

CASE NO.:
Appeal (civil) 3439 of 2003

PETITIONER:
Employers, Mgmt., M. Colliery M/s BCCL Ltd.

RESPONDENT:
Bihar Colliery Kamgar Union Through: Workmen

DATE OF JUDGMENT: 22/02/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T
WITH

C.A. NO. 1347 OF 2005
(arising out of SLP (C) No. 1195 of 2004)

SANTOSH HEGDE, J.

The Management of Muriadih colliery of M/s BCC Ltd. is in appeal against the award made by the Central Industrial Tribunal (No.2), Dhanbad dated 11th of October, 1991 in an industrial dispute referred to it under Section 10 of the Industrial Disputes Act, 1947.

By the said award the Tribunal upholding the misconduct of the two workmen set aside the punishment of dismissal and directed reinstatement of the said workmen without payment of back wages and with permanent stoppage of one increment. The Tribunal also directed the workmen to give the continuity of their service.

The writ petition filed by the Management as against the said reduction in sentence before the learned Single Judge and an appeal before the Division Bench of the Patna High Court having been dismissed, the Management appellant is in appeal before us.

The brief facts necessary for the disposal of this appeal are as follows:

The two workmen were working as Pump Operator and Trammer respectively under the management of Muriadih colliery of M/s BCC Ltd. . On 11.5.1983 at about 11.15 a.m. a mob consisting of about 200 persons variously armed with deadly weapons like lathi, Bhalla, bow and arrow came to the office premises of General Manager, Barora area and amongst them the two respondent workmen attacked Shri H.N. Tripathi, the General Manager of the area with a lathi on his head as a result of which he sustained bleeding injury and he had to be admitted to a hospital. These workmen with the rest of the mob further assaulted other officers of Barora area including one Shri K.K. Khadia, Area Manager, Personnel, Shri K. Bhardwaj, Inspector CISF, Sher Singh, Havaladar and Bhim Singh. The motive for the said attack is stated to be an accident that occurred previously in regard to bursting of a water tank causing death of two persons.

A show cause notice was issued to these workmen to reply and the explanation submitted by the workers was not found satisfactory. In the domestic inquiry that was conducted the respondent workmen were found guilty of misconduct charged against them and on the recommendation of the Inquiry Officer the services of the concerned workmen were terminated w.e.f. 14.11.1984.

The said order of dismissal after inquiry gave rise to an industrial dispute as stated above. In the industrial dispute the workmen challenged the fairness and validity of the domestic inquiry. The Tribunal having come to the conclusion that the inquiry conducted was not fair, gave opportunity to lead evidence to the parties and after considering the material produced in the said inquiry came to the conclusion that the alleged incident of assault by the workers was proved and the two workmen concerned found guilty of the misconduct alleged against them.

Having taken into consideration the gravity of the offence of physical assault on the Managing Staff of the colliery with deadly weapons and causing injuries to them and having come to the conclusion that the Management has been able to prove most of the charge leveled against the workmen, the Tribunal proceeded to interfere with the punishment of dismissal observing thus:-

"I am to hold further that the concerned workmen were members of the mob and they also caused injury to Shri Tripathy and others. But definitely they had never intended to kill Shri Tripathy as held above. Since there was casually on account of bursting of water tank it was natural for the workmen in general to go in agitation against the management and at that time the mob is mostly guided by their own emotions and feelings. In the circumstances of the case I am of the view that the punishment of dismissal will be harsh punishment which definitely amount to hanging of an accused after criminal trial. For causing simple hurt even to the high officials like the General Manager the workmen should not be dismissed rather some alternative punishment like stoppage of increment which is also one of the major penalty should be inflicted. I also find that there is no previous history of any such act on the part of the concerned workmen. In the circumstances, I feel that the needs of justice can be met by reinstating the concerned workmen in their service without payment of back wages and with permanent stoppage of one increment. However, they will get continuity of their service."

As stated above being aggrieved by the interference with the punishment awarded by the Management after coming to the conclusion that the misconduct alleged is established, the appellant preferred writ petition before the Ranchi Bench of the Patna High Court. The learned Single Judge of the Patna High Court dismissed the said writ petition agreeing with the finding of the Tribunal observing thus:-

"Certainly the assault to the senior officials that too in the rank of General Manager by the workmen in discharge of their duties is a gross misconduct and in such a situation officials who are managing the affairs are being demoralised. But in the instant case the Tribunal has recorded a finding that there was a mitigating circumstance and the action of the two workmen were neither deliberate or intentional but it was in a sudden spur of the moment overwhelmed by the mob mentality the workmen assaulted these senior officials only for the reason that on the same day there was a bursting of a tank in which some workmen died in the accident which created an impression to the fellow workers that due to negligence on the part

of the Management, such accident took place. So far the aforesaid reason alone, this occurrence took place and it is not a case of personal vendetta or a gross act of in discipline or insubordination. In that view of the matter, the Tribunal was perfectly justified in modifying the extreme punishment of dismissal and both the workmen though definitely guilty, were also awarded sufficient punishment as no back wages were awarded also an increment was withheld. In that view of the matter and in such mitigating circumstance, I am not inclined to interfere with the order of the Tribunal. Accordingly this Writ application is dismissed, but without costs."(Emphasis supplied)

The appeal filed against the said order before the Division Bench of the Jharkhand High Court also having failed on the same ground as stated above, the appellant is before us. The only question for our consideration in this appeal is whether the Tribunal was justified in interfering with the quantum of punishment awarded by the Management after coming to the conclusion that the finding of the domestic inquiry was fair and legal or whether the so called mitigating circumstances recorded by the Tribunal would be a sufficient ground to reinstate the concerned workmen. Shri A. Sharan, Addl. Solicitor General appearing for the Management contended that the accident on the previous day had nothing to do with the General Manager and others who were assaulted and assault in question did not take place immediately after that accident but was a premeditated attack with deadly weapons causing grievous injuries (according to the learned counsel). The learned Addl. Solicitor General pointed out that the mitigating circumstances recorded by the Tribunal that the workmen definitely did not have an intention to kill Shri Tripathi is a frivolous excuse for reducing the sentence. He further submitted that the nature and manner of attack in the presence of the security forces itself showed that the attack on the managerial staff of the appellant was premeditated and deliberate attack to undermine the discipline in the organization. Such indiscipline could not be exonerated on the excuse of emotions and feelings of workmen. The learned Addl. Solicitor General also pointed out from the order of the learned Single Judge that he had recorded a finding that the conduct of the workmen was 'a gross misconduct' and had even recorded a finding that because of the attack, the officials have been demoralised. In such a fact situation it is contended that the reduction of punishment of dismissal into stoppage of one increment is perverse.

Unfortunately, none appeared for the workmen in this case.

It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11 (A) of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did

not die is not a mitigating circumstance to reduce the sentence of dismissal.

Considering the question of proportionality of punishment this Court in the case of Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr. [2004 (7) SCALE 608], a case involving misconduct of lesser liability held:

"This leaves us to consider whether the punishment of dismissal awarded to the concerned workmen de hors the allegation of extortion is disproportionate to the misconduct proved against them. From the evidence proved, we find the concerned workmen entered the estate armed with deadly weapons with a view to gherao the Manager and others in that process they caused damage to the property of the estate and wrongfully confined the Manager and others from 8.30 p.m. on 12th of October to 3 a.m. on the next day. These charges, in our opinion, are grave enough to attract the punishment of dismissal even without the aid of the allegation of extortion. The fact that the Management entered into settlement with some of the workmen who were also found guilty of the charge would not, in any manner, reduce the gravity of the misconduct in regard to the workmen concerned in this appeal because these workmen did not agree with the settlement which others are agreed instead chose to question the punishment."

Similarly in the case of The Management of Tournamulla Estate Vs. Workmen [(1973) 2 SCC 502], this Court while considering the denial of gratuity to a dismissed workmen held:

"If a workman is guilty of a serious misconduct such as acts of violence against the management or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline, then his gratuity can be forfeited in its entirety. "

From the above it is clear that this Court has considered an act of violence as an act of grave misconduct calling for stringent punishment.

From the facts narrated herein above, the ratio laid down in two cases referred to herein above amply applies to the appeal in hand. The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11 (A) of the Act to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case withholding of one increment in our opinion is wholly disproportionate to the gravity of misconduct and is unsupportable.

Herein it is worthwhile to recall the finding of the learned Single Judge who has rightly held that the assault on the senior officials by the workmen in discharging of their duties is a misconduct and in such a situation officials who are managing the affairs will be demoralised.

This being the factual situation we are of the opinion that the orders of the courts below modifying the punishment of dismissal is unsustainable.

For the reasons stated above, the impugned orders of the

Tribunal, Single Judge of the High Court and the Division Bench of the High Court are set aside and the order of dismissal of the appellant-Management in regard to the respondent - workmen concerned is upheld. The appeal is allowed.

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Leave granted.

In view of the order made by us in Civil Appeal No. 3439 of 2003 this appeal is also allowed.

JUDIS