

(2009) 01 AHC CK 0177

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 16654 of 1989 and C.M.W.P. No. 6136 of 1991

Hindustan Aeronautics Ltd.,
Kanpur

APPELLANT

Vs

Presiding Officer, Labour Court
V, Kanpur and others

RESPONDENT

Date of Decision: Jan. 23, 2009

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N

Citation: (2009) 122 FLR 704

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Vijay Bahadur Singh and Vijay Sinha, for the Appellant; B.N. Singh, Devendra Pratap Singh, V.K.S. Chaudhary and B.R. Tripathi S.C., for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani, J.

Heard Shri Vijay Sinha, learned Counsel for the petitioner. Shri B.N. Singh appears for the respondents.

By an order dated 17.12.2008 the restoration application was allowed on payment of costs and that the writ petition was heard on merits.

2. M/s. Hindustan Aeronautics Limited, Chakeri, Kanpur is a company registered under the Companies Act, 1956 and is engaged in the manufacture of aircrafts, avionics, aircraft accessories, instruments/components etc. The company mainly caters to the requirement of the defence and is wholly owned and controlled by the Central Government.

3. By this writ petition the petitioner has prayed for quashing the award dated 31.3.1989 passed by the Labour Court-V, U.F. Kanpur in Adjudication Case No. 28 of 1983 decided on 31.1.1989. The Labour Court found that the domestic enquiry was not just and fair and allowed the employer to lead evidence. It thereafter, found that the charges for which the respondent-workman was terminated on 7.5.1981 were not established and that the workman is entitled to reinstatement with full back wages. The Labour Court did not agree with the objections that the employer has lost confidence in the employee and directed reinstatement with full back wages w.e.f. 7.5.1981. The Labour Court has thereafter given an option that if the employer do not wish to reinstate the workman, it will give him full back wages w.e.f. 7.5.1981 and thereafter terminate his services after giving him one month notice following the provisions u/s 6-N of the U.P. Industrial Disputes Act, 1947. The workman was also made entitled to Rs. 500/- as costs.

4. The operation of the award was stayed on 16.1.1989 on deposit of Rs. 20,000/- with the Labour Court out of which Rs. 10,000/- was to be withdrawn by the respondent-workman without furnishing security and remaining amount was to be kept with the respondent No. 1.

5. The Writ Petition No. 6136 of 1991 filed by the workman-employee by Hindustan Aeronautics Ltd. as Second Cook seeks to quash the observation contained in paras 14 and 15 to direction to retrench in the award dated 31.3.1989 in Adjudication Case No. 28 of 1983 decided by the Presiding Officer, Labour Court-V, U.P. Kanpur.

On 3.11.1995 the Court passed following order;--

Heard the learned Counsel for the parties.

These two writ petitions are against the same award of the Labour Court. By means of the interim order dated 16th October, 1989, the petitioner was directed to deposit Rs. 20,000/- out of which Rs. 10,000/- was paid to the respondent No. 3 without furnishing any security the balance was to remain with respondent No. 1. Learned Counsel for the petitioner has made a statement that the aforesaid order has been complied with. The controversy involved in this case is that when there is a finding of the Labour Court that the employer lost confidence in the employee can there be any order of reinstatement. The second controversy is as to whether the findings of fact recorded by the Labour Court, that no case has been made out against the petitioner can there be no reinstatement. There are the two legal questions involved in this case. This is a case in which a final hearing can be done as such the parties may apply for final hearing of the case.

Admit.

Issue notice.

6. Briefly stated the facts giving rise to the dispute are that the respondent workman was charge-sheeted on 5.2.1980 for selling ganja and bhang (narcotics) in the

establishment. He was suspended pending domestic enquiry. The respondent-workman denied the charges in his reply dated 21.5.2000 on which Shri Manvir Singh was appointed as enquiry officer on 16.4.1980 and that after a domestic enquiry the services of the respondent-workman were terminated on 7.5.1981.

7. The Labour Court framed a preliminary issue on 23.5.1984 as to whether the domestic enquiry was proper and followed the principles of natural justice. By an order dated 13.1.1987 it was found that the domestic enquiry was not just and proper and that principles of natural justice were not followed. The petitioner has not challenged these findings in the writ petition.

8. The respondent-workman gave an application on 20.3.1987 stating that a criminal case was registered against the workman in respect of the same incident and that in a Criminal Trial No. 934 of 1981 the respondent-workman was honorably acquitted from the criminal charges and that in the circumstances the employer should not be allowed to prove the charges in the Labour Court.

9. The Labour Court did not agree with the contention. By an order dated 29.6.1987 an opportunity was given to the employer to prove the charges in the Labour Court. The employer examined Shri Ramapati Pandey, the then Administrative Officer posted in the canteen of the establishment and Shri Ram Murti Dubey, an employee of the security office of H.A.L. On his part the respondent-workman Shri Vrindavan examined himself.

10. In the charge-sheet the respondent workman was charged with illegally selling ganja and bhang in the campus of the factory near the canteen. Shri R.B.N. Sharma, the Security Officer and other security personnel checked him and found that he had in his possession 4 packets of ganja (70 grams) and Rs. 59/- in cash. Apart from this the locker in the almirah was found containing 60 packets of ganja (160 grams), 8 packets of bhang (800 grams), two bottles and some blueprint of aircraft designs.

11. Shri Ram Murti Dubey, a witness produced by the employer stated that Shri Vrindavan, the cook was arrested selling ganja and bhang in canteen. He was the officer on the factory gate at that time at 9 O'clock in the morning, where he along with Asst. Security Officer Shri R.B.N. Sharma were present. The 2-3 packets of ganja were recovered from the pocket of Shri Vrindavan along with bunch of keys and some cash. The almirah of Shri Vrindavan was directed to be opened. Shri Vrindavan stated that he does not have keys. Later on keys were found in the bunch of keys in his possession. The witness opened the almirah in the presence of Shri Sharma, where Shri Vrindavan was also present and found Ganja, Bhang and two bottles from the almirah. Some drawing of Avro aeroplane were also recovered. All this was kept on table. A list was prepared on which all the officers signed from where the officer and Shri Vrindavan proceeded to the factory gate.

12. Shri Ramapati Pandey, the other witness stated that at about 9.30 a.m. Shri R.B.N. Sharma, Shri D.S. Beli, Asstt. Security Officer and two other security guards and members of the workers' union and Shri Ram Manohar Dubey came to the canteen and wanted information about Shri Vrindavan. After 5-10 minutes the security guards brought Shri Vrindavan in the canteen, which is in the factory campus to check his almirah. The almirah is not allotted to any employee. The workmen used to lock his lockers. On one of the locker Shri Vrindavan had put his locks. Shri R.B.N. Sharma, the Security Officer opened it. At that time Shri Vrindavan was present. A lot of things were found in the locker. There were many drawing sheets, ganja and bhang. There was no other goods. No money was recovered. All the goods were taken by Shri Sharma, the Security Officer. The list was prepared on 1.30-2.00 p.m. The witness stated that the list was not prepared before him. He had signed on the list at 2.00 p.m. The list was signed by Shri Sharma, Shri Beli, the security guards and Shri M. Ali, an employee of the union. At about 2.00 p.m. the police was called and Shri Vrindavan was taken away by the police.

13. The Labour Court found that there are discrepancies or contradictions in the statements of the prosecution witnesses. The Labour Court found that the respondent-workman was acquitted by the Criminal Court on the ground that there were some contradictions on important points in the statement of the witnesses. Similar statements were given by the witnesses in the Court and there were some contradictions, namely whether any almirah was allotted to Shri Vrindavan, and the person, who had opened the locker. There were important facts on which Shri Sharma and Shri Ram Murti Dubey made different statements. Shri Ram Murti Dubey stated that he and Shri Sharma went to the canteen and that they found Shri Vrindavan in the canteen and as soon as he met Shri Sharma they checked his person. Shri Rama Pati Pandey in his statement stated that at about 9.30 p.m. Shri Sharma along with Shri D.S. Beli, the Asstt. Security Officer, the security guards and a member of the workers' union and Shri Ram Manohar Dubey and one more employee came to the canteen and started making enquiries. After about 5-10 minutes one security guard brought Shri Vrindavan to the canteen. The Labour Court further found that whereas Shri Ram Murti Dubey in his statement stated that he opened the almirah, when Shri Vrindavan was being checked, whereas Shri Rama Pati Pandey in his statement stated that there are lockers in the almirah and on one of the lockers a lock was put by Shri Vrindavan. After enquiries from other employees they could find the locker of Shri Vrindavan, which was opened by Shri Sharma, the Security Officer. There were clear contradictions with regard to the fact, as to who had opened the locker. There were also contradictions in their statements with regard to the time of the incident. Shri Rama Pati Pandey stated that the list was not prepared before him. He had signed on the list at about 1.30-2.00 p.m. He, therefore, was not the eye-witness to the recoveries made from the locker. Apart from this he had in the statement before the Addl. Chief Metropolitan Magistrate stated on 14.4.1982 that the incident took place at 2.00 p.m., whereas in the

statement recorded in the Labour Court the incident was alleged to have taken place at 9.00 a.m. The Labour Court further found that the witness had stated in the Criminal Court that packets recovered from the locker was not opened before him and that a person present in the canteen told him that ganja and bhang recovered and that goods were not sealed before him. So far as recovery from the presence of the workman is concerned, Shri Rama Pati Pandey stated that the incriminating material was not recovered from the workman in his presence.

14. There are different standards of proof of the charges in the criminal case and domestic enquiry. Whereas in the criminal case charges must be proved beyond reasonable doubt, in the domestic enquiry the charges may be proved by preponderance of probabilities. Where the same witnesses are examined to prove the same charges both in the criminal Court and in the domestic enquiry, there should not be variance and contradictions in their statement. The respondent-workman was acquitted in the criminal case on the ground of contradictions in the statement of witnesses of recovery of incriminating material from the person and the locker of the workman. The same witnesses had deposed and not only contradicted themselves with regard to time of the incident but also the fact as to the person, who was present at the time, when the locker was opened, and the recoveries were made from the lockers. The time, when the list was prepared and was signed were also different. Shri Ram Murti Dubey, an employee of the security section and Shri Rama Pati Pandey, the Asstt. Administrative Officer of the canteen did not agree with each other both with regard to time and the manner of the recovery, and the time, when the list was prepared. They also disagreed on the number of persons, who were present, when the recoveries were made from the locker. The Labour Court did not commit any error of law in agreeing with the findings of the Criminal Court that these contradictions in the statements of the employers made the recoveries doubtful.

15. When the domestic enquiry held by the employer was not found to be just and proper, the burden shifts upon the employer to prove the charges, in the Labour Court. Shri Ram Murti Dubey was not examined by the prosecution in the Criminal Court. He was posted at the officers' gate and was a witness of search of the person of the respondent-workman, who was found in possession of ganja, bunch of keys and some cash. Shri Ram Murti Dubey stated in examination-in-chief that he himself opened the almirah and that at that time Shri Sharma, the Security Officer and Beli Sahab were, present. Shri Vrindavan was also present. He did not refer to any packets and stated that in the almirah there was ganja, bhang and two empty bottles and some drawing of avro aeroplane. All these goods were placed on the table and list was prepared, which was signed by the officers. In the cross-examination he stated that the entire recoveries were made in the presence of Shri Vrindavan and all witnesses have seen him. Shri Rama Pati Pandey, the other witness serving as Asstt. Administrative Officer in H.A.L. canteen stated that at about 9.30 Shri R.B.N. Sharma, the security officer, Shri D.S. Beli, the Asstt. Security Officer,

2-3 other security guards, employees of the union and Shri Ram Manohar Dubey and one other canteen employee came to the canteen and started enquiring about Shri Vrindavan. After about 5-10 minutes Shri Vrindavan was brought by the security guard. They were informed that no almirah was allotted in the name of any employee and that no employee locked the almirah. There are lockers in the almirah in which one locker is locked by Shri Vrindavan. The lock was opened by Shri R.B.N. Shamna, Shri Vrindavan was present at that time. There was many goods in a box. There were drawing sheets, ganja, bhang etc. There was no money. The list was prepared at about 1.30-2.00 p.m. It was not prepared before him. The list was signed by Shri Sharma, Shri Beli and the security guard as well as the union employee at about 1.30-2.00 p.m. Shri Vrindavan was taken by the police at 2.00 p.m.

16. In the cross-examination Shri Rama Pati Pandey stated that he had made statement before the Addl. Chief Judicial Magistrate, Kanpur on 14.4.1982, which is Ex. 28. He read the statement and stated that apart from the time of the incident his statement is correct. The incident took place at 9.30 a.m. and the police had taken away Shri Vrindavan at 2.00 p.m. He had not cared to look into the time in his statement. Nothing was recovered from Shri Vrindavan in his presence. He stated that the goods were recovered from a box. The goods were not weighed before him. There were about 7-8 small packets of ganja and in all 13-14 packets. Shri Vrindavan was not member of any union. There are about 10-12 unions in H.A.L. and that only one union is recognised by the management. It is wrong that the management has framed a workman in the union.

17. After going through the statement of witnesses examined in the Labour Court and the judgment of the Addl. Chief Metropolitan Magistrate, Kanpur in Criminal Case No. 938 of 1981 acquitting the respondent workman on 11.5.1982, I am in complete agreement with the findings recorded by the Labour Court that there were serious discrepancies and contradictions in the statement, which did not prove the charges against him in the domestic enquiry. In the criminal case Shri Ram Manohar Dubey was declared as hostile witness. Shri R.B.N. Sharma, PW-2 and Shri D.S. Beli, the Security Officer were found to have contradicted themselves. The Magistrate found that according to the statement of Shri R.B.N. Sharma the incriminating material was sealed at the spot, where it was recovered. Shri Beli, however, stated that the material was sealed in the security office and no such proceedings were taken place in the canteen. There is distance of about 500 yards between the canteen and the security office, which creates a doubt, whether the goods were sealed before they were sent to the police station. Fard Dakhila Mai and the Court witness No. 3-Jhakuri Lal stated that the goods were sent in open condition and were sealed at the police station. The Magistrate also took into account the statement of Shri Ram Manohar Dubey, who was declared as hostile witness that prior to the incident there was some quarrel with regard to theft of "Laddus". The workman was found to have stolen 1000 Laddus. Shri R.B.N. Sharma

did not claim ignorance of the theft of Laddus. The Magistrate concluded that the accused was caught at 2.00 p.m. and not at 9.00 a.m. as it was shown by the prosecution.

18. With regard to recovery of the drawing of the aeroplane, I find, that no such charge regarding violation of the Official Secret Act, 1923 was alleged against the respondent-workman either in the domestic enquiry or in the criminal case. If there were recoveries of the drawing/blueprint of the products, which were secret in nature, the employer could not have ignored to level such a serious charges in the departmental charge-sheet. It appears that an application was made by the employer to the Presiding Officer, Labour Court on 28.8.1983 to take on record the paper cuttings of Dainik Jagran and blue prints and to return the same to the company. In para 3 of this application it was stated that when the representatives of the company argued before the Court about the secret documents that is the blueprint of the maps of the aircraft recovered from the possession of Shri Vrindavan and these maps were secret documents and could not be produced in evidence, the Court observed that atleast they could be shown to the Court and that in compliance thereof the documents were sought to be shown. It is surprising that when such serious allegations were made against the respondent-workman, neither any charge was framed nor the witnesses proving the charges against the petitioner made any deposition about the recovery of secret materials from the respondent-workman.

19. It is submitted that when the confidence was lost by an establishment dealing in production of defence equipments, the order of reinstatement should have been avoided. It is further submitted that in [O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others](#), it was held by the Supreme Court in the judgment delivered by Justice M.P. Thakkar that compensation in lieu of reinstatement is not reasonable. In this case the argument of loss of confidence, in case of reinstatement may not be examined as the respondent-workman was 59 years old on 24.9.2006, when he affirmed the counter affidavit to the recall application. The respondent-workman was 62 years old and thereafter superannuated. There is as such no question of reinstatement of the workman to consider the question of loss of confidence.

20. Shri B.N. Singh, learned Counsel for the respondent-workman has relied upon the judgment in [Shambhu Nath Goyal Vs. Bank of Baroda and Others](#), [Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others](#), 1987 Lab. I.C. 1667, [Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others](#), and [Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam](#), submitting that where the termination of service is found to be on the charges, which could not be proved and was consequently illegal, the workman deprived of working should be provided with full back wages.

21. He submits that the Supreme Court has held that where the termination was found to be illegal, the workman was entitled to back wages. The departure from the principle of payment of full back wages as consequence to reinstatement has not been overruled nor any different view has been expressed in the decision cited by Shri B.N. Singh.

22. The Writ Petition No. 6136 of 1999, Brindavan v. Hindustan Aeronautics Ltd. and another is allowed to the extent that the observations in paras 14 and 15 of the Labour Court upholding the plea of loss of confidence and consequential direction to terminate his services after giving him notice and notice pay and after following provisions of section 6-N of the U.P. Industrial Disputes Act are set aside.

23. The Writ Petition No. 16654 of 1989, M/s. Hindustan Aeronautics Ltd. v. The Presiding Officer and others is allowed only to the extent that the respondent workman shall be made entitled to half of the back wages from 7.5.1981, when he was terminated from service, which he would have drawn, if he was not terminated. The petitioner shall calculate the amount and pay to the respondent-workman within three months from the date a certified copy of the judgment is produced before them.