Rajendra Singh Shekhawat Vs Labour Court, III and Another

Court: Allahabad High Court

Date of Decision: Nov. 10, 1992

Acts Referred: Constitution of India, 1950 â€" Article 226
Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 4K, 6(2)A, 6(2)K

Citation: (1993) 1 AWC 669 : (1993) 2 UPLBEC 837

Hon'ble Judges: D.S. Sinha, J

Bench: Single Bench

Advocate: K.P. Agarwal and A.K. Sinha, for the Appellant; V.B. Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.S. Sinha, J.
By means of this petition, under Article 226 of the Constitution of India, Rajendra Singh Shekhawat, the Petitioner, an

erstwhile workman of M/s. Elgin Mills Co. Ltd. Mill No. 2, Cooper ganj, Kanpur, the Respondent No. 2, seeks to challenge the award dated

25th January, 1988, rendered by the Labour Court III, Kanpur the Respondent No. 1, in adjudication case No. 48 of 1985.

2. The facts of the case, as pleaded, are that the Petitioner was charge-sheeted on 9th February, 1983 which was followed by a departmental

inquiry. In the departmental inquiry the misconduct of the Petitioner was held to be proved. Consequent upon the findings of the departmental

inquiry, the Petitioner was dismissed from service by means of an order dated 19th March, 1982. This gave rise to an industrial dispute leading to

a reference u/s 4K of the U.P. Industrial Disputes Act, 1947, hereinafter called the Act.

3. The Labour Court III, Kanpur, the Respondent No. 1, after thoroughly investigating the respective case set up by the parties, came to the

conclusion that the inquiry was fair and proper. However, it found that the punishment of dismissal awarded to the Petitioner was severe and the

proper punishment should be termination with the benefits annexed thereto. The dismissal of the Petitioner was, therefore, directed to be

understood to have been converted into one of termination entitling him for benefits of termination. The Petitioner is not satisfied with the award.

Hence this petition.

4. Heard Sri. K.P. Agarwal, learned Senior Advocate, appearing for the Petitioner and Sri. V.B. Singh Advocate, representing the employer

Respondent.

5. Shri Agarwal, learned Counsel for the Petitioner, neither assails the finding of the Labour Court with regard to the fairness and propriety of the

domestic inquiry nor does he challenge the power of the Labour Court to enter the question of quantum of punishment and to award lesser

punishment. What is agitated by Shri Agarwal is the ineffectiveness of the relief of conversion of dismissal into termination of the services of the

Petitioner. The learned Counsel submits that the relief granted by the Labour Court is illusory, and if it had properly reassessed and reappraised the

evidence before it, which it was obliged to do in view of the provisions of Section 6(2A) of the Act, the Petitioner might have been granted more

effective relief.

6. Sri. Singh, learned Counsel appearing for the Respondent No. 2, counters the submissions of Sri. Agarwal by submitting that the relief granted

by the Labour Court to the Petitioner was not illusory and that the discretion of conversion of the order of dismissal into one of termination of

service of the Petitioner was properly exercised. It does not warrant any interference by this Court under Article 226 of the Constitution of India.

7. Sub-section (2A) of Section 6 of the Act clothes the Labour Court or the Tribunal with the power and jurisdiction to set aside the discharge or

dismissal and direct reinstatement of workmen on such terms and conditions as it may think fit or grant such other relief to the workman, including

the substitution of any lesser punishment for discharge or dismissal, as the circumstances of the case may require, notwithstanding the conclusion

that the domestic inquiry was fair and proper. But the power and jurisdiction under Sub-section (2A) of Section 6 of the Act has to be exercised

judicially and not arbitrarily. For substituting the lesser punishment for discharge or dismissal of a workman, the Labour Court or the Tribunal may

reassess and reappraise the evidence and come to its own conclusion that the lesser punishment is warranted by the facts and circumstances of the

case.

8. Ordinarily, the punishment of termination is a punishment lesser than the punishment of dismissal in as much as the dismissal carries along with it

a stigma while the termination does not. The dismissal of an employee may disqualify him from future employment but the termination does not.

9. In the instant case. Sri. V.B. Singh, learned Counsel for the Respondent No. 2, concedes that the Petitioner, as a consequence of the

conversion of his dismissal into termination by the impugned award, will carry no stigma and will be eligible for future employment. This apart,

according to Sri. Singh, the Petitioner will also be entitled to hundred per cent gratuity besides retrenchment compensation and salary in lieu of

notice. In view of the fact that he will not be subject to any will stigma ,be eligible for future employment and would also be entitled to hundred per

cent gratuity besides the retrenchment compensation and salary in lien of notice, it cannot be said that the relief granted to the Petitioner by the

impugned award is illusory.

10. From the perusal of the impugned award, it does appear that the Respondent No. 1 has duly considered the evidence on record, and it cannot

be said that while exercising the discretion u/s 6(2A) of the Act in awarding the lesser punishment of termination to the Petitioner alongwith other

benefits it did not properly reappraise or reconsider the evidence to come to its own conclusion with regard to the justifiability of the award of

lesser punishment.

11. For what has been said above, the Court does not find any infirmity in the impugned award. The petition, therefore, fails and is hereby

dismissed. No order as to costs.