

Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs The Secretary, Sahakari Noukarara Sangha Etc.

Court: Supreme Court of India

Date of Decision: Sept. 21, 2000

Acts Referred: Industrial Disputes Act, 1947 " Section 10, 11A

Citation: AIR 2000 SC 3129 : (2000) AIRSCW 3439 : (2000) 87 FLR 483 : (2000) 10 JT 589 : (2000) 2 LLJ 1395 : (2000) 6 SCALE 446 : (2000) 7 SCC 517 : (2000) SCC(L&S) 958 : (2000) 3 SCR 367 Supp : (2000) 6 Supreme 339

Hon'ble Judges: M. B. Shah, J; D.P. Mohapatra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.B. Shah, J.
Leave granted.

2. Heard learned Counsel for the parties exhaustively.

3. The question involved in these appeals is -- Whether High Court was justified in confirming the order passed by the Labour Court reinstating the

respondents-workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for

the value given in the said charges had been clearly established. Apparently, it would bean unjustified direction to reinstate an employee against

whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though number of such

misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be

rewarded or legalised by reinstatement in service with full or part of back wages.

4. The matrix of the facts as culled out from the case are that the appellant is a Cooperative Society registered under the Karnataka Co-operative

Societies Act, 1959, The Management charged four of its employees, namely Smt. Seetha B., Sri D. Chandrashekhar, Sri Madhukar Shetty and

Sri B. Damodhar Naik, with breach of trust and misappropriation of the value of goods amounting to Rs. 24,239.97 and Rs. 19,884.06 during the

period 1-7-1977 to 3-6-1978. The said charges were based on shortage of goods noticed on stock verification for the above said period. After

holding an enquiry, the management dismissed all the above employees. Thereafter, the employees' Union raised an industrial dispute and on

26.6.1981 a reference was made by the Government to the Labour Court, Mangalore, u/s 10 of the Industrial Disputes Act, 1947 (hereinafter

referred to as "the Act") in I.D. No. 45/1981. The Labour Court considered the documentary evidence produced by the Management, the audit

report for the relevant period from 1-7-1977 to 30-6-1978; the admissions of the indicated workmen who deposed that the goods were sent to

their counters for sale by means of supply slips and the fact that they have not accounted for the shortage of goods noticed, the value of which is

given in the audit report, and recorded the finding that the charges of breach of trust and misappropriation of the goods entrusted to them of the

value given in the charges have been clearly established. In the award passed by the Labour Court, there is a thorough discussion of the evidence

adduced by the Management and the Workmen and sufficient reasons are given in support of the finding that the charges alleged against the

workmen are proved. After recording evidence and hearing both the sides the Labour Court vide its award dated 30-1-1995 held that the charges

of breach of trust and misappropriation by the employees were proved. However, the Labour Court in exercise of its discretionary power u/s 11A

of the Act ordered their reinstatement with 25% of back wages. The Labour Court further ordered for continuity of their service by imposing

penalty of stoppage of 5 increments with cumulative effect and for fixing their pay on the basis of imposition of such penalty from the date of their

dismissal till the date of reinstatement. Against the award of the Labour Court, both the parties filed writ petitions before the High Court of

Karnataka. The Learned Single Judge confirming the award passed by the Labour Court dismissed both the writ petitions.

5. Being aggrieved by the common order passed by the learned Single Judge, both the parties filed Writ Appeals No. 8795 of 1996 and 1954 of

1997 before the Division Bench of the High Court. The Division Bench found that the Labour Court had arrived at its conclusion after thoroughly

considering the entire evidence and, therefore, it did not call for any interference. Further, with regard to the question whether the Labour Court

was justified in interfering with the order of dismissal passed by the Disciplinary Authority in exercise of its powers u/s 11A of the Act, the High

Court came to the conclusion that the Labour Court gave reasons for coming to its conclusion and those reasons could be considered as justifiable

and sufficient grounds to interfere with the punishment imposed by the employer. By common judgment and order dated 18-9-1998, the writ

appeals were dismissed. Hence, these appeals by special leave.

6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges

against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been

established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management

removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or

large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled.

Municipal Committee, Bahadurgarh v. Krishnan Behari and Ors.] . In U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 this Court set

aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed

from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to

23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of

Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that Corporation removing the

conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development

Corporation Ltd. and Anr. v. Kala Singh and Ors , this Court considered the case of a workman who was working as a Dairy Helper-cum-

Cleaner for collecting the milk from various centers and was charged for the misconduct that he inflated the quantum of milk supplies in milk

centers and also inflated the quality of fat contents where there were less fat contents. The Court held that ""in view of proof of misconduct a

necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and

consequently the Labour Court rightly declined to exercise the power u/s 11A of the I.D. Act to grant relief with minor penalty"".

7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in

reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no

evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without

any blemish and to some extent, there was lapse on the part of the Management.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider

the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

9. In the result, the appeals are allowed. The impugned order passed by the High Court confirming the award dated 30-1-1995 passed by the

Labour Court is set aside. There shall be no order as to costs.