



In the High Court of Punjab and Haryana, at Chandigarh

Letters Patent Appeal No. 1877 of 2018 (O&M)

Reserved On: 25.09.2024

Pronounced On: 21.10.2024

Chandigarh Transport Undertaking

... Appellant(s)

Versus

The Presiding Officer, Labour Court, Union Territory, Chandigarh and
Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Gaurav Mohunta, Additional Standing Counsel
and Mr. Yashasvi Goyal, Advocate,
for the appellant(s).

Anil Kshetarpal, J.

CM-4872-LPA-2018

1. For the reasons stated in the application, the same is allowed.
Delay of 272 days in filing the appeal stands condoned.

CM-4871-LPA-2018

2. For the reasons stated in the application, the same is allowed.
Delay of six days in refiling the appeal stands condoned.

LPA-1877-2018

3. Brief Facts

3.1 Through this intra Court appeal, the correctness of the Labour
Court's award passed on a reference under Section 10(1)(c) of the Industrial

Disputes Act, 1947 (hereinafter referred to as “the 1947 Act”) which, in turn, has been affirmed by the learned Single Judge, has been assailed.

3.2 Gurnam Singh-respondent No.3, despite the receipt of notice of the appeal, has not entered appearance. He was working as a Driver with the appellant. Another driver, namely Kehar Singh, brought Bus bearing registration plate No. CHW-8955 to the yard for parking. After parking the bus, he went to get his bed as he used to stay at Ambala. On his return, he found respondent No.3, who was not on duty, on the driver’s seat of the bus. He started the bus and drove it in rash and negligent manner resulting into an accident at the intersection of Sectors 28-29-30 in which a cyclist died on the spot whereas the pillion rider suffered injuries. The police registered a case against respondent No.3 and the departmental proceedings were also initiated against him. The article of charge served on the petitioner reads as under:-

“Article of Charge

On 04.12.1987, Shri Kehar Singh Driver No.243 was on duty with bus No.CHW-8955, while he parked his bus in Sector-28 and went to get his bed as he had to stayed at Ambala. On his return from him he found Shri Gurnam but Singh D-355 who was not on duty with the said was sitting on the drivers seat and started the bus. While Shri Gurnam Singh driver was driving the bus No.CHW-8955 with rash and negligent manners, caused an accident in inter section of Sector 28/29/30. In this accident, a cyclist died on the spot and other pillion rider met some injuries. The accident took place due to rash and

negligent driving of the bus by Sh.Gurnam Singh, Driver No.355 and the police has registered a case U/S.279/337/304 against him. Thus Shri Gurnam Singh D-355 is guilty for causing fatal accident by taking bus forcibly from Sh.Kehar Singh Driver 243 which amounts to grave misconduct on his part.”

3.3 In the disciplinary inquiry, it was found that the charges are proved against respondent No.3. Ultimately, a show cause notice was issued and the disciplinary authorities reduced the pay scale of respondent No.3 for a period of five years to the time scale and the suspension period was also limited to grant of subsistence allowance during his suspension period. The respondent No.3 sent a demand notice which was referred to the Labour Court under Section 10(1)(c) of the 1947 Act. By filing an application, the learned counsel representing respondent No.3 did not challenge the correctness of the inquiry report but limited his submission only to the provisions of Section 11A of the 1947 Act. The Presiding Officer substituted the punishment with the stoppage of two increments with cumulative effect. It was also ordered that respondent no.3 shall not be entitled to any arrears on account of any modification in the punishment. The management filed a writ petition which was dismissed on the following three grounds:-

- I) Misconduct or negligence against respondent No.3 to the extent of using bus which was not allotted to him, is proved.
- II) No doubt, the Labour Court has not assigned any reason

as to why the penalty has been modified but the event of the alleged incident relates to the year 1987 whereas the penalty was imposed in the year 1994.

III) There would not be a much difference in view of the pillion rider while modifying the penalty order.

4. Submissions put forth by the Learned Counsel Representing the Appellant

4.1 The appellant's counsel while drawing attention of the Court to Section 11A of the 1947 Act, has submitted that the Labour Court had no jurisdiction to modify the punishment while exercising the powers under Section 11A. He submits that Section 11A is attracted only in the eventuality when the punishment awarded is discharge or dismissal of the workman which is not the case herein. He further submits that the power of Labour Court to reduce the sentence is not unlimited and the discretion to reduce the punishment can be exercised only where the punishment is wholly disproportionate to the gravity of misconduct or the existence of the mitigating circumstances.

5. Discussion and Analysis

5.1 We have considered the submissions of the learned counsel representing the appellant and with his able assistance, perused the paper book.

5.2 It is evident that the workmen filed an application under Section 11A of the 1947 Act before the Labour Court while categorically submitting that he does not wish to challenge the correctness of the disciplinary inquiry. It appears that the Labour Court as well as the learned

Single Judge overlooked that Section 11A of the 1947 Act was not applicable, which is extracted as under:-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5.3 It is evident that Section 11A of the 1947 Act is applicable only in the case of discharge or dismissal of the workman. This is sine qua non for invoking the enabling power under Section 11A of the 1947 Act. Hence, the order passed by the Labour Court, which, in turn, has been affirmed by

the learned Single Judge was the result of material irregularity going to the root of the matter. Reliance, in this regard, can be placed upon the judgment of the Supreme Court in *The General Secretary, South India Cashew Factories Workers' Union v. The Managing Director, Kerala State Cashew Development Corporation Limited and Others (2006) 5 SCC 201*. In fact, Section 11A was inserted on 15.03.1971 by Act No. 45 of 1971. The language of the statute is clear and categorical. The enabling discretion given to the Labour Court, Tribunal/National Tribunal to interfere with the quantum of punishment is only when the industrial dispute relating to the discharge or dismissal of the workman comes up for adjudication. This is not applicable if the Labour Court is deciding the reference against any other order of penalty.

5.4 In any case, it is evident that the learned Single Judge has found that the Labour Court has failed to record any reason. In these circumstances, it was not appropriate for the learned Single Judge to uphold the award. Moreover, the learned Single Judge has also erred in observing that the misconduct or negligence against respondent No.1 would be to the extent of using of bus which was not allotted to him. Once respondent No.3 did not challenge the correctness of the inquiry report, the charge of misconduct as extracted above stood proved. The acquittal of respondent No.3 in a criminal case would not nullify the findings reported by the Inquiry Officer. In a criminal case, the standard of proof is much higher when compared with the departmental inquiry. The acquittal in criminal case would not be sufficient to nullify the effect of punishment awarded after the

interfere with the punishment unless it is established that the punishment is disproportionate to the gravity of misconduct or there was existence of the mitigating circumstances. It is evident that on account of misconduct of respondent No.3, one person lost his precious life whereas another suffered injuries. In these circumstances, it was not appropriate for the Labour Court to interfere with the order of punishment. Similarly, the learned Single Judge has erred in observing that the substituted punishment will not be of much difference. The question is not of difference, but the question is “whether the Labour Court had the jurisdiction to intermeddle with the discretion exercised by the punishing authority which has the primary jurisdiction to impose punishment? The Labour Court gets the jurisdiction only in case of dismissal or discharge of workman where the punishment is disproportionate to the gravity of misconduct or the existence of mitigating circumstances. In this case, neither the Labour Court nor the learned Single Judge has found that Section 11A is extracted.

5.5 It is correct that the submission based on the scope of Section 11A has not been taken either before the Labour Court or the learned Single Judge, however, this being purely a legal issue which goes to the root of the matter, hence, the appellant’s counsel has been permitted to make submissions.

6. Decision

6.1 Keeping in view the aforesaid facts, the present appeal is allowed and the reference stands answered against respondent No.3.

6.2 The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

October 21, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No