

(2004) 10 AHC CK 0143**Allahabad High Court****Case No:** C.M.W.P. No. 51740 of 2000

Regional Manager Shri Gandhi
Ashram and Others

APPELLANT**Vs**

Labour Court and Another

RESPONDENT**Date of Decision:** Oct. 5, 2004**Acts Referred:**

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2

Citation: (2005) 1 AWC 127**Hon'ble Judges:** Rakesh Tiwari, J**Bench:** Single Bench**Advocate:** S.S. Nigam, for the Appellant; R.K. Pandey, S. C., for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. The respondent-workman was appointed as Shop Incharge. It appears that some theft took place in the shop by breaking open the wall and the almirah kept in the shop was opened by the keys, which were kept in the locked cash box by the workman. The locked cash box was also broken open by the thieves. The charge against the workman was that he should have kept the keys with him but as the keys were kept in the locked cash box they broke open the locked cash box. The services of the workman were terminated after enquiry proceedings. Aggrieved the workman raised an industrial dispute which was referred to the Labour Court, Varanasi by the State Government.

3. Before the labour court the employer took a preliminary objection that respondent No. 2 was not a workman within the meaning of the U. P. Industrial

Disputes Act, 1947, as he was designated as the Shop Incharge. The labour court after appraisal of evidence held that there was no employee working under respondent No. 2 and as such it could not be stated that he was working in supervisory capacity, as he was only a workman in the shop. The labour court further held that though the workman had kept the keys with him but if he had kept the same in the locked cash box according to his prudence he should not have been awarded such a harsh punishment as that of termination of services, which appears to be highly disproportionate to the charge. By the impugned award dated 10.8.1999, the labour court reinstated the workman but without any back wages which has been challenged in this writ petition.

4. The award has been assailed on the ground that respondent No. 2 is not a workman and that the impugned award is wholly illegal and liable to be set aside as no cogent and convincing reasons have been given by the labour court for interfering with the quantum of punishment. It is also submitted that the labour court has exceeded its jurisdiction in granting the relief as it has interfered with the quantum of punishment.

5. The contention of the employer has no force as the labour court has given a categorical finding that respondent No. 2 was performing the duties of only a workman in the shop and was not discharging supervisory duties. The labour court has further held that the employer could not give cogent and convincing reasons for not interfering with the quantum of punishment, i.e., the punishment was too harsh looking to the charge against the workman. Moreover, the workman was not involved in the theft and the thieves had committed the theft in the shop by breaking open the wall, almirah and the cash box. Even if the keys had been with the workman, it cannot be said that the thieves would not have been able to break open the almirah. If they could break open the wall of the shop and the locked cash box they could also break open the almirah. Normally the keys were quite safe in the locked cash box. In my opinion also the punishment of termination of respondent No. 2 from service was too harsh. There is no illegality or infirmity in the impugned award in reinstating the workman with back wages. Not granting of back wages to the workman for the period he was out of service is adequate and appropriate punishment.

6. The counsel for the petitioner has argued no other point.

7. For the reasons stated above and in the facts and circumstances of the case the writ petition is dismissed. No interference is required in the finding of fact recorded by the labour court. No order as to costs.