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**(2019) 02 CHH CK 0054**

**Chhattisgarh High Court**

**Case No:** Writ Petition No. 1645 Of 2005

Bhupendra Chandrakar

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** Feb. 7, 2019

**Acts Referred:**

- Chhattisgarh Industrial Relations Act, 1960 - Section 107A
- Industrial Disputes Act, 1947 - Section 11A

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Bharat Rajput, Pradeep Saxena, Sunita Jain

**Final Decision:** Allowed/Disposed Of

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**Judgement**

P. Sam Koshy, J

1. The challenge in the present Writ Petition is to the order of the Industrial Court, Raipur passed in Appeal Case No. 122/MPIR Act/97 dated

20/04/2005.

2. Vide the said order, the learned Industrial Court has set-aside the order of the Labour Court, Raipur dated 18/02/1997 passed in case No.34/MPIR

Act/93 wherein the learned Labour Court had granted the petitioner the relief of reinstatement without backwages.

3. The facts of the case in brief is that, the petitioner was initially appointed as Conductor under the erstwhile Madhya Pradesh State Road Transport

Corporation (In short ""erstwhile MPSRTC"" ) on 13/12/1985. On 05/09/1991 it is said that, the petitioner was sent as Conductor plying on the route

Raipur to Dhamtari in Bus No. 7761. Enroute, the flying squad stopped the vehicle and inspected and on inspection it was found that, there were 80

passengers of whom 23 passengers were such who were not issued with the tickets, but from whom the charges were levied by the petitioner. It is

said that the flying squad immediately had imposed fine upon the petitioner for an amount of Rs. 200/- which the petitioner also had deposited.

Lateron, it is said that, the petitioner for the same misconduct was also issued with a chargesheet on 19/11/1991 and thereafter a departmental enquiry

was conducted and the respondents proceeded ex-parte against the petitioner and finally the department vide order dated 30/03/1992 imposed the

punishment of termination from service.

4. The order of termination was questioned by the petitioner before the Labour Court vide case No. 34/MPIR Act/93. The Labour Court initially

deciding the issue of the veracity of the departmental enquiry reached to the conclusion that the enquiry was not properly conducted and vitiated the

same giving an opportunity to the employer i.e. the respondent No.2 to prove the misconduct by leading evidence before the Labour Court. It is said

that the respondent No.2 adduced evidence of two witnesses, PW/1 - Kuwar Singh and J.B.S.Chauhan - PW/2. Lateron, the Labour Court finally

vide its order dated 18/02/1997 reached to the conclusion that, the charge against the petitioner stood proved of the petitioner plying 23 passengers out

of total 80 passengers without ticket and in the process the petitioner is said to have collected and pocketed an amount of Rs.130/-. However, the

Labour Court taking into consideration the judgment of the Hon'ble Supreme Court in the case of Sooter India Ltd., Lucknow v. Labour Court,

Lucknow & Ors. [AIR 89 SC 149] interfered with the punishment imposed by the department and modifying the punishment from "termination from

service" to one of "stoppage of 3 annual increments" and as a consequence, the Labour Court granted relief of reinstatement in service without

backwages.

5. This order of the Labour Court was questioned by the respondent No.2 before the Industrial Court at Raipur where the case was registered as

Appeal No. 122/MPIR Act/97.

6. The Industrial Court finally vide the impugned order dated 20/04/2005 allowed the appeal of the Corporation and set-aside the order of the Labour

Court and held that, the finding and relief granted by the Labour Court is erroneous, nor was the petitioner entitled for the relief that he has sought for.

It is this order which is under challenge in the instant Writ Petition.

7. The contention of the counsel for the petitioner is that, the order passed by the Industrial Court is bad in law for the reason that, the Industrial Court

has not properly appreciated the fact that it was within the power of the Labour Court u/s 107-A to interfere with the punishment imposed by the

Disciplinary Authority. According to him, the Industrial Court failed to appreciate the fact that, the Labour Court infact had reached to the conclusion

that the punishment imposed upon the petitioner was highly disproportionate or excessive and therefore the Labour Court had modified the punishment

by imposing lesser punishment to the petitioner and granting relief of reinstatement without backwages. He further submits that, taking into

consideration the gravity of the offence, the punishment which has been inflicted by the disciplinary authority apparently is too shocking to the

conscience for a person and for this reason if the Labour Court exercise its powers, the same should not be interfered as a matter of routine by the

Industrial Court and thus prayed for quashment of the same.

8. Per contra, the counsel for the respondent No.2 - corporation submits that the Labour Court infact had without any basis or discussion abruptly

after reaching to the conclusion that the charges stood proved have altered the punishment from termination to stoppage to 3 annual increments.

According to him, the Labour Court has not discussed nor has it held that, it was invoking powers upon under Section 107-A of the Act of 1960 while

passing the order dated 18/02/1997. He further drew the attention of the Court to the categorical finding of the two courts wherein the charges

levelled against the petitioner have been held to be proved by both the courts. Under the circumstances, the petitioner would not had been entitled for

the benefit that he has claimed and which was awarded by the Labour Court and thus prayed for dismissal of the Writ Petition.

9. Having heard the contention put forth on either side and on perusal of record, the undisputed fact in the instant case is that, the petitioner is a low

paid employee under Corporation was appointed on 13/12/1985. He had put in about 7 years of service when he was terminated for misconduct which is said to have been done on 05/09/1991. The order of termination was challenged before the Labour Court and the Labour Court vide order dated 18/02/1997 reached to the conclusion that, from the evidence that the respondent No.2 - Corporation had led before the Labour Court, the charges or the misconduct levelled against the petitioner stood established.

10. However, the Labour Court thereafter proceeded further and went on to consider whether the decision taken by the Disciplinary Authority in terminating the services of the petitioner was justified or not and it also assessed whether the punishment of termination was commensurate to the misconduct committed by the petitioner. The Labour Court went into the overall consideration including the status of the petitioner, his financial condition, etc. and also came to the conclusion that, the petitioner ought to have been granted one more opportunity for improving himself. The Labour Court relying upon the judgment of the Hon'ble Supreme Court in the case of *Scooter India Ltd., Lucknow v. Labour Court, Lucknow & Ors.* [AIR 1989 SC 149] and other similar judgments reached to the conclusion that, the punishment was excessive and therefore the ordered for his reinstatement without backwages. At the same time, the Labour Court ordered that, for the misconduct which stood proved, the petitioner should be inflicted with the punishment of stoppage of 3 annual increments. It is this order which has been set-aside/reversed by the Industrial Court on the ground that, the invoking of the powers conferred upon the Labour Court under Section 107-A of the CGIR Act in the present case was not justified. The finding of the Industrial Court was that, since the charges stood proved and considering the nature of misconduct, the corporation definitely must have lost confidence and trust of the petitioner. Under the circumstances, the Labour Court could not have shown misplaced sympathy which amount to illegal exercise of discretion vested in the Labour Court under Section 107-A of the CGIR Act.

11. It would be relevant at this juncture to refer to Section 107-A of CGIR Act, 1960. For ready reference, it has been reproduced herein under:-

107-A. Power of Labour Court and Industrial Court to give appropriate relief in case of discharge or dismissal of employee.- Where industrial dispute relating to the discharge or dismissal of an employee has been referred to a Labour Court or the Industrial Court for decision under any of the provisions of this Act and in the course of the proceedings the Labour Court or the Industrial Court, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, set aside the order of discharge or dismissal and direct reinstatement of the employee on such terms and conditions, if any, as it thinks fit or give such other relief to the employee 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 or the Industrial Court, as the case may be, shall, rely on the materials on record and shall not take any fresh evidence in relation to the matter.

12. The plain reading of the aforesaid section itself would clearly reveal that, the Labour Court under Section 107-A had the discretionary power in a given case of discharge or dismissal to set-aside the order and pass another order as it deems fit. It also has the power to grant a lesser punishment in lieu of the discharge or dismissal commensurate to the misconduct.

13. At this juncture, what should be relevant is that, in the course of enquiry, there was no evidence in respect of the petitioner having done any such misconduct in the past, neither is there material to show that the petitioner's past record was in any manner tainted or where the integrity of the petitioner could be doubted.

14. What cannot also be brushed aside is the fact that, the total amount of money which is said to have been pocketed by the petitioner without issuing tickets to the passengers was Rs. 130/-.

15. These are all matters of materials available on record and if these materials were taken note of or the Labour Court bore these facts in mind while setting-aside the order of termination and modifying it to punishment of stoppage of 3 annual increments, it cannot be said that, the Labour Court had crossed its jurisdiction or has exercised its discretion illegally.

16. Another aspect which also needs due weightage is the age of the petitioner also where the petitioner was a young person aged around 25 years, an age where the first misconduct or a wrong committed by an employee could be pardoned or could have been let of with a lesser punishment other than the capital punishment of termination.

17. The Labour Court while it exercises the power under Section 107-A of CGIR, Act is supposed to see whether the punishment imposed was so shockingly disproportionate to the misconduct attributed.

18. Further, it is also to be taken note of that, the Labour Court as it is had held that, the petitioner would not be entitled for the backwages for the period he was out of employment and in addition to that, the Labour Court further had imposed a punishment of stoppage of 3 annual increments.

19. In the opinion of this Court, denying the petitioner the backwages for the period of his out of employment and in addition ordering for withholding of 3 annual increments by way of punishment for misconduct, this by itself is a sufficient punishment which the petitioner has been inflicted with and in the given circumstances, the findings arrived at by the Industrial Court does not seem to be justified or proper.

20. In the opinion of this Court, the Industrial Court infact has interfered with the order of the Labour Court on technicalities of the misconduct having been proved and thereafter the scope of interference by the Labour Court gets reduced to the minimal. This approach of the Industrial Court does not seem to be proper at all and is too hypotechnical a stand taken by it.

21. If we look into the provision of Section 107-A of the CGIR, Act which is pari materia to the provision of Section 11-A of the Industrial Dispute Act, the makers of the law have given wide powers to the Labour Court to meet the ends of justice in the factual backdrop of each case of dismissal or discharge.

22. For all the aforesaid reasons, the order of Industrial Court - Annexure- P/2 dated 20/04/2005 is not sustainable and the same deserve to be and is accordingly set-aside, thereby affirming the order of the Labour Court.

23. It is ordered that, the respondent - Corporation shall reinstate the petitioner forthwith as per the direction of the Labour Court within a period of 60

days from the date of receipt of copy of this order.

24. The Writ Petition accordingly stands allowed and disposed off.