

CASE NO.:
Appeal (civil) 8304-8305 of 2002

PETITIONER:
Bharat Heavy Electricals Ltd.

RESPONDENT:
M. Chandrasekhar Reddy & Ors.

DATE OF JUDGMENT: 25/01/2005

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

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

These appeals are preferred against the common judgment of the High Court of Judicature Andhra Pradesh at Hyderabad made in Writ Appeal Nos. 1864 of 2001 and 1901 of 2001 whereby the High Court dismissed the appeals filed by the appellant herein confirming the order of the learned Single Judge dated 21-11-2001 made in W.P. Nos. 29150 of 1997 and 10461 of 2000.

Facts necessary for the disposal of these are as follows :-

The respondent herein was an employee working as Assistant Grade-I in the Stores Department of the appellants, R & D Division at Hyderabad. He borrowed house building advance by depositing title deeds of his properties as securities, creating an equitable mortgage in favour of the appellant. As per the terms of the said title deeds of the property belonging to the respondent was to be in custody of the appellant till the entire amount of the loan with interest was discharged. While the mortgage was still subsisting and an amount of Rs. 1,34,951/- was due from the respondent, the appellant's officers came to know that certain public notices were published in the local Newspaper calling upon the intending purchasers to make their offers for the purchase of the property belonging to the respondent which was mortgaged to the appellant by deposit of title deeds. On the appellants coming to know of the same, its officers approached the advocate who on behalf of the respondent had issued the publication. Then they came to know that the original title deeds which were supposed to be in deposit of the company was in his custody. Obviously, because it was stealthily taken away from the custody of the appellant. Based on said facts a departmental enquiry was instituted and on the reports submitted by the Enquiry Officer holding the appellant guilty of the misconduct charged and taking into consideration the seriousness of the charge the services of the respondent were terminated.

Being aggrieved of the said decision of the appellant, respondent approached the Additional Labour Court challenging the said enquiry report as well as the consequential punishment imposed on him. The Labour Court after considering the report of the Enquiry Officer has also examined certain witnesses summoned by it came to the conclusion the finding given by the Enquiry Officer and also the confirmation of the said finding by the Disciplinary Authority was legal and valid. It also observed that in view of the said fact it did not see any reason to come to a different conclusion from that of the Enquiry Officer. During the course of its order it also observed that the most of the facts were not disputed and the documents which were supposedly to be in the custody of the appellant found its way to the possession of the respondent and by so obtaining the possession of the

document the appellant tried to sell the property when the mortgage was still subsisting. The Labour Court also recorded the following finding :-

"No doubt the confidence of the employer on this petitioner has shaken by this occurrence but no instance of earlier mis-conduct are spelt. On the other hand it appears he is an active participant in the cultural activities and for common cause of the employees. Therefore, I also feel the punishment of dismissal from service is harsh in the circumstances.

Being aggrieved by the said order directing the reinstatement of the respondent the appellant preferred a writ petition before the learned Single Judge, the respondent also being aggrieved by the order upholding his misconduct filed a writ petition before the High Court challenging that part of the order. The learned Single Judge after hearing the parties dismissed both the writ petitions. In the course of his orders the learned Single Judge observed :-

"\005There is any amount of spectrum of discretion vested with the Tribunal in taking into consideration the facts and circumstances of the case. The decision relied upon by the learned Counsel for the Management has to be taken into consideration basing on the facts and circumstances of the case\005".

On the above basis writ petitions of the appellant as well as that of the respondent came to be dismissed.

Against the said judgment of the learned Single Judge both the appellant and respondent herein preferred appeals before the Division Bench of the High Court which dismissed the writ appeals on the following grounds :-

"\005In our opinion, a reading of Section 11-A would show that the power of the Labour Court is without limitation. The Labour Court or the Industrial Tribunal can interfere when the punishment awarded is disproportionate to the proved guilt. Under such circumstances, the Labour Court, in our opinion, is bound to give and should give its reasons in support of its decision. No doubt, the Labour Court, after due discussion of the charges and the evidence adduced by both the parties came to the conclusion that the charges stand proved\005"

Having carefully considered the entire facts and circumstances of the case, we do not find any impropriety or illegality in the award of the Labour Court as confirmed by the learned single Judge in modifying the punishment of dismissal from service to that of reinstatement into service as a fresh candidate in the post of Assistant Grade-II. The Labour Court, in our opinion, had exercised its discretionary power under Section 11-A judiciously and has given valid and cogent reasons for modifying the punishment\005."

It is against the said judgments of the courts below directing the fresh appointment of the respondent in spite of finding of the Labour Court that the conclusions arrived at by the Enquiry Officer is correct, the appellant is before us in these appeals.

Ms. Mohini Narain, learned counsel appearing for the appellant contended that the courts below was totally in error in coming to the conclusion that there was absolute discretion on the Labour Court under Section 11-A of the Industrial Dispute Act to alter the sentence in spite of coming to conclusion that the enquiry conducted by the management was correct and just and the finding of guilt recorded by the Enquiry Officer is based on facts. She submitted the discretion vested under Section 11 A of the Act has to be exercised judiciously bearing in mind the nature and gravity of the misconduct proved as also the loss of confidence genuinely entertained by the management. In support of her contention she placed reliance on the judgments of this Court in the case of :-

(1) Air India Corporation, Bombay vs. V.A. Rebellow and Anr. (1972 1 SCC 814),

(2) Francis Klein & Company Private Limited vs.

Their Workmen & Anr. (1972 4 SCC 569),

(3) Janata Bazaar South Kanara Central Co-operative Wholesale Stores Limited & Ors.

vs.

Secretary, Sahakari Nourkarara Sangha & Ors. (2000 7 SCC 517),

(4) UPS RTC vs. Mohan Lal Gupta (2000 9 SCC 521) and

(5) The Workmen of Firestone Tyre & Rubber Co.

vs.

The Management & Ors. (1973 1 SCC 813).

Shri Nageshwar Rao, learned senior counsel appearing for the respondent submitted that under Section 11 A of the Act the Labour Court was well within its jurisdiction to interfere with the quantum of punishment if it came to the just conclusion that the penalty imposed on the employee is disproportionate and the same shakes the court's conscience. He submitted in view of the fact that the respondent had returned the entire loan amount and the appellant-company has not suffered any monetary loss. The Labour Court was justified in altering the punishment. He also submitted that though the Labour Court did not accept the respondent's case that the documents in question were given to him by the company itself, on the material on record it is seen that on a request made by the respondent the officers of the appellant company had handed him over the documents so that he can sell the property and return the loan taken by him. He also submitted that right till the date of this misconduct the respondent's behaviour has been exemplary and he has served the company honestly and efficiently, therefore, for this one stray act of misconduct he ought not to be punished and so called loss of confidence pleaded by the management is imaginary, therefore, he justified the Labour Court's exercise of its wide jurisdiction judiciously which was upheld by the learned Single Judge as well as by the Division Bench of the High Court and there is absolutely no reason for this Court to interfere with such concurrent finding.

It is an admitted fact that the documents kept in deposit for obtaining a loan from the appellant company by the respondent by way of a mortgage did find its way to the office of the lawyer of the respondent and of the respondent did make an attempt to sell the property by calling for offers by way of Newspaper publication. Though the respondent pleaded that the documents were given to him on his request by the management itself, the findings of facts recorded by the Enquiry Officer as well as by the Labour Court was that these documents were taken away without the consent or knowledge of the management. It is seen that the Labour Court itself

from the evidence of three witnesses examined by it came to the conclusion that case of the respondent that the document was returned by the management was false and the signature of the three witnesses on the letter produced by the respondent was forged. Hence, the inference to be drawn on this finding is that apart from removing the documents illegally the respondent also tried to justify the removal by producing certain fabricated documents. Though the respondent challenged these finding right up to the Division Bench those findings have now become final, therefore, we will have to proceed on the basis that the allegation of misconduct leveled against the respondent stands proved.

Question then is whether the misconduct alleged against is so serious or grave as to create a genuine lack of confidence in respondent by the appellant.

While considering this question of loss of confidence and the jurisdiction of the Labour Court in interfering with the quantum of punishment the learned Single Judge was of the following opinion :-
"There is any amount of spectrum of discretion vested with the Tribunal in taking into consideration the facts and circumstance of the case"

The Division Bench in appeal concurred with the said finding of the learned Single Judge by observing :-

"In our opinion, a reading of Section 11A would show that the power of the Labour Court is without limitation".

With respect, we are unable to agree with these findings of the High Court. In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum. An unfettered discretion is a sworn enemy of the constitutional guaranty against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority be it an administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

The Labour Court while exercising its discretion recorded that though the confidence of the employer on the respondent is shaken still it gave 3 reasons for exercising its discretion, they are :-

- (A) No instance of earlier misconduct are spelt.
- (B) It appears the respondent is an active participant in the cultural activities and for common cause of the employees.
- (C) Therefore, it felt the punishment of dismissal from service is harsh, in the facts and circumstances of the case.

These extenuating circumstances recorded by the Labour Court is in the background of the following proved facts :-

- (A) Title deeds deposited with the appellant for borrowing money were surreptitiously taken away without the permission of the appellant which act amounts to theft.
- (B) The said documents so stolen were admitted to be used for the purpose of selling the property which amounts to fraud.
- (C) The documents so taken was sought to be justified by a letter where the signatures are forged amounting to forgery.

The question the Labour Court ought to have asked itself while exercising its discretion under Section 11 A should have been whether the reasons given by it that there was no earlier misconduct or that the respondent is an active participant in cultural activities is sufficient to come a reasonable conclusion that a punishment of dismissal was harsh in the background of the finding recorded by itself as to the confidence of the employer on the respondent which according to the Labour Court was shaken by the misconduct.

In our opinion with no stretch of imagination either the extenuating circumstances recorded by the Labour Court or the exercise of its discretion could be termed either as reasonable or judicious. In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction under Section 11-A of the Act. It is because of the above erroneous legal foundation as to the vastness of power vested with the Labour Court. The High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the High Court fell in error in granting the relief to the respondent which is challenged in this petition.

The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In *Air India Corporation (supra)* this Court held with reference to loss of confidence as follows :-

"..Once bonafide loss of confidence is affirmed the impugned order must be considered to be immune from challenge.."

In *Francis Klein & Company Private Ltd. (supra)* this Court held :-

" In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement\005."

..Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person.."

In *Janta Bazaar South Kanara (supra)* this Court held :-

"\005Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled\005"

"\005In case of proved misappropriation, in our view, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.."

In UPS RTC (supra) this Court held :-

"\005The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-à-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment\005."

With reference to Section 11-A of the Act, in the case of The Workment of Firestone Tyre & Rubber Company Ltd. (supra) this Court held :-

"\005 Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation\005."

"\005If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer\005"

In CMC Hospital Employees' Union & Anr. (supra) this Court held :-

".. Section 11-A\005 cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision\005"

In our opinion all the above judgments applies with full force to the facts of this case. The Labour Court has itself come to the conclusion the management has lost confidence in the respondent. If that be the case the question of it exercising its jurisdiction under Section 11-A to alter or reduce the punishment does not arise. That apart the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent, no finding has been given by the courts below including Labour Court that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records interference with the award of punishment in a domestic inquiry is impermissible. For the reasons stated above the appeals succeed. The impugned orders to the extent they direct the reinstatement of the respondent is set aside. The order of dismissal of the respondent made by the appellant

pursuant to the inquiry is upheld.
Appeals allowed to the above extent.

JUDIS