

Radha Kant Choudhary Vs Presiding Officer, Labour Court and Another

Court: Jharkhand High Court

Date of Decision: Nov. 14, 2003

Acts Referred: Constitution of India, 1950 " Article 226
Industrial Disputes Act, 1947 " Section 11A

Citation: (2004) 1 JCR 54

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: M.M. Pal, for the Appellant; Kameshar Prasad and S.K. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Merathia, J.

In this writ petition, the petitioner has challenged the award dated 28th February, 1994 passed by Shri Bijay Kumar

Rai, Presiding Officer, Labour Court, Ranchi in Reference Case No. 4 of 1993 upholding the dismissal of the petitioner.

2. On 1.8.1979, the petitioner alongwith one other workman was transferred from 06-shop to 02-shop as there was no work in the 06-shop. The

petitioner without obeying the said order, made a representation on 4.8.1979, on the ground that only the junior most workmen were to be

transferred but the petitioner was not the junior most. After about a month, on 3.9.1979 he entered into the office of Shri G.V.V. Giri, Assistant

Manager of 06-shop and assaulted him by slapping on his face. Petitioner was suspended on 3.9.1979 and after holding a departmental

proceeding he was dismissed on 31.10.1980. He preferred a departmental appeal which was also ultimately dismissed. He raised an Industrial

Dispute which was registered as Reference Case No. 4/1993. Shri Satyendra Singh, Presiding Officer, Labour Court, Ranchi, Held on 10.9.1986

that the dismissal was justified. The award was pronounced on 28.10.1988. The petitioner challenged the same vide CWJC No. 2126 of 1989

(R). A short question was raised that the award was antedated. This Court held that it is possible that the award was antedated and since there

was a gap of more than two years in pronouncement of the award, the chances of the Presiding Officer forgetting the submissions of the parties,

cannot be ruled out. Accordingly, the said award was set aside and the Labour Court was directed to pass an award, after hearing the parties

afresh. The matter was thereafter heard afresh. Again the petitioner's dismissal was held to be justified. This award is Impugned in this writ petition.

3. Three charges of misconduct in terms of Standing Order were levelled against the petitioner:

(i) By the office order dated 1.8.1979, the petitioner was relieved from 06-shop for reporting at 02-shop which he disobeyed. This amounted to

disobedience of lawful and reasonable orders of the competent authority;

(ii) The petitioner was to report to 02-shop w.e.f. 3.8.1979 but he did not do so and absented himself from duty without any prior information or

sanction of leave which amounted to willful absence from duty without leave or without sufficient cause;

(iii) On 3.9.1979 the petitioner entered the office of Shri G.V.V. Giri, Assistant Manager, 06-shop and assaulted him by slapping on his face.

4. The Labour Court on the basis of the materials on record held that the order of transfer was lawful and reasonable. He further held that the

petitioner refused to receive and obey the order in spite of the knowledge about said order of his transfer.

With regard to the second charge, the labour Court held that there is no evidence to show that from 3.8.1979, the petitioner had not working in

either 06-shop or in 02-shop and, therefore, he clearly absented from the work without any leave or sufficient cause.

Regarding the third charge, the labour Court found the charge of assaulting the superior officer to be correct. In these circumstances, the labour

Court upheld the order of dismissal passed by the Management.

5. Mrs. M.M. Pal, learned counsel appearing on behalf of the petitioner submitted that the order of transfer was not lawful as the petitioner was

not the junior most whereas only the junior most workmen were to be transferred.

Replying to this, learned counsel for the Management with reference to the materials on record particularly the evidence of M.W. I, Shri Krishna

Chandra Yadav, submitted that this witness has deposed that though he made a suggestion for transferring two person who joined 06-shop last,

but there was nothing that only junior most workmen were to be transferred.

6. Further submission of Mrs. Pal that the petitioner is not guilty of non obedience of lawful order of transfer as he filed a representation against the

same, cannot be accepted. Only because, the petitioner made a representation, it cannot be said that he was entitled to or was justified in not

obeying the order of transfer from one shop to the other in the Plant. If he had any grievance, he could have raised it after joining the 02 shop.

7. Mrs. Pal further submitted that charge No. 3 is superfluous in view of charge No. 1. If the petitioner did not obey the order of transfer as per

charge No. 1, he cannot be charged with the second charge of not joining or absenting from duty from the transferred place.

In view of the aforesaid finding of the labour Court, that the petitioner neither worked at shop No. 06 nor at shop No. 02, even if charge No. II is

superfluous, the other two charges, equally serious in nature, were proved.

Mrs. Pal further submitted that there is a serious contradiction in the case of the Management, inasmuch as Shri G.V.V. Giri in his written report

dated 3.9.1979, regarding the assault, stated that the petitioner asked about his salary, whereas in his deposition he stated that the petitioner was

asking, why he was transferred. Learned counsel for the Management, in reply, submitted that the petitioner was transferred by order dated

1.8.1979 which he disobeyed and the occurrence of assault took place one month thereafter on 3.9.1979 and in that situation the alleged grievance

against transfer and non payment of salary are inter related and there is no contradiction. Moreover, the said evidence was adduced after six years.

I find force in the submission of the Management and reject the submission of Mrs. Pal that there is any serious contradiction in the version of Mr.

Giri on which interference is required.

8. Mrs. Pal lastly submitted that in view of Section 11A of the Industrial Disputes Act, the Labour Court should have reduced the punishment of

dismissal. I am not inclined to accept this argument also, in view of establishing facts in this case, which justifies the order of dismissal. The

petitioner did not obey the order of transfer from one shop to another. He even refused to receive the order, did not work at either of the shops

and ultimately assaulted his senior officer questioning his transfer/non payment of salary.

9. Learned counsel for the Management relied on the judgment of Hon"ble Supreme Court reported in Indian Overseas Bank Vs. I.O.B. Staff

Canteen Workers' Union and Another, , and submitted that reappreciation of evidence is impermissible by the High Court. The High Court does

not exercise appellate jurisdiction under Article 226 of the Constitution of India. Insufficiency of evidence or that another view is possible, is not

ground to interfere with the findings of the Industrial Tribunal. The writ Court is only to see whether legally established criteria for grant of relief

were satisfied or not. He submitted that petitioner is seeking reappreciation of the evidence for reaching to another view, which is not permissible.

10. In the case of Indian Overseas Bank (supra), the Supreme Court has held that the findings of fact recorded by a fact finding authority duly

constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having

been passed on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they

are based upon some material which are relevant for the purpose or even on the ground that there is yet another view, which can reasonably and

possibly be taken.

11. After taking into consideration the entire matter, I do not find any irregularity, illegality or perversity in the findings recorded by the labour

Court.

In the result, this writ petition is dismissed. No costs.