

Item No.8 of list dt. 9.9.22.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 26.09.2022

DELIVERED ON:26.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

F.M.A. No.1325 of 2021

With

I.A. No.CAN 1 of 2022

M/s. Tamralipta Co-operative Spinning Mills Ltd.

Vs.

The State of West Bengal & Ors.

Appearance:-

**Mr. S. M. Obaidullah,
Mr. Ravi Chowdhury**

..... for the appellant.

Ms. Sikha Roy

... for the respondent no.3.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra Court appeal by the writ petition is directed against the order dated 4th July, 2018 in W.P. 20613(W) of 2017

by which the writ petition filed by the appellant was dismissed. The appellant had challenged the award passed by the First Labour Court, Kolkata dated 28th April, 2017 by filing the writ petition. Disciplinary proceedings was initiated against the respondent / workman for insubordination and disobedience. This resulted in issuance of a charge memo, a domestic enquiry was conducted in which the charges were held to be proved and the disciplinary authority namely, the appellant imposed a punishment of dismissal from service. The validity and legality of the dismissal was put to challenge before the Labour Court by way of a dispute raised under Section 2A(2) of the Industrial Disputes Act, 1947 (for short, "the Act").

2. The Labour Court after carefully examining the evidence, which was available has recorded that during the domestic enquiry, while holding that there was insubordination on the part of the respondent / workman came to the conclusion that the punishment of dismissal was very harsh and accordingly exercised its jurisdiction under Section 11A of the Act and modified the punishment by setting the order of dismissal and directing the workman to be reinstated and restricting the back wages only 20% for the period from 7th March, 2013 to the month of February, 2015 with no other consequential benefits.

3. The writ petition was filed by the appellant was dismissed by the learned Single Bench after noting the facts and more particularly, the Labour Court had appreciated the entire material and arrived at a proper conclusion.

4. Before us, the learned Advocate appearing for the appellant had elaborately contended as to how the appellant had lost confidence in the employee and the Labour Court had erred in setting aside the order of dismissal and interfering with the punishment imposed on the workman. On the contrary, learned Advocate appearing for the respondent / workman submitted that the Labour Court rightly took into consideration the evidence on record recorded in domestic enquiry and found the punishment imposed to be very harsh and accordingly, modified the punishment and there was no error in the award of the Labour Court and therefore, the learned Writ Court rightly dismissed the writ petition.

5. After we have elaborately heard the learned Advocates appearing for the parties and carefully perused the materials placed on record, we find that the award of the Labour Court to be a well-reasoned order. The Labour Court had noted the correct legal position by referring to various decisions of the Hon'ble Supreme Court and proceeded to examine the factual

position. The Labour Court found that the enquiry officer has not given any finding as to whether the nature of the misconduct committed by the workman to be very grave or a minor misconduct. That apart, the Labour Court found that there were gross inconsistencies in the evidence of the management witnesses and there was nothing on record to show that the workman had used force on the superior of the appellant / society.

6. Furthermore, the Labour Court upheld the validity of the domestic enquiry and found the same to have been done in full compliance of the principles of natural justice. After pointing out these factors, the Labour Court invoked its power under Section 11A of the Act, took note of the decision in the case of **Narayanan & Ors. Vs. State of Tamil Nadu and Ors.** reported in **2001-III-LLJ (suppl) 169** and pointed out that though there was an allegation that the workman attempted to assault a superior officer, there was no acceptable evidence, which was produced during the domestic enquiry and also found that the testimony of the witnesses of the management suffer from inconsistencies, which cast a cloud as to whether the misconduct on the part of the workman can at all be said to be a major misconduct.

7. The challenge to the award of the Labour Court being a proceeding under Article 226 of the Constitution of India, the Court has to exercise its jurisdiction not as an appellate authority over an award passed by the Labour Court but to examine as to whether there is any error in the decision making process and whether there was any wrong appreciation of the factual position.

8. None of the abovementioned criteria stands fulfilled in the instant case and therefore, we are of the view that the learned writ Court rightly dismissed the writ petition and no grounds have been made out for interference with the same.

9. Accordingly, the appeal fails and it is dismissed.

10. No order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)