

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 15762 of 2001  
With  
CAN 183 of 2003**

**Hindustan Engineering & Industries Ltd.  
Versus  
The State of West Bengal & Ors.**

|                         |   |                                                                |
|-------------------------|---|----------------------------------------------------------------|
| For the petitioner      | : | Mr. Soumya Majumder<br>Mr. Shounak Mitra<br>Ms. Shivangi Thard |
| For the respondent no.3 | : | Ms. Rakhi Shroff                                               |
| Heard on                | : | 17 <sup>th</sup> January, 2024                                 |
| Judgment on             | : | <b>17<sup>th</sup> January, 2024.</b>                          |

**Raja Basu Chowdhury, J:**

1. The present writ petition has been filed, *inter alia*, questioning the extent of imposition of punishment on the respondent no.3 by the learned First Industrial Tribunal, West Bengal in Case No. VIII-50/94 vide award dated 29<sup>th</sup> June, 2001.
2. Shorn of unnecessary details, the facts are the respondent no.3 was employed with the petitioner as a Clerk, Grade-A, since, 15<sup>th</sup>

October, 1973. At the relevant point of time, he was posted at the Head Office of the petitioner company.

3. On or about 12<sup>th</sup> May, 1983, a charge-sheet was served on the respondent no.3, *inter alia*, alleging willful disobedience of orders and/or instructions given in relation to work, willful insubordination, arrogant behavior with the seniors etc. The respondent no.3 had duly responded to the charge-sheet by a communication in writing dated 16<sup>th</sup> May, 1983 by denying all material allegations. The same was followed by an enquiry. Ultimately, by an order dated 19<sup>th</sup> July, 1983 on the basis of the enquiry conducted by the management, the respondent no.3 was found guilty of the charges and was inflicted a punishment of dismissal from service from the petitioner company with effect from close of the day of 19<sup>th</sup> July, 1983.
4. Following the aforesaid, an industrial dispute was raised and the appropriate Government by an order dated 6<sup>th</sup> January, 1994 was, *inter alia*, pleased to refer the disputes between the parties to the learned First Industrial Tribunal for adjudication by framing the following issues:-
  - a) *Whether the dismissal from services of Shri Alik Kumar Rakhit is justified?*
  - b) *What relief, if any, is he entitled to?*
5. Both the respondent no.3 as also the petitioner participated in the proceeding before the learned Tribunal which, ultimately culminated in the award dated 29<sup>th</sup> June, 2001.

6. Although, the Tribunal had found that the enquiry stood vitiated, however, on the basis of the evidence led by the parties concluded that the workman concerned was guilty of misconduct and disobedience for one particular occasion, thus, while setting aside the order of dismissal, had inflicted a lesser punishment on the respondent no.3.
7. The petitioner being aggrieved by the aforesaid imposition of lesser punishment has filed the present writ petition.
8. Mr. Majumder, learned advocate representing the petitioner, submits that once, the Tribunal had come to a conclusion that the charges levelled against the respondent no.3 stood proved, it was no longer open to the Tribunal to interfere with the punishment inflicted on the respondent no.3. He submits that although, discretion vests with the Tribunal in awarding punishment, such discretion must be exercised judiciously. Admittedly, in this case the petitioner had been able to prove the charges levelled against the respondent no.3. In view thereof, the Tribunal had overstepped its authority and jurisdiction in interfering with the punishment imposed.
9. It has been submitted that considering the nature of the charges levelled and the proof thereof, no punishment less than the punishment of dismissal would commensurate with the misconduct of the respondent no.3. In support of his contention, he has placed reliance on the following judgments: -

- a) ***Uttar Pradesh State Road Transport Corporation v. Nanhe Lal Kushwaha*** reported in **(2009) 8 SCC 772;**
  - b) ***Divisional Manager Rajasthan State Road Transport Corporation v. Kamruddin*** reported in **(2009) 7 SCC 552;**
  - c) ***Kurukhetra University v. Prithvi Singh*** reported in **(2018) 4 SCC 483;**
  - d) ***Uttar Pradesh State Road Transport Corporation & Another v. Gopal Shukla & Anr.***, reported in **(2015) 17 SCC 603.**
10. By placing reliance on the judgment reported in the case of ***Ved Prakash Gupta v. M/s Delton Cable India (P) Ltd.***, reported in **(1984) 2 SCC 569**, he has tried to distinguish the same and submitted that the said judgment ought not to have been relied on by the Tribunal while passing the award impugned. According to Mr. Majumder, stoppage of one increment was in the nature of a minor punishment and if the respondent no.3 is let off with such minor penalty for committing such grave misconduct, it shall be difficult for the petitioner to maintain discipline amongst its workers.
11. In the facts as noted hereinabove, it is submitted that the exercise of jurisdiction by the Tribunal in interfering with the order of punishment being an irregular exercise of authority should be interfered with by this Court, and this Court should re-impose the punishment in the form of dismissal.

12. *Per contra*, Ms. Shroff, learned advocate representing the respondent no.3 submits that there is no irregularity in the award passed by the Tribunal.
13. Admittedly, the enquiry conducted by the petitioner stood vitiated. It is submitted that despite the petitioner alleging that the incident which took place on 10<sup>th</sup> May, 1983 was not an isolated incident, and there were previous incidents where the respondent no.3 was involved in indecent behavior with the officer of the company, such allegation which forms part of the charge-sheet could not be proved. What was proved before the Tribunal was an isolated incident that happened on 10<sup>th</sup> May, 1983. She submits that the respondent no.3 had an unblemished career with the petitioner company for the past ten years prior to the said isolated incident. The learned Tribunal in the facts of this case having found the incident though proved, was an isolated one, had concluded that the punishment of dismissal of the workman to be disproportionate to the allegation of misconduct and disobedience and had accordingly, set aside the same.
14. The punishment awarded by the Tribunal of stoppage of one increment in the facts of this case is also harsh. It is submitted that the basic salary of the respondent no.3 was only Rs.250/- and at the time of the order of dismissal his last drawn gross salary was Rs.1200/-. Having regard to the aforesaid, stoppage of

one increment cannot be said to be a minor punishment for the respondent no.3.

15. By placing reliance on the judgment in the case of ***Ram Kant Mishra v. State of U.P.***, reported in **AIR 1982 SC 1552**, it is submitted that in an identical set of facts, the Hon'ble Supreme Court taking into consideration that there had been no blameworthy conduct in such case during the period of 14 years of service rendered prior to the date of misconduct of the said appellant on only one occasion, had come to a conclusion that the order of dismissal was not justified in the facts of the case and had accordingly, directed that withholding of two increments with cumulative effect would be more than adequate punishment for such a low paid employee. She submits that the Tribunal had exercised its discretion in the matter and this Court in exercise of its power under the judicial review ought not to interfere.
16. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears that on the basis of the incident that took place on 10<sup>th</sup> May, 1983, a charge-sheet was issued on the respondent no.3, on 12<sup>th</sup> May, 1983. The respondent no.3 had denied all material allegations in the charge-sheet. Unfortunately, without conducting any proper enquiry, the respondent no.3 was dismissed from service with effect from close of the day of 19<sup>th</sup> July, 1983.

17. Pursuant to an order of reference issued by the appropriate Government on 6<sup>th</sup> January, 1994, the matter reached the learned First Industrial Tribunal, West Bengal.
18. In course of hearing, the learned Tribunal was of the view that the enquiry held was not valid and proper and as such had permitted the petitioner to prove the charges by leading evidence. Equal opportunity was also afforded to the respondent no.3. In course of the proceeding before the Tribunal, the petitioner had not been able to prove and substantiate the entirety of the charges. Insofar as the charge of previous conduct of the respondent no.3 is concerned, the petitioner could not prove the same.
19. Having regard to the aforesaid and taking note of the fact that the misconduct committed by the respondent no.3 was an isolated act on a particular date and since, according to the Tribunal the punishment of dismissal as awarded by the management was disproportionate to the allegation of misconduct which stood proved, the order of dismissal was set aside. From the findings returned by the Tribunal, it is apparent and clear that the Tribunal had concluded that though the charge of misconduct against the respondent no.3 stood proved, however, since, the same was an isolated incident and having found the order of dismissal to be disproportionate to the charges levelled, had not only set aside the order of dismissal, but imposed a penalty of

stoppage of one increment and consequentially directed reinstatement in service with full back wages.

20. I find that Mr. Majumder by placing reliance in the case of ***Uttar Pradesh State Road Transport Corporation*** (*supra*) has claimed that though, a power has been conferred on the Industrial Tribunal or Labour Court to interfere with the quantum of punishment awarded, in exercise of its power under Section 11(A) of the Industrial Disputes Act, 1947, ordinarily, the discretion exercised by the employer should not be interfered with, however, if, such power is exercised so as to interfere with the order passed by the employer the same should be exercised judiciously considering the gravity of the offence. The next judgment cited by Mr. Majumder is the case of ***Divisional Manager Rajasthan State Road Transport Corporation*** (*supra*). In the said case, the workman, during his probation had misconducted himself on five occasions, and a letter of warning was also issued. Although, an enquiry was conducted and on being held guilty his service was terminated yet, the tribunal had directed reinstatement opining that the punishment was disproportionate. The above judgment is clearly distinguishable on facts. The judgment delivered in the case of ***Kurukhetra University*** (*supra*) is on the issue that once, the employer is able to prove charges before the Labour Court, the Labour Court can exercise its powers to interfere with the order of punishment,

provided the case for exercise of such power to that effect has been made out by the respondent employee. The aforesaid judgment does not assist the petitioner as the employer had not been able to prove all the charges. By referring to the case of **Gopal Shukla & Anr.** (*supra*), Mr. Majumdar had tried to drive home the point that it is the obligation for the Tribunal to record satisfaction that the order of dismissal was not justified and only thereafter, to proceed for awarding lesser punishment, in lieu of discharge or dismissal. In the case at hand I, find that all the allegations made in the charge-sheet could not be proved. The learned Tribunal has also recorded reasons for its interference with the order of dismissal. Such reasons may or may not be to the liking of the petitioner but this Court in exercise of its power under judicial review cannot substitute its own views with that of the learned Tribunal, especially when the award and the interference thereon, by the Tribunal cannot be said to be based on no evidence or perverse.

21. Having regard to the aforesaid, I find that the aforesaid judgments relied on by Mr. Majumder do not assist the petitioner. In this context I must note that Mr. Majumder has strenuously argued that reduction of one increment would constitute only a minor penalty. I, however, notice that the learned Tribunal in consideration of all aspects, which obviously includes the basic salary of the respondent no.3, had awarded

the punishment. The discretion to that effect, exercised by the learned Tribunal cannot be interfered with.

22. The writ petition fails and is accordingly dismissed without any order as to costs.
23. In so far as the application being CAN 183 of 2003 is concerned, it is submitted on behalf of the petitioner that the said application had been filed seeking modification of the order dated 20<sup>th</sup> August, 2002 passed under Section 17B of the Industrial Disputes Act, 1947 (in short "said Act"), on the respondent no.3 reaching the age of superannuation, on 29<sup>th</sup> December, 2002. It is further submitted that subsequent to the date of superannuation of the respondent no.3 the petitioner has not disbursed any monetary benefit under Section 17B of the said Act to the said respondent.
24. Ms. Shroff, learned advocate representing the respondent no.3 acknowledges the fact that the respondent no.3 has reached the age of superannuation with effect from 29<sup>th</sup> December, 2002.
25. Having regard to the submissions made by the parties, and in view of the dismissal of the writ petition, the connected application being CAN 183 of 2003 is also dismissed as infructuous.
26. There shall be no order as to costs.

27. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

**(Raja Basu Chowdhury, J.)**

**sb**