

(1995) 02 MP CK 0028
Madhya Pradesh High Court
Case No: M.P. No. 2984 of 1988

General Manager, Ordnance
Factory and Another

APPELLANT

Vs

The Presiding Officer, Central
Govt. Industrial
Tribunal-cum-Labour Court and
Another

RESPONDENT

Date of Decision: Feb. 16, 1995

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Citation: (1996) 1 LLJ 536

Hon'ble Judges: M.V. Tamasker, J

Bench: Single Bench

Advocate: L.S. Singh, for the Appellant; R.P. Gupta, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

M.V. Tamaskar, J.

This petition is directed against the award passed by the Central Government Industrial Tribunal directing reinstatement of the respondent No. 2 by order dated December 14, 1987 (Annexure-I) allowing backwages from the date of reference i.e. October 13, 1986. The respondent No. 2 was an employee of the petitioners, Ordnance Factory, Khamaria Jabalpur. The respondent No. 2 was Civilian Motor Driver, Grade- II, on December 30, 1980. The respondent No. 2 brought his vehicle No. MP-3973 and parked it near the gate. The vehicle was checked and he was found to have kept 3 kgs. copper strips concealed in the driver's Cabin. There was no other occupant in the vehicle. A charge sheet was served, he was suspended and an enquiry was held. The Disciplinary Authority exonerated the respondent No. 2 of the

charges whereas the Competent Authority disagreeing with the Disciplinary Authority found that he was guilty of the misconduct and the order of termination from service was passed.

2. A reference was made to the Central Government Industrial Tribunal-cum-Labour Court (C.G.I.T.) and the C.G.I.T. after recording the evidence has passed an order of reinstatement as already stated above. The said order has been challenged in this petition.

3. The submissions of the learned counsel for the petitioner are many. However, the main submission raised in this Court is that there was enough material before the C.G.I.T. showing that the respondent No. 2 had kept concealed, under driver's cabin/ seat articles found during the check.

4. The Disciplinary Authority arrived at a finding on some surmises i.e. to say that there was no direct evidence of keeping the articles in the vehicle and, therefore, the inference that the respondent No. 2 was the person who kept these articles cannot be arrived at. It was also stated that someone else might have placed it in the vehicle. The competent authority disagreeing with the findings recorded by the Disciplinary Authority held on appreciation of the evidence as under:

N.K.. Kaka Singh stated that he was on duty at EDK Gate with Hassan Shah brought the vehicle and stopped at the gate some distance away from it. The vehicle was checked and under the seat and driver's cabin the pieces of copper articles were seized. The gate keeper was informed, the driver had apparently left the vehicle.

5. The question for consideration before the Labour Court was whether the findings recorded by the Competent Authority were perverse. The learned Labour Court -cum-C.G.I.T. was deciding the matter on reference which was as under:

"Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (M.P.) in awarding punishment of removal from service to Shri Hassan Shah CMD Gr. II/OFK by order dated December 22, 1981 is legal and justified? If not, to what relief is the concerned workman entitled to and from what date?"

That is to say whether the order dated December 22, 1981 is legal and justified. There is no illegality found in the enquiry. Therefore, the only question was whether the Competent Authority was entitled to take a different view of the matter disagreeing with the Disciplinary Authority who had exonerated the delinquent employee.

6. The fact that the article was found under the driver's cabin is not denied. The vehicle was parked just near the gate. Nobody was seen entering the vehicle thereafter. The delinquent employee had brought the vehicle and kept it, as such the inference would be that the article was already in the vehicle and who kept it is a question of inference.

7. The submission made by the learned counsel for the petitioner is that the Labour Court was not entitled to reverse the findings which were based on circumstances which were quite eloquent and has committed an error in reversing the order passed by the Competent Authority and ordered reinstatement with back wages. Learned counsel for the respondents submits that the findings recorded by the C.G.I.T. is a finding of fact and this Court cannot travel beyond the finding recorded by the C.G.I.T. Shri R.K. Gupta, learned counsel relied on the decision of the Supreme Court reported in AIR 1984 Section C. page 289. However, the said decision does not lay down a proposition first the Labour Court has to find out whether the enquiry was proper and thereafter offered an opportunity to the employer to lead evidence on the guilt. What was stated in this case was that when a reference is pending, whether the termination is bad. Whole matter is open before Labour Court on merits. Whole record was placed including the finding recorded by the Disciplinary Authority and the Competent Authority. The only question that remains is whether the finding recorded by the Competent Court was not acceptable. As such the Labour Court-cum-C.G.I.T. was required to state as to why the finding recorded by the Competent Authority was not acceptable.

8. The Labour Court has held that the enquiry was legal in para 10 of the award under Issues Nos. 1 and 2. The findings recorded on issues Nos. 3, 4 and 5 the Labour Court could not say that merely because some witnesses were not examined to show that somebody has planted the article under the driver's cabin/seat, the inference that it was kept by the delinquent employee cannot be arrived. That would be a perverse method of approaching the finding. The fact was that the delinquent was only occupant of the vehicle, had brought the vehicle and kept it at the gate. No one entered the vehicle at the place where it was kept and the article was found under the driver's seat in cabin itself proves that the delinquent was the person who had kept it there. In this view of the matter the order passed by the Labour Court suffers from perversity and is hereby modified. The second question that arises for consideration is whether the order reinstating the delinquent should be set aside. The order of reinstatement was passed in the year 1987 i.e on December 14, 1987 with back wages from the date of reference as also considering his past record, the order of reinstatement is maintained.

9. However, disagreeing with the Labour Court that the delinquent employee was entitled to any back wages the order regarding payment of back wages is set aside. With this modification the award passed by the Labour Court is maintained. The petition is partly allowed. There shall be no order as to costs. Security amount, if any, be refunded to the petitioners.