CASE NO.:
Appeal (civil) 817 of 2005

PETITIONER:
Obettee Pvt. Ltd.

RESPONDENT:
Mohd. Shafiq Khan

DATE OF JUDGMENT: 23/09/2005

BENCH:
Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

The challenge in this Appeal is to the judgment of a learned Single Judge of the Allahabad High Court holding that the termination order as passed by the appellant (hereinafter referred to as the 'employer' was not sustainable in law.

Background facts in a nutshell are as under:

The respondent (hereinafter referred to as the 'Workman') filed a writ application for quashing the order dated 23rd April, 1988 passed by the Industrial Tribunal (I) Allahabad (in short the 'Tribunal') holding that the termination of his service with effect from 11.4.1984 was reasonable and legal. A reference was made by the State Government in exercise of its power under Section 4(K) of the Uttar Pradesh Industrial Disputes Act, 1947 (in short the 'U.P. Act') for adjudication by the Tribunal. The reference which was made on 21st June, 1996 was registered as Adjudication Case No. 39 of 1986. After framing issues on the basis of the statement of payment and the written statement filed by the parties, initially the Tribunal held that the enquiry was not fair and proper. However, the employer was granted liberty to adduce evidence to substantiate its stand that the enquiry was fair and proper. On the basis of materials on record the Tribunal came to hold that the termination was in order.

The background in which the reference was made is as follows:

On 2nd May, 1980 workers of the employer under the instigation of the respondent-workman went on strike. The respondent-workman did not permit the vehicles carrying the articles to go out of the factory and he and others not only went on strike but also incited others to go on strike and threatened others. Though the factory Manager, V.R. Sharma warned them not to go on strike but they did not pay any heed. Charge sheet was given and the concerned respondent-workman was suspended. Along with him two others namely Chunnu and Vakil were also proceeded against. At this juncture, the respondent-workman and the other two gave in writing that their suspension may be withdrawn since they were giving assurance to perform their duties diligently and not to indulge in activity like strike. There was further assurance that full co-operation will be given in the departmental proceedings. The employer revoked the suspension of the concerned respondent-workman without prejudice to the right to hold the enquiry. Domestic enquiry was instituted and charges were levelled against five persons including the concerned respondent-workman. During enquiry Chunnu and Vakil gave further assurance that they have tendered unqualified apology and indicated their remorse for having resorted to illegal strike. On the basis of the unqualified apology and the undertakings given, the appellant-employer did not proceed further against them but the situation was different so far as the respondent-workman was concerned.

It is to be noted that while Chunnu and Vakil accepted the correctness of the charges levelled against them and tendered apology, the respondent-workman continued to contest the charges levelled against him. On appreciation of evidence the Tribunal came to hold that merely because no action was taken against Chunnu and Vakil, the position is not the same so far as the respondent-workman is concerned. The distinctive features, so far as the respondent-workman and the other two namely Chunnu and Vakil are concerned, were highlighted by the Tribunal. Accordingly the Tribunal held that the termination of the respondent-workman was legal and proper.

In the Writ Petition filed before the High Court the primary stand was that there were no distinctive features so far as writ petitioner was concerned. The High Court accepted the stand of the respondent-workman and held that the distinction made by the Tribunal was clearly an artificial distinction. It was further held that though there was no subsequent apology tendered, the respondent-workman had in letter and spirit shown his bona fides by not resorting to any strike subsequent to 2.5.1980 and there is clearly "inferred apology" on the part of the respondent-workman. Accordingly the order of termination was set aside and it was directed that the respondent-workman was to be reinstated in service if he had not attained the age of superannuation and was to be paid 50% of the back wages from the date of termination till reinstatement. It was further indicated that in case the respondent-workman had attained the age of superannuation, then he will be awarded 50% of the back wages from the date of termination till he attained the age of superannuation.

In support of the appeal, learned counsel for the appellant submitted that the view of the High Court is clearly untenable. The Tribunal had rightly noted the distinctive features so far as the respondent-workman and the other two are concerned. While in the case of Chunnu and Vakil they had given undertakings and had expressed regrets for resorting to illegal strike, there was no such regret expressed by the respondent-workman. On the contrary he tried to justify his action and even termed the strike on 2.5.1980 to be legal one.

In response, learned counsel for the respondent-workman submitted that the Tribunal had taken a hyper technical view. Even though he had not given undertaking as given by Chunnu and Vakil there was no allegation that he had resorted to any illegal act thereafter. Mere fact that he had tried to justify his action in the proceedings cannot be taken as a distinctive features to make a departure from the benevolence shown to Chunnu and Vakil.

On consideration of the rival stand one thing becomes clear that Chunnu and Vakil stood at different footing so far as the respondent-workman is concerned. He had, unlike the other two, continued to justify his action. That was clearly distinctive feature which the High Court unfortunately failed to properly appreciate. The employer accepted to choose the unqualified apology given and regrets expressed by Chunnu and Vakil. It cannot be said that the employer had discriminated so far as the respondent-workman is concerned because as noted above he had tried to justify his action for which departmental proceedings were initiated. It is not that Chunnu and Vakil were totally exonerated. On the contrary, letter of warning dated 11.4.1984 was issued to them.

In Union of India v. Parma Nanda, [1989] 2 SCC 177 the Administrative Tribunal had modified the punishment on the ground that two other persons were let out with minor punishment. This Court held that when all the persons did not stand on the same footing, same yardstick cannot be applied. Similar is the position in the present case. Therefore, the High Court’s order is clearly unsustainable and is set aside.

The appeal is allowed with no order as to costs.