

(2005) 12 GAU CK 0015

Gauhati High Court

Case No: WP (C) No. 489 of 1999

Management of Teok Tea Estate

APPELLANT

Vs

Presiding Officer, Labour Court
and Others

RESPONDENT

Date of Decision: Dec. 1, 2005

Acts Referred:

- Constitution of India, 1950 - Article 136, 226
- Industrial Disputes Act, 1947 - Section 11, 11A

Citation: (2006) 108 FLR 696 : (2006) 2 GLR 144

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Advocate: C. Baruah and P.J. Saikia, for the Appellant; R. Chakraborty, for the Respondent

Judgement

H.N. Sarma, J.

Heard Mr. C. Baruah, the learned senior Counsel, appearing for the petitioner. None appears on behalf of the respondents workman in spite of service of notice. Ms. R. Chakraborty, learned State Counsel is present for respondent No. 1.

2. The management of Teok Tea Estate has filed this writ petition challenging the part of the award passed by the learned Presiding Officer, Labour Court at Dibrugarh in Reference No. 10/1996 by which the learned Tribunal although did not find fault with the domestic enquiry, held that for committing a petty offence, dismissal of the workman from service is harsh and severe one and accordingly, by setting aside the punishment, the workman was directed to be reinstated in service with full back wages with retrospective effect. It is also stated in the said award that the workman should be reinstated with severe warning.

3. The respondent-workman was a garden labour employed by the petitioner's Tea Estate and was a workman within the meaning of the Industrial Disputes Act. The workman having been entrusted with the work of supervising the plucking

operation in the Men site challan instigated the pluckers not to give their weightment of leaf at the factory site. Further, they left the factory site on 11.4.1994 at 12 Noon without permission of the management. Again on 13.4.1994, Smti. Binita Tossa and Manju Tossa, the wife and sister respectively of the workman, assaulted another workman of the garden. It is alleged that they also assaulted one Babita Tossa on the instigation of the workman. On the aforesaid allegations, the management having issued charge sheet upon the workman on 14.4.1994 asking him to submit written explanation within 3 days, the workman denied the allegations. However, on the intervention, of the office bearers of the Assam Chah Mazdoor Sangha, the management decided to take a lenient view in the matter and pardoned the workman vide letter No. ST/141 dated 9.5.1994. By the said letter warning was given to the workman to be cautious and improve his habits. It is alleged that the workman having refused to accept the said letter submitted an unsigned letter on 17.5.1994 to issue a clean letter for his rejoining and also wanted to have a domestic enquiry in the matter to prove his innocence. Accordingly, on the wish of the workman, a domestic enquiry was held on 26.6.1994 and 27.8.1994 into the charges leveled against the workman. One Dilip Borgohain, an outsider, was appointed as Enquiry Officer. In the said enquiry, the workman was afforded full opportunity to cross-examine the witnesses of the management and also to examine his witnesses in defence. But the workman did not examine any witnesses except himself. On conclusion of the enquiry, the Enquiry Officer submitted his report holding the workman guilty for violation of the provisions of Clause 14 Sub-clauses 2, 7, 8 and 19 and Clause 15 Sub-clause 5 of the Standing Order in force in the garden. On receipt of the report, the management dismissed the workman from service with effect from 8.9.1994.

4. A dispute having been raised, the State Govt. vide Notification No. GLR.73/96/10 dated 13.5.1996 referred the following issues for adjudication to the Labour Court:

(a) Whether the management of Teok Tea Estate, P.O. Sonari are justified in dismissing the services of Sri Sibo Tosha?

(b) If not, whether he is entitled to reinstatement with full back wages, with retrospective effect?

4.1 The aforesaid reference was registered as Reference Case No. 10/96 and the learned Court below after hearing the matter passed the impugned judgment and order.

5. It is submitted by Mr. C. Baruah, learned senior counsel, appearing on behalf of the petitioner that the learned Presiding Officer of the Labour Court had categorically held that the workman was informed clearly all the charges leveled against him, witnesses were examined in presence of the workman in respect of all the charges, the workman was given a fair opportunity to cross-examine the witnesses of the management and also to examine his witnesses in defence and the

Enquiry Officer recorded his findings by assigning proper reasons. Even after holding the enquiry in the aforesaid manner, the learned Court below found that the punishment of dismissal of the workman from service for the petty offence alleged against him is a harsh and severe one and for such activities, severe warning is sufficient and on such count, the dismissal order of the workman was set aside and he was directed to be reinstated with full back wages with retrospective effect. It is submitted by Mr. C. Baruah, learned senior counsel that in exercising the aforesaid discretion and power holding the punishment of dismissal awarded against the petitioner is a harsh and severe and to let him off with severe warning was improper and unjust. However, Mr. Baruah has fairly submitted that the management has no objection in reinstating the petitioner provided the power of inflicting other punishment commensurate to the offence other than the warning as directed by the Labour Court is maintained.

6. On perusal of the records of the enquiry proceeding, it is found that the said enquiry was conducted within 2 days i.e., on 26.6.1994 and 27.8.1994. The records do not disclose that the charges were explained to the workman. We should not forget that the workman is an illiterate garden labour using thumb impression. PW 1, the star management witness, was examined and his statement was recorded in little above 6 foolscap pages in English. In the cross-examination, it appears that the Enquiry Officer asked him some questions to which he replied inter alia that "although there was some quarrel between us, at the intervention of the Chah Mazdoor Sarigha, a compromise was arrived at and I do not know thereafter what was the necessity for further enquiry. The compromise was also effected in the Police Station". Similarly in the cross-examination, PW 2, the Enquiry Officer asked him some questions to which the workman replied denying the allegations. Same is the case with other witnesses also. Records do not disclose that at any point of time the statement of PW 1 recorded in English was explained to the workman in his language.

7. The power of the Tribunal in order to interfere with the punishment awarded by the Labour Court is statutorily recognised by way of amendment of the Section 11 of the Industrial Disputes Act brought vide Act No. 45 of 1977. The Labour Court has jurisdiction, power and authority u/s 11A to substitute its measure of punishment in place of what was awarded by the employer.

8. In the case of [Workmen Vs. Bharat Fritz Werner \(P\) Ltd. and Another](#), at paragraph 18 the Apex Court held as follows:

18. Even since the decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal*, the settled position of law is that the Industrial Tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in Industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal was wrongful the workman has been denied reinstatement for

the reason that it would not be expedient to direct reinstatement.

8.1 Again in the case of [Rama Kant Misra Vs. The State of Uttar Pradesh and Others](#), , the Apex Court, inter alia, held that the tribunal or the Court has to be satisfied that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that punishment must always be commensurate with the gravity of the offence charged.

9. Mr. C. Baruah, learned senior counsel has referred to a decision of the Apex Court reported in [Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others](#), . Referring to paragraphs 16 and 17, it is submitted by Mr. Baruah, learned senior counsel that in arriving at such findings, the Labour Court is to follow certain norms and the discretion to exercise the power u/s 11A is not absolute and in the case in hand, the learned Labour Court exercised the said discretion without going to the relevant circumstances of the case. In the case in hand, the learned Tribunal categorically found that the punishment of dismissal inflicted upon the workman was a harsh and severe one for committing petty offence. Records of the case, some of which is cited hereinabove, disclose the manner and method in which the case was conducted by the management against the workman. The offence alleged against the workman no doubt was a petty or trivial offence and in fact the management vide letter No. ST. 141 dated 9.5.1994 pardoned the workman and let him off with warning. The said decision was taken by the management being conscious of the fact of misconduct alleged against the workman. Thereafter, after holding the domestic enquiry, that too in the manner as aforesaid, discharged the workman from service. It is, thus, clear that the management itself considered the offence leveled against the workman to be a petty or trivial one, otherwise there was no occasion for the management to reinstate the workman with warning vide letter dated 9.5.1994. These are some of the broad facts which might have played in the mind of the tribunal while exercising the power and discretion u/s 11A of the Act in interfering with the punishment.

10. Now question arise with regard to the extent of power of this Writ Court under Article 226 of the Constitution to interfere with the aforesaid order of dismissal inflicted by the Labour Court in the circumstances of the present case. We may conveniently refer to the findings of the Apex Court as held in *Rama Kant Misra* (supra) wherein at paragraph 7, it has been held as follows:

7. It is now crystal clear that the labour court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. And this Court is at present exercising jurisdiction under Article 136 over the decision of the labour court. Therefore, this Court can examine

whether the labour court has properly approached the matter for exercising or refusing to exercise its power u/s 11A. Before we can exercise the discretion conferred by Section 11A, the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier, it is a well recognized principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged.

11. Following the aforesaid principle and on the facts and circumstances of the present case, I am not inclined to interfere with the discretion that was exercised by the learned Presiding Officer, Labour Court directing reinstatement of the workman and the said discretion was exercised on valid ground with proper reason. However, the submission of Mr. C. Baruah, learned senior counsel that the direction exercised directing reinstatement of the workman with retrospective effect is illegal has some force. The aforesaid order of reinstatement would come into operation from the date of the order of the tribunal dated 6.7.1998 only. The workman shall be entitled to his back wages with effect from that date only.

12. With the aforesaid modification of the impugned order, this writ petition stands disposed of.