its written statement before the Tribunal contended that the security guard found one bold forging die of the company inside the tool box of the motorbike of the respondent no. 1. On the next day the respondent no. 1 gave a written confession in the presence of number of staff and workmen including the management. The respondent no. 1 started absenting from duties thereafter which compelled the management to dismiss him from service vide letter dated 22.02.96.
5. The learned Tribunal passed an award dated May 29, 2002 reinstating the respondent no. 1 in service with full back wages. The Tribunal expressed doubt as regards the genuinity of the confessional statement. It further held that the alleged act of theft is nothing but a concocted story manufactured by the management and the termination was not justified.
6. The appellant challenged the award passed by the Tribunal by filing a writ petition and the learned Single Judge dismissed the writ petition. Being aggrieved the instant appeal has been filed by the writ petitioner.
7. Mr. Ghosh, the learned counsel for the appellant contended that since the respondent no. 1 has admitted the act of theft in a confessional statement signed by him, there is no necessity to issue a charge sheet or holding a domestic

enquiry as the act of theft is proved by way of admission. He, further, submitted that even in a case where domestic enquiry was not conducted by the employer, the charges can be proved before the Tribunal or the Labour Court. He, further, contended that the order of the Tribunal and the Writ Court is liable to be set aside on the ground that the Tribunal as well as the Writ Court failed to take into consideration the relevant piece of evidence and arrived at the findings merely on surmise and conjecture. He, further, submitted that since the act of theft has been proved by way of admission no order for reinstatement should be passed as the employer has lost confidence on the employee. He also submitted that even in a case where the order of dismissal/termination is set aside, direction to pay full back wages is not automatic. He submitted that in order to get relief of full back wages the workman has to plead and prove that he was not gainfully employed from the date of his termination from service. He submitted that in the absence of pleading in support of the relief of full back wages no evidence in respect thereof can be looked into. In support of his aforesaid contentions he relied upon the following decisions:

- a) Workmen of the Motipur Sugar Factory Private Ltd. vs. The Motipur Sugar Factory Private Ltd. reported at AIR 1965 SC 1803

- b) The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. Management and others reported at AIR 1973 SC 1227
- c) Additional District Magistrate (City) Agra vs. Prabhakar Chaturvedi and another reported at (1996) 2 SCC 12
- d) Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar (DRARM) Educational Institution vs. The Educational Appellate Tribunal & Anr. reported at JT 1999 (6) SC 60
- e) Chairman & Managing Director, V.S.P. and others vs. Goparaju Sri Prabhakara Hari Babu reported at (2008) 5 SCC 569
- f) Depot Manager A.P.S.R.T.C vs. Raghuda Siva Shankar Prasad reported at 2006(11) SCALE 316
- g) R.K. Gandhi & Ors. vs. 1st Labour Court, West Bengal & Ors. reported at 2010(1) CHN (CAL) 639
- h) Divisional Controller, N.E.K.R.T.C vs. H. Amaresh reported at 2006 LAB. I.C. 3983
- i) U.P.S.R.T.C. vs. Ram Kishan Arora reported at 2007(6) SCALE 721
- j) Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal reported at (2004)8 SCC 218

- k) U.P. State Road Transport Corporation vs. Vinod Kumar reported at (2008) 1 SCC 115
- l) Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Others vs. Secretary, Sahakari Noykarara Sangha and Others reported at (2000) 7 SCC 517
- m) Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and Another reported at (1979) 3 SCC 371
- n) The Management of Regional Chief Engineer P.H.E.D. Ranchi vs. Their Workmen Rep. By District Secretary reported at 2018(11) SCALE 353
- o) Delhi Transport Corporation vs. Ramesh Chand reported at 2015(13) SCALE 486

8. Per contra, Mr. Guha Thakurta, the learned advocate for the respondent no. 1 submitted that the respondent no. 1 was dismissed from service on an allegation of theft without issuing any charge sheet and without even holding any domestic enquiry. He drew the attention of the Court to the judgments of the Tribunal and the learned Single Judge wherein the genuinity of the alleged confessional statement has been seriously doubted. He, further, submitted that the ground for issuing the order of termination was the alleged confessional statement and when the Tribunal after considering the evidence on record returned a finding that

the said confessional statement is not genuine, the order of dismissal cannot be sustained. He submitted that the appellant failed to prove the alleged act of theft by the respondent no. 1 and as such the Tribunal was perfectly justified in setting aside the order of termination and directing reinstatement of the respondent no. 1 in service with full back wages. He further submitted that the scope of enquiry by a Writ Court in judicial review is very limited and the learned Single Judge was perfectly justified in not interfering with the order passed by the Tribunal. He also submitted that since the Tribunal has set aside the order of termination which has been confirmed by the Writ Court, even for the sake of argument this court decides to set aside the order passed by the Tribunal and the Writ Court, the order of termination has to take effect from the date of this order and not from the date when the order of dismissal was passed by the appellant.

9. Mr. Guha Thakurta relied upon the following judgments in support of his aforesaid contentions:-

- a) Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others reported at (2013) 10 SCC 324
- b) Amar Chakravarty and Ors. vs. Maruti Suzuki India Ltd. reported at 2011-I-LLJ-251(SC)

- c) Engineering Laghu Udyog Employees' Union vs. Judge, Labour Court and Industrial Tribunal reported at 2004-I-LLJ-265 (SC)
- d) Management of the Mysore Coffee Processing Co-op. Society Ltd., Mysore vs. Presiding Officer, Labour Court, Mysore & Anr. reported at 1998 I CLR 542
- e) Harjinder Singh vs. Punjab State Warehousing Corporation reported at (2010)1 SCC (L&S) 1146 and (2010)3 SCC 192
- f) The K.C.P. Employees' Association, Madras vs. The Management of K.C.P. Ltd. Madras and ors. reported at 1978 AIR 474, 1978 SCR (2) 608
- g) Mohan Lal vs. The Management of M/s. Bharat Electronics Ltd. reported at AIR 1981 SC 1253
- h) Desh Raj Gupta vs. Industrial Tribunal IV, U.P., Lucknow and another reported at 1990 LAB.I.C. 1892
- i) Indian Railway Construction Co. Ltd. vs. Ajay Kumar reported at 2003-II-LLJ 180-(SC)
- j) The Workman of Firestone Tyre & Rubber Co. vs. The Management & Ors. reported at 1973 AIR 1227, 1973(26)FLR 359
- k) Syed Yakoob vs. K.S. Radhakrishnan and Ors. reported at 1964 SCR (5) 64

1) D.C. Roy vs. Presiding Officer, M.P., I.C., Indore and others reported at 1976 SCR (3) 801

10. We have heard the learned advocates for the parties and have perused the materials on record.

11. In this intra court appeal this Court is to decide whether the learned Single Judge was justified in dismissing the writ petition while exercising the power of judicial review.

12. It is now well settled by judicial pronouncements that the jurisdiction of the High Court while exercising its power of judicial review over the Labour Court or Tribunal is not that of an appellate court and the scope of interference is very limited. The High Court may interfere in cases where there has been a violation of the principles of natural justice or the findings are based on no evidence or are perverse or the same are based on mere surmises or conjecture or the punishment is totally disproportionate to the proved misconduct of an employee.

13. Bearing in mind such limited scope of interference by a writ court the instant appeal is to be decided by this Court.

14. The main ground of challenge against the order of dismissal passed by the appellant is that the same was passed without issuing any charge sheet or holding any domestic enquiry. It was vehemently contended by the learned advocate for the

respondent no. 1 that the appellant dismissed the respondent no. 1 from service without proving that he was guilty of any misconduct.

15.It is well settled that the right to take disciplinary action and to decide on the quantum of punishment are mainly managerial functions and the employer is expected to conduct a proper enquiry before imposing the punishment.

16.It is not in dispute that no charge sheet was issued to the respondent no. 1 nor any domestic enquiry was held for the alleged misconduct prior to dismissal of the respondent no. 1 from service.

17.The Hon'ble Supreme Court in the case of M/s Firestone Tyre & Rubber Co. (supra) after taking into consideration the judgment in the case of Motipur Sugar Factory (supra) held that even after incorporation of Section 11A of the 1947 Act, the employer is entitled to adduce evidence for the first time before the Tribunal in case no enquiry is held. However, an opportunity is to be given to the workman to lead evidence to the contrary.

18.In the instant case the appellant led evidence before the Tribunal in support of the order of dismissal and the

respondent no. 1 also led evidence in support of the defence set up by him against such order.

19.Evidence on record reveals that a dice belonging to the appellant company was recovered from the tool box of the motorbike of the respondent no. 1. In other words, the said dice was recovered from the possession of the respondent no. 1.

20.The onus thus, shifted upon the respondent no. 1 to explain how such property came to his possession. He could not produce gate pass or any valid document authorising him to possess such property of the appellant. Though the respondent no. 1 sought to make out a case in the written statement that the management insisted the durwans to keep such dice inside the tool box of his motorbike but he miserably failed to prove such mala fide act of the appellant by adducing evidence. Thus, this court is of the considered view that the respondent no. 1 was in unauthorised possession of the property of the appellant which amounts to an act of theft.

21.Now, this Court is to consider as to whether the confessional statement is genuine or not.

22.The respondent no. 1 made out a case in the written statement that he was compelled to sign on a blank paper under undue force and coercion which was subsequently

manufactured into confessional statement by the appellant. However, pleading in this regard is absolutely vague and devoid of specific particulars.

23. Records reveal that Shri Alok Kr. Pal who was the General Manager of the appellant company deposed as OPW 3. He deposed that the confessional statement was written by him and the same was recorded as per the dictation of the respondent no. 1. Thereafter, he read over the same to Netai i.e. the respondent no. 1 in presence of other workmen. He stated in his evidence that Netai put his signature in his presence and the other co-workers also put their signature or LTI in his presence. He, further, deposed that the confessional statement of Netai was recorded in the presence of the director. Such evidence of the OPW 3 was corroborated by the other witnesses from the side of the appellant company. Such evidence also could not be shaken in cross examination by the respondent no. 1.

24. The respondent no. 1 also admitted in his evidence to have signed on the Exhibit A in the presence of several persons who happened to be the signatories in the said document as witnesses. The only defense of the respondent no. 1 was that he was forced to sign on a blank paper under force and coercion. However, no complaint in this regard was made to the police. Since there is no evidence far less convincing evidence in this regard this Court has no other option but to

accept the said document being Exhibit A to be the genuine one.

25. The Tribunal, in our view, exceeded its jurisdiction by expressing a doubt as to the genuineness of the said document only on the ground that the same does not bear the full signature of the respondent no. 1 when the said respondent admitted his signature on the said document. The Tribunal failed to take into consideration that the appellant by leading evidence before the Tribunal proved that confessional statement being Exhibit A was written by Alok Kr. Pal as per the dictation of the respondent no. 1 and the same was also read over to him and also that the same was signed by the respondent no. 1 as well in the presence of the other workmen who also put their signature or LTI on the said document. In the light of such evidence on record, the mere fact that there was no certificate appended to the said document that the contents of the document were written as per the dictation of the respondent no. 1 or that the same was read over and explained to him is not sufficient to declare the said document as not being a genuine one. Such finding of the Tribunal thus, suffers from perversity.

26. This court accordingly holds that Exhibit A is a genuine document signed by the respondent no. 1 after understanding the contents of the same.

27. The recovery of the property of the appellant from the possession of the respondent no. 1 being an admitted fact coupled with the confession of the guilt contained in Exhibit A and the respondent no. 1 not reporting for duties after the said incident goes to prove that the respondent no. 1 was guilty of theft which amounts to misconduct.
28. The learned advocate for the respondent no. 1 strenuously argued that there could not have been any termination without any domestic enquiry.
29. The Hon'ble Supreme Court in the case of DRARM Educational Institutional (supra) held that giving of opportunity or an enquiry is a check and balance concept that no one's right can be taken away without giving him/her opportunity or without enquiry. It was further held therein that in a case where allegation and charges are admitted nothing remains to be enquired into upon holding an enquiry.
30. This Court has already held that the confessional statement of the said respondent to be genuine. Since the guilt was admitted by the respondent, this Court is of the considered view that in the instant case the order of dismissal without holding any domestic enquiry was justified.
31. In cases where the Tribunal decides the matter on evidence adduced before it for the first time, the Tribunal may hold that the order of dismissal or discharge is not justified as the

alleged misconduct is not proved. Even if the Tribunal is of the view that the alleged misconduct has been proved it may hold that such proved misconduct does not warrant dismissal or discharge. Keeping such legal principles in mind this court shall now proceed to decide as to whether the punishment of dismissal was justified in the instant case.

32. The respondent no. 1 claims that the value of the dice is only Rs. 50 and as such the order of dismissal from service is disproportionate to the misconduct complained of. When the employer finds that an employee is guilty of misappropriating the property of the employer or theft there is loss of confidence and faith of the employer in such employee. The Hon'ble Supreme Court in the case of *Sohanlal* (supra) and *Vinod Kr.* (supra) held that when misconduct proved is of dishonesty or misappropriation of property or funds of the employer, the quantum of loss is immaterial, it is the loss of confidence that matters. Thus, applying the said legal proposition, even if it is accepted that the value of the dice in question is very nominal but misappropriation of such property is certainly an act of dishonesty resulting in loss of confidence of the employer and in such case there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment.

33.It has been held in *Janatha Bazar* (supra) that in view of proof of misconduct a necessary consequence will be that the management had lost confidence and in such a case the power under Section 11A may not be exercised to grant relief with minor penalty.

34.In the instant case it is proved that the respondent no. 1 is guilty of committing an act of theft resulting in loss of confidence of the management in such workman. Thus, in such case the order directing reinstatement should not have been passed nor the order of dismissal be substituted with any minor penalty.

35.The learned Tribunal without considering the evidences that were available on record directed reinstatement with full back wages after setting aside the order of dismissal. The findings of the Tribunal were based merely on surmises and conjecture. The learned Single Judge while exercising its power of judicial review also failed to take into consideration the aforesaid aspect. The learned Single Judge drew an adverse inference against the management for not lodging any complaint with the police station against the workmen alleging theft. Such finding is a perverse one as it is evident from the record that such act of theft was reported to the officer-in-charge of the local police station on January 11, 1996. It was also stated in the said letter that since the workmen has made a clear confession of guilt therein the

appellant did not insist for lodging any formal diary. For the reasons as aforesaid this Court is of the considered view that the learned Single Judge ought to have interfered with the order of the Tribunal in the instant case. Thus, the orders of the learned Single Judge and the Tribunal are liable to be set aside.

36. Now, the next question which arises is the date from which order of termination is to take effect and whether it should be from the date of passing of the order of dismissal by that employer or the date of passing of this judgment and order.
37. The learned advocate for the respondent no. 1 by referring to the judgments in the case of *Engineering Laghu Udyog* (supra), *Desh Raj Gupta* (supra), *D.C.Roy* (supra), *Management of Mysore Coffee Processing Co-operative Society Ltd.* (supra) contended that the same is to take effect from the date of passing of this judgment and order. He, further, contended that since the respondent no. 1 has admittedly attained the age of superannuation long back the entire exercise by this Court would be only academic.
38. The aforesaid judgments relied upon by the learned advocate for the respondent no. 1 deals with cases falling under Section 33 (C)2 of the 1947 Act. The instant case is one under Section 11(A) of the 1947 Act and not under Section 33(C) of

the said Act. Thus, the said judgments do not apply to the facts of the instant case.

39. Let us now deal with the other judgments cited by Mr. Guha Thakurta.

40. The Hon'ble Supreme Court in *Syed Yakoob* (supra) held that if a finding of fact arrived at by the Tribunal is based on no evidence that would be regarded as error of law which can be corrected by a writ of certiorari. The said decision however, supports the case of the appellant as the Tribunal failed to take into consideration relevant evidence on record in the case on hand.

41. In the case of *Maruti Suzuki India* (supra) it has been held that the burden of proof lay on the management to prove misconduct of workman and the workman could not be asked to prove that he did not commit misconduct. The said decision is not applicable as in the instant case the management has proved the misconduct of the workman.

42. The decision in the case of *Deepali Gundu Surwase* (supra) is not applicable as it deals with a case of wrongful termination of service which is not in the case here.

43. There is no quarrel to the proposition of law laid down in *Harjinder Singh* (supra) that the writ court while exercising its powers of Judicial review in labour matters are duty bound to

keep in mind that the 1947 Act and other similar legislative instruments are social welfare legislation. The said reported decision did not deal with a case of admitted act of theft of employer's property and therefore the said judgment has no application to the facts of the instant case.

44. The decision in the case of *Mohan Lal* (supra) is not applicable in the instant case as it was a case of illegal termination.

45. The Hon'ble Supreme Court in *Ajay Kumar* (supra) directed payment of monetary compensation to the employee upon holding that the order dispensing with enquiry was not proper. The said judgment is not applicable to the facts of the instant case as the workman admitted his guilt.

46. In *KCP Employees Association* (supra) it has been held that the benefit of reasonable doubt on law and facts, if there be any doubt, must go to the weaker section, labour. In the instant case as the guilt is admitted by the workman there is no question of any doubt to arise. As such the said decision is not applicable to the facts of the instant case.

47. The other decisions relied upon by Mr. Ghosh are not relevant for the purpose of deciding the instant appeal in view of the findings rendered by this Court in the foregoing paragraphs.

48. For the reasons as aforesaid the instant appeal stands allowed. The impugned order dated August 1, 2014 passed by the learned Single Judge in WP 13544 (W) of 2002 with CAN 2334 of 2014 as well as the award dated 29th May, 2002 passed by the Tribunal in case no. VIII-52/99 stands set aside and quashed. The order of dismissal passed by the appellant no. 1 dated 22.02.1996 thus stands restored. The application being CAN 2 of 2015 stands disposed of accordingly.

49. All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

50. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)