

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23426 of 2012

The Management of M/s. Orissa Steavoderes Ltd., Cuttack ***Petitioner***

Mr. B.P. Tripathy-2, Advocate
-versus-

State of Odisha and another ***Opp. Parties***
Mr. B, Baral, Advocate for OP No.2

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

Order No.

**ORDER
28.06.2022**

- 03.
1. The challenge in the present petition is to an award dated 13th June, 2012 passed by the Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.313 of 2008 whereby the Tribunal held the second party workman to be entitled to be reinstated in employment under the first party i.e. the Petitioner together with 50% back wages. While directing notice to issue on the present petition on 11th December, 2012, this Court stayed operation of the impugned award.
 2. The background facts are that the workman was working in the fertilizer plant of Paradeep Phosphates Ltd. under the different contractors since 26th February, 1986. On 8th March, 2004 he was placed under suspension and on 3rd April, 2004 he was charge sheeted. A domestic enquiry was conducted leaving to the dismissal of the workman from 19th April, 2005. The following dispute was referred to the Tribunal for adjudication:

“Whether the dismissal of service of Sri Kalachand Nayak, Ex-Slat worker with effect from 19.04.2005 by the management of M/s. Orissa Stevedores Ltd., a Contractor’s establishment of M/s. Paradeep Phosphates Ltd. Paradeep is legal and/or justified? If not, what relief Sri Nayak is entitled to?”

3. While the Tribunal held the domestic enquiry to be fair and proper, it found on merits that of three charges against the workman in the domestic enquiry, the most serious charge viz., that the workman had allegedly ‘threatened, abused or assaulted any superior or co-worker’ was not found to be proved. The charge that along with two other workers he was found inebriated was also held not to have been proved. There was no proof of the workman having behaved in a disorderly manner. All that was shown was that he had accompanied with two other workmen one of whom had abused and threatened the victim. A witness examined on behalf of the management, who worked as Supervisor, stated that the workman ‘was simply present in the company of the other two workmen and he had never created any *pati tunda*’.

4. The Tribunal found that the only thing proved against the workman was temporary absence and that could not amount to either wilful insubordination or disorderly behaviour. It is in the above circumstances of the Tribunal came to the conclusion that ‘the severest form of punishment imposed in the second party is neither legal nor justified’. It was held to be ‘shockingly disproportionate’.

5. Learned counsel for the Petitioner relied on the decision in *M/s. Mangalam Timber Products Ltd. v. Sri Sailesh Kumar Gantayat 2009 (I) OLR 831* to urge that the Tribunal ought not to have interfered with the quantum of punishment. It is seen in the said case, the workman was involved in theft and such misconduct was held to be grievous in nature warranting the punishment inflicted. In the present case, the most serious charges of threatening under intoxication and disorderly behaviour were not proved against the workman. The only thing proved was temporary absence. Clearly for such act, the punishment of dismissal was disproportionate. Consequently, the Court is unable to be persuaded that the Tribunal erred in interfering with the punishment awarded to the workman and ordering his reinstatement with 50% back wages. There is no merit in the present petition and dismissed as such.

6. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge