

**(1986) 12 GAU CK 0002****Gauhati High Court****Case No:** None

Workmen of Tanganagaon Tea  
Estate

**APPELLANT**

Vs

Management of Tanganagaon  
Tea Estate and Others

**RESPONDENT****Date of Decision:** Dec. 18, 1986**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 10, 11A

**Citation:** (1987) 2 LLJ 491**Hon'ble Judges:** K.N. Saikia, J; J. Sangma, J**Bench:** Division Bench

### **Judgement**

K.N. Saikia, J.

The Assam Chah Mazdoor Sangha, Doom Dooma Circle moves for an appropriate writ to quash the award of the Labour Court, Dibrugarh dated 8th December 1976 holding that the workman's dismissal was justified.

2. On the allegation that the workman on 30th November 1973 at about 4 PM after leaf weighment, forcibly took away two weighing scales from the staff members on weighment duty alleging that the scales were showing wrong weighment, which allegation the workman denied and termed as victimisation, the Management held a domestic enquiry and finding the workman guilty of the charges dismissed him from service from 27th December 1973.

3. An industrial dispute having been raised, and conciliation having failed, by Notification No. GLR 525/74/5 dated 19th December 1974, the State of Assam referred the dispute to the Labour Court, Dibrugarh u/s 10 of the Industrial Disputes Act, hereinafter called "the Act", for adjudication of the following issues:

(1) Whether the Management, Tanganagaon Tea Estate, P.O. Doom Dooma are justified in dismissing Shri Giridhar Tanti from service with effect from 31st

November 1973?

(2) If not, is he entitled to reinstatement or any other relief thereof?

4. In Reference No. 10 of 1975 the workman-petitioner was represented by the Assam Chah Mazdoor Sangha and in their written statement it was stated, inter alia, that the domestic enquiry was vitiated by serious infirmities; and that the proceedings were not faithfully recorded. It was further stated that as the workers suspected short weighment they complained to the staff members on duty who allowed them to verify the scales and later on finding some defects to take the same to the office to show it to the Manager, and as the Manager was not found in the office the scales were shown by the workers to staff members present in the office and also to Shri Shyam, representative of the proprietor, and those were left in the office for inspection by the Manager; and that the concerned workman did not take away the scales, as alleged, but only joined the workers in their protest against defective weighment and insisted that the matter should be brought to the notice of the Manager. It was also stated that the charge was vague and lacking in material particulars, that natural justice was denied to the workman who was not afforded reasonable opportunity of defence and that the Enquiry Officer was biased and the finding was perverse.

5. The Management in their written statement stated that the concerned workman, Giridhar Tanti, was found to have behaved in a very disorderly manner disobeying the reasonable orders of the staff members of the garden in that on 30th November 1973 at about 4 P.M. after leaf weighment he forcibly took away two weighing scales from the staff members on weighment duty alleging that the scales were showing wrong weighment and that the concerned workman was earlier warned twice for misconduct and that the Management dismissed him accepting the finding of the domestic enquiry.

6. On consideration of the enquiry proceedings, the Labour Court found that the concerned workman was not given opportunity to examine himself or to give his statement after the defence witnesses were examined. Only the Enquiry Officer asked the concerned workman some questions regarding previous warnings. There was no record to show that the workman was asked to give his statement or explanation about the evidence led against him or that he declined to do so. Under the above facts and circumstances of the case the Labour Court held that the domestic enquiry was not proper and valid and that he could not accept the finding of the domestic enquiry.

7. The management then examined 7 witnesses and the concerned workman examined himself before the Labour Court and relied upon the depositions of his witnesses before the domestic enquiry (Annexures A to F) in order to show that it was Chandrasena and Joyghar who took away the scales from the place of weighment. The Sangha also cross-examined the management witnesses with the

help of their statements made at the domestic enquiry. On perusal of the evidence the Labour Court in the impugned award held that the management was justified in dismissing the workman from service with effect from 27th December 1973.

8. Mr. P.G. Barua, the learned Counsel for the petitioner, assails the impugned award mainly on three grounds, namely, (i) that the Labour Court after having rejected the domestic enquiry as bad, ought not to have assessed the evidence before it with reference to the statements of the witnesses made at the domestic enquiry and this has resulted in an erroneous finding to the prejudice of the workman; (ii) that the workman having denied that he committed any misconduct it was the bounden duty of the management to show and establish commission of misconduct as envisaged in the Standing Orders and this burden was not discharged and (iii) that the refusal to apply Section 11A of the Act on the ground that the workman was previously warned, was not justified.

9. Mr. D.N. Barua, the learned Counsel for the management, tries to refute submitting that the Sangha itself having relied on the statements of witnesses at the domestic enquiry there was no illegality or error on the part of the Labour Court in relying on the same; that the workman never denied that he committed misconduct, rather he proceeded on the footing that he did not commit the misconduct, as alleged; and that the Labour Court, after considering the antecedents of the workman, rightly refused to apply Section 11A of the Act and hence the award suffers from no infirmity and is not liable to be enterfered with.

10. As regards the reliance on the statements before the domestic enquiry, we are of the view that after the domestic enquiry was found to be bad, the Labour Court should not have had anything to do with the evidence recorded in that enquiry and should have wholly relied on the evidence adduced before itself. It is true that the Sangha relied on the evidence of their witnesses recorded at the domestic enquiry. But that would amount to adducing the same evidence before the Labour Court and could be dealt with as such. On perusal of the award we find that as regards the evidence of MW 2 the Labour Court held: "Therefore what this witness stated before the domestic enquiry can be accepted as correct although he has now stated that he cannot say who took away the scales". Similarly the Labour Court observed: "MW 3 Lokananda Borgohain has not said in the domestic enquiry that he reported about the incident to the Manager but in this Court he says that he reported to the Manager about the incident". But it appears that there was no occasion for him to tell about this in the domestic enquiry. The Enquiry Officer also did not ask about this. As regards MW 6 also the Labour Court has similarly assessed the evidence before it with reference to his evidence before the domestic enquiry. So also in case of MW 7. To our mind the domestic enquiry having been rejected, reliance on the evidence thereof except to the extent relied on by the party adducing that evidence, cannot be said to be fair.

11. As regards misconduct, in the award there is no reference to the Standing Order at all. It appears the Labour Court did not at all consider the question whether the taking away of the scales, as alleged, would or would not amount to misconduct.

12. The evidence shows that the workman allegedly took away the scales after weighment and there is no allegation that thereby he obstructed the performance of any duty by any employee of the tea estate. Admittedly the workers were vitally interested in correct weight of the leaves plucked by them as they were paid on the basis of such weighment. Mr. Barua submits that the seals of the scales were found broken and that amounted to destruction of garden property. However, there was no mention of such destruction in the charge itself. What was stated was that the scales were left at the office at 5 P.M. when the scales were found tampered. It was not stated under which clause of the Standing Order, if any, that would amount to misconduct. In his written statement the workman stated: "Anyway, I am not guilty of any misconduct as alleged by you and hence I deny all the charges". Generally speaking, misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. As was held in the Management of Tournamula Estate v. Workmen 1973 2 LLJ 241 misconduct could be of three kinds; (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline. Misconduct is often classified into (1) major misconducts which justify punishment of dismissal/discharge, and (2) minor misconducts which do not justify punishment of dismissal/discharge but may call for lesser-punishment. Caltex India Ltd. v. Labour Court 1966 2 LLJ 137 at p. 139. Mr. D.N. Barua has not categorically stated whether there was at all any Standing Order framed or adopted by the management. It is true that in the absence of Standing Orders, it would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. The management, however, could act in good faith. It is for the management to determine what constitutes major misconduct within its Standing Orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the act alleged is connected with vital interest of the workman regarding their earnings, the management should not treat it as misconduct. As was ruled in Delhi Cloth and General Mills Co. v. Ludh Budh Singh 1972 1 LLJ 180 at p. 191, it is an elementary principle of justice that when allegations of misconduct are levelled against a person, it is the primary duty of the

person making these allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty. If the Labour Court decides, as in the instant case, that the domestic-enquiry has not been held properly it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and the workman and decide the matter on the basis of such evidence. The management has to discharge its burden in proving the misconduct. In [Rajinder Kumar Kindra Vs. Delhi Administration through Secretary \(Labour\) and Others,](#) at p. 524 it was held that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated and the industrial tribunal can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. It was ruled in [Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another,](#) at p. 528 that it is well settled that unless either in the certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. It cannot be left to the unbridled discretion of the employer to dub any conduct as misconduct, otherwise the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is well settled canon of penal jurisprudence that removal or dismissal from service on account of misconduct constitutes penalty in law. [Glaxo Laboratories \(I\) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union,](#) and [Western India Match Company Ltd. Vs. Workmen,](#) are referred to. Considering the facts of this case and on perusal of the award we are of the view that the Labour Court did not bear in mind the above principles of law.

13. The last question is that of application of Section 11A of the Act, which is as follows:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.♦Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman 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, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

By this Section wide powers have been conferred on the Labour Court to set aside an order of discharge or dismissal and direct reinstatement or to award a lesser punishment in lieu of discharge or dismissal but a limitation has been engrafted on the said power by means of the proviso to this section. The Labour Court can rely only on the materials on record and it is not entitled to take any fresh evidence in relation to the matter. However, no fetters have been placed on the discretion conferred on the adjudicating authorities under the Section. It is well settled that the Labour Court, while exercising discretion, must act in good faith, must have regard to all relevant consideration and must not seek to promote purposes alien to the letter or to the spirit of the legislation that has given it power to act, and must not act arbitrarily or capriciously. The Labour Court, while considering the application of Section 11A, found that leniency was not shown to the workman in view of the fact that he was twice warned previously for gross misconduct. Ext. 7 was the charge sheet dated 23rd September 1971 issued to the workman alleging riotous conduct of gathering some workers and demanding bonus by shouting and abusing the management. It was further alleged the workman came to Manager's office window followed by misguided crowd, partially gheraoed the office and started shouting demanding bonus immediately; and that inspite of efforts of the President and Secretary of the garden unit asking him to keep silent and go to work, the workman threatened the management to assault. In his reply Ext. 12, the Labour Court observed, the workman did not deny the charges and appeared to have admitted the charge and apologised and assured the Manager that he would not repeat the same in future, and the Manager issued the warning letter, Ext. 8. Ext. 9 was another charge-sheet dated 18th June 1972 issued to the workman, alleging wilful insubordination on 10th June 1972 refusing to come out from the No. 25, where he was plucking, to meet the Manager and told the Sirdar that the Manager should come to him wherefor the Manager warned him by Ext. 13. The Labour Court further found that an enquiry was ordered to enquire into the charges of Ext. 9 but because of abnormal situation the same could not be held. However, no order of punishment on completion of the domestic enquiry was produced and it should not be definitely held that the workman was found guilty and punished for the same.

14. It is a fundamental principle of justice that punishment should be commensurate with the guilt. "Judex acquitatem semper spectare debet: a Judge ought always to have equity before his eyes", Dismissal from service for a tea garden labour deprives him of his livelihood, and once dismissed it may be difficult for him to find a means of livelihood. As the labourer is paid by weight of the leaves plucked by him, suspicion of the scales showing wrong weight by itself cannot

be an offence. His conduct in taking away the scales for testing by the Manager has to be interpreted in that light. As regards antecedents, unless the workman was earlier punished after disciplinary enquiry, no inference of guilt could be normally drawn. In Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others, at 293, where 13 workmen were dismissed by the appellant company as a result of inquiry into their misconduct of physically obstructing other workmen who were willing to work, it was held that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management, there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the offence that the tribunal may be able to draw an inference of victimisation merely from the punishment inflicted.

In Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another, where the management had imposed the punishment of termination of service of the first respondent, the Labour Court in exercise of powers conferred upon it by Section 11A of the Act reduced the punishment by setting aside the punishment of termination of service and in its place imposed the punishment of stoppage of the increments for two years, the Supreme Court held that Section 11A confers power on the Labour Court to evaluate the severity of misconduct and to assess whether the punishment imposed by the employer is commensurate with the gravity of misconduct. This power is specifically conferred on the Labour Court u/s 11A. If the Labour Court after evaluating the gravity of misconduct held that punishment of termination of service was disproportionately heavy in relation to misconduct and exercised its discretion, the Supreme Court in the absence of any important legal principle would not undertake to re-examine the question of adequacy or inadequacy of material for interference by Labour Court. In *Baldev Singh v. The Presiding Officer, Labour Court, Patiala, SLP (Civil) No. 2782 of 1984* decided on 15th October 1986 and reported in 1986 IV SVLR 10, where the petitioner, a driver in Punjab Roadways, was charge-sheeted for failing to discharge his duties as a driver properly by not plying his bus on his route was found guilty on inquiry and his service was terminated and the Labour Court found that the punishment awarded was harsh being not in consonance with the nature of the charge against the workman and as such found that a lesser punishment would meet the ends of justice, and accordingly held that the order of termination was not justified and ordered his reinstatement with continuity of service but without back wages applying the discretion u/s 11A of the Act and the High Court dismissed the writ petition. The Supreme Court dismissed the SLP and upheld the judgment and order of the High Court. Bearing in mind the above principles it cannot be said that the Labour Court was justified in refusing to exercise its discretion u/s 11A of the Act.

15. For the reasons aforesaid we set aside the impugned award and remand the reference to the Labour Court, Dibrugarh to make an award in accordance with law on the basis of the evidence already adduced before it and additional evidence, if

any, adduced by the parties producing the Standing Order, bearing in mind the observations made hereinabove, as expeditiously as possible, preferably within two months from today. The parties shall appear before the Labour Court within 15 days from today to take necessary instructions.

16. This petition is allowed to the above extent. We, however, make no order as to costs. Send down the records forthwith.