(2012) 08 AP CK 0018

Andhra Pradesh High Court

Case No: Writ Petition No''s. 953 of 2000 and W.P. No. 7800 of 2001

Dr. Reddy''s Laboratories Limited, Hyderabad		APPELLANT
	Vs	
The Presidindg Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Others The Presidindg Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Others Vs Dr. Reddy''s Laboratories Limited, Hyderabad		RESPONDENT

Date of Decision: Aug. 17, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 11A, 2A(2)

Citation: (2013) 4 ALT 170 : (2013) LabIC 917 : (2013) 1 LLJ 372 : (2013) LLR 599

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: C.R. Sridharan in W.P. No. 953 of 2000 and Sri K. Lakshman in W.P. No. 7800 of 2001, for the Appellant; C.R. Sridharan in W.P. No. 7800 of 2001 and Sri K. Lakshman in W.P. No. 953 of 2000, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao

1. W.P. No. 953 of 2000 is filed by Dr. Reddy''s Laboratories Limited, Hyderabad (herein after referred to as "the Company") challenging the award dated 07-10-1999

in I.D. No. 173 of 1996 on the file of the Industrial Tribunal-cum-Additional Labour Court, Hyderabad (herein after referred to as "the Tribunal"). W.P. No. 7800 of 2001 is filed by a workman D. Ramakrishnam Raju of the above Company (the petitioner in W.P. No. 953 of 2000) challenging the same award insofar as the Tribunal had directed withholding of four annual increments and denied backwages to him. The facts leading to the above writ petitions are as under:

(i) D. Ramakrishnam Raju (hereinafter referred to as "the workman")was appointed as a Boiler Operator in the Company''s factory on 01-03-1985 and he was also a Joint Secretary of the Company''s Employee''s Union for a term of two years.

(ii) On 03-03-1993 a charge sheet was issued to the workman alleging that on 03-03-1993 he was present in the ''A'' shift i.e. from 06:00 hours to 14:00 hours and he was allocated his usual job of operating a boiler, that at about 8.35 a.m. he has unauthorizedly left his place of work neglecting the highly responsible job of operation and approached Mr. S. Vijaya Reddy, Security Supervisor, near change room while he was speaking to the incoming General Shift workmen, that he repeatedly abused Vijaya Reddy in vulgar abusive language and threatened him for foiling some workmen''s effort to hold a dharna in front of the corporate office of the Company on 02-03-1993, that this incident had taken place in the presence of Sri M.L.N. Rao, Assistant Production Manager, Sri M.V. Nandachary, Assistant Production Manager and Sri N. Srihari Rao, Maintenance Manager, that the above acts of the workman amounts to misconduct under the Model Standing Orders under clause 29 (l), (k) and (x) applicable to the Company which read as follows:

20 (l) habitual neglect of work or gross or habitual negligence;

(k) riotous or disorderly behaviour during working hours at the establishment or any act subversive or discipline;

(x) threatening, abusing or assaulting any superior or co- worker;

The actual words of abuse and threats uttered by the workman were mentioned in the charge sheet. The workman was asked to submit his explanation within three days of receipt of the charge sheet why disciplinary action should not be initiated against him. It was stated that if he failed to submit his explanation within the stipulated time, it would be deemed that he has no valid explanation to offer and the matter will be dealt with accordingly. He was also placed under suspension with immediate effect under the same proceedings.

(iii) The workman submitted his explanation to the charge sheet denying the allegations made against him in the charge sheet and requested for withdrawal of the suspension order and to permit him to join duty.

(iv) Not satisfied with the reply to the charge sheet, the Company decided to proceed with the conduct a domestic enquiry into the misconduct allegedly committed by the workman and appointed one G. Suryam as enquiry officer.

(v) The enquiry officer conducted the enquiry, examined five witnesses on behalf of the Company and five witnesses on behalf of the workman and marked Es.M-1 to M-13.

(vi) The enquiry officer after considering the evidence on record held that the charges made against the workman are established in the enquiry and that he is guilty of committing misconduct under clause 20 (1), (k) and (x) of the Model Standing Orders applicable to the establishment and submitted an enquiry report dated 14-07-1993 to that effect.

(vii) After receiving the enquiry report, the Company, issued a second show cause notice dated 19-07-1993 (Ex.M3) to the workman enclosing a copy of the enquiry report and asked the workman to show cause notice why he should not be dismissed from service. It was also mentioned in this show cause notice that the workman''s past record is also not good and that he was issued a warning letter dated 05-10-1987 for sleeping on duty, another warning letter dated 31-05-1989 again for sleeping on duty and a warning letter dated 24-12-1990 for assaulting the General Manager (personnel). The workman was asked to submit his explanation within five days from the date of receipt of the said notice.

(viii) After some delay, the petitioner gave a reply dated 10-08-1993 to the said show cause notice expressing his regret for the incident and promised to be careful in future. He requested the Company to withdraw the proposed punishment of dismissal and allow him to join duty.

(ix) After considering the said explanation of the workman wherein the workman had expressed his regret for the incident, the findings of the enquiry officer in the enquiry report and also the past record of the employee mentioned above, the Company through its Managing Director took a decision to dismiss the workman from service vide order dated 16-08-1993.

2. The workman thereafter approached the Tribunal by filing a petition u/s 2-A (2) of the Industrial Disputes Act, 1947 contending that he was an active member of the union and was instrumental in organizing workmen of the Company to secure better conditions of service and increase of wages, that therefore, the Management of the Company bore grudge against him and was waiting for an opportunity to terminate his services on one pretext or other and tried to implicate him in criminal case on the alleged charges of assaulting General Manager (Personnel), that he was acquitted in the said case, that the management had once again made an attempt to eliminate him and issued charge sheet-cum-suspension order dated 03-03-1993 with false and baseless allegations, that the enquiry officer who conducted enquiry with reference to the said charge sheet had a pre-determined mind and acted in haste and that he had never left the work spot and therefore, the question of riotous disorderly behavior, threatening, abusing or assaulting any superior or co-worker does not arise. Therefore, he sought the intervention of the Tribunal to

set aside the punishment of dismissal from service imposed on him and prayed for reinstatement of backwages. The said petition was numbered as I.D. No. 173 of 1996 on the file of the 1st respondent Tribunal.

3. The Management of the Company filed a counter contending that the workman had unauthorisedly left his place of work, approached the Security Supervisor and started repeatedly abusing him in filthy language and threatening him and that therefore a charge sheet was issued to the workman and also another workman by name K.L.P. Raju who also was reported to have committed similar acts of misconduct on the same day, that the domestic enquiry was conducted and the enquiry officer had found this workman and the other workman K.L.N. Raju guilty of acts of misconduct alleged against him, that the enquiry was held to be valid and proper by the order of the Tribunal dated 09-09-1997 and therefore, no relief should be given to the workman.

4. The Tribunal after considering the evidence on record and contentions of the Company and the workman, held that the finding recorded by the enquiry officer holding that the workman was guilty of the charge is correct and did not warrant any interference by it. However, it held that the punishment of removal from service is too harsh and highly disproportionate to the alleged misconduct, that the workman and the other co-workman K.L.P. Raju were charged with the same misconduct through the same charge sheet and they were found guilty of the same misconduct in the common enquiry, but the management had imposed punishment stoppage of three increments only on K.L.P. Raju while dismissing the workman from service for the same misconduct and thus had shown discrimination in awarding punishment. It therefore, modified the punishment imposed on the workman by setting aside the order of dismissal imposed by the management on the workman and substitute it with the relief of reinstatement of the workman with continuity of service, stoppage of four annual increments and without any attendant benefits and backwages.

5. Aggrieved thereby, the management of the Company filed W.P. No. 955 of 2000 contending that the award of the Tribunal dated 07-10-1999 in I.D. No. 173 of 1996 interfering with the quantum of punishment imposed by the management suffers from patent error on the face of the record, that the Tribunal erred in interfering with the quantum of punishment while exercising its powers u/s 11A of the Act and that the Tribunal having found that serious misconduct was committed by the workman should not have interfered with the quantum of punishment and it is for the employer to award necessary punishment. It also contended that interference by the Tribunal with the quantum of punishment, merely on the ground that another workman who is similarly charge sheeted has not been dismissed from service, was not proper because in doing so, the Tribunal had totally ignored the past service record of the workman. It also contended that the exercise of discretion/powers u/s 11A of the Act by the Tribunal is arbitrary and illegal and in

utter disregard of various decisions of the Supreme Court and the High Courts and prayed that the award of the Tribunal be quashed.

6. W.P. No. 7800 of 2001 is filed by the workman challenging the award of the Tribunal dated 07-10-1999 in I.D. No. 173 of 1996 insofar as it withheld four annual increments and denied backwages. The workman contended that this was arbitrary, unjustified and contrary to the principles laid down by the Supreme Court in number of cases. He contended that the Tribunal ought to have awarded full backwages. He also contended that the management failed to place the past conduct of the workman before the enquiry officer and to give an opportunity to the workman to prove his innocence.

7. Heard Sri C.R.Sridharan, counsel for the management and Sri K.Lakshman, counsel for the workman.

8. Sri C.R.Sridharan, learned counsel for the management, contended that the exercise of power by the Tribunal u/s 11A of the Act in interfering with the quantum of punishment in the facts and circumstances of the present case is contrary to law and relied on the decisions of the Supreme Court in U.P. State Road Transport Corporation Vs. Mohan Lal Gupta and Others, Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, , L.K. Verma Vs. H.M.T. Ltd. and Another, , J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another, U.P. State Road Transport Corporation Vs. Nanhe Lal Kushwaha, and The Govt. of A.P. and Others Vs. Mohd. Taher Ali, He further contended that the charge against the workman of abusing an officer of the Company in vulgar and threatening language is a serious misconduct warranting the punishment of dismissal from service and the Tribunal erred in directing reinstatement of the workman with a symbolic punishment of withholding of four annual increments and without backwages. He also contended that this Court under Article 226 of the Constitution of India ought to call for the records pertaining to the said award of the Tribunal and quash the same. He also opposed the grant of any relief to the workman in W.P. No. 7800 of 2001 filed by the workman.

9. Per contra, Sri K.Lakshman, learned counsel for the workman, contended that the Tribunal had acted correctly in interfering with the quantum of punishment in exercise of its power u/s 11A of the Act insofar as setting aside the dismissal of workman and directing his reinstatement. But he contended that insofar as the Tribunal had directed withholding of four annual increments and denied backwages, it had not acted properly in exercise of its powers u/s 11A of the Act. He relied upon Rama Kant Misra Vs. The State of Uttar Pradesh and Others, , Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., , Cotton Corporation of India Limited Vs. Presiding Officer, Labour Court and Another, A.P.S.R.T.C., Cuddapah Vs. K. Bajjanna 2002 (1) LLJ 460 (S.C.), Nara Goud Vs. Industrial Tribunal-cum-Labour Court, Warangal & Another 1997 (1) LLJ 643, Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra

Prasad Singh and Another 2001 (1) LLJ 595 (SC) and Man Singh Vs. State of Haryana and Others,

10. I have considered the submissions of both the counsel and the material on record.

11. In my opinion, the following points arise for consideration in the case:

a. When the Tribunal had agreed with the finding of the enquiry officer that the workman had committed the misconduct of abusing in filthy language and threatening the superior officer apart from neglect of duties, whether it was just in interfering with the quantum of punishment in exercise of its power u/s 11A of the Act?

b. Whether the past conduct of the workman should have been made subject matter of the charge sheet before the enquiry officer and whether the omission of the management to do so would vitiate the enquiry? and

c. Whether the Tribunal was correct in relying upon the fact that Sri K.L.P. Raju (the other workman against whom the same charge was made by the management and against whom also a domestic enquiry was conducted by the enquiry officer jointly along with this workman) was given a lesser punishment of withholding only three annual increments and therefore, there was discrimination shown against this workman?

12. Point (a):- It is settled law that the Tribunal/Labour Court has power to interfere with the quantum of punishment awarded by the management where a workman was found guilty of misconduct in a domestic enquiry conducted by the management. It is also settled law that such discretion of the Tribunal/Labour Court shall be exercised u/s 11A of the Act only when the Labour Court/Industrial Tribunal comes to the conclusion that the punishment is disproportionate to the gravity of the misconduct such as to disturbing the conscience of the Court or where there exist any mitigating circumstances which require any reduction of sentence or the past conduct of the workman was such that it warrants reduction of punishment. In the absence of any such factor existing, the Labour Court/Industrial Tribunal cannot by way of sympathy alone exercised the power u/s 11A of the Act and reduced the punishment.

13. Admittedly there was a finding in the domestic enquiry conducted against the workman by the management that the workman had committed misconduct of abusing a superior officer of the Company in vulgar and filthy language and also threatened him apart from neglecting his job and the actions of the workman squarely amount to misconduct under clause 20 (l), (k) and (x) of the Model Standing Orders applicable to the Company. It is also clear that there was no provocation for the conduct on the day it was committed. It is also a matter of record that in his reply, Ex.M-6 dated 10-08-1993 to the second show cause notice, Ex.M-3, dated

19-07-1993, the workman had expressed his regrets for the incident and promised to be careful in future. This amounts to an admission of guilt by the workman in relation to the various acts alleged to have been committed by him and which are mentioned in the charge sheet and in the second show cause notice Ex-M3. The findings of the enquiry officer in the domestic enquiry that the workman was guilty of the charges has also been confirmed by the Tribunal in its award dated 07-10-1999.

14. Sri K. Lakshman, learned counsel for the workman does not question the correctness of the findings of the enquiry officer in the enquiry report or of the Tribunal in the award in regard to findings of guilt of the workman regarding the misconduct alleged against him in the charge sheet.

15. In New Shorrock Mills Vs. Maheshbhai T. Rao, , after noticing that the workman in that case has seriously misbehaved by abusing an officer and also threatened him, the Supreme Court held:

The Labour Court, in the present case, having come to the conclusion that the finding of the departmental inquiry was legal and proper, respondent''s orders of discharge was not by way of victimisation and that the respondent-workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee''s conduct and his past record.....

It upheld the punishment of discharge from service imposed on the workman in question.

16. In Mahindra and Mahindra''s case (supra 2), the Supreme Court following the above decision, observed at para 20 as follows:

20. It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power u/s 11A of the Act and reduce the punishment. As noticed hereinabove at least in two of the

cases cited before us i.e. Orissa Cement Ltd. (1960 1 LLJ 518 (SC) and New Shorrock Mills Vs. Maheshbhai T. Rao, this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.

17. In L.K. Verma''s case (supra 4), it was held that punishment of dismissal from service is appropriate punishment where the workman has been found guilty of abusing a superior in vulgar and filthy language and threatening him.

18. In Biecco Lawrie Limited''s case (supra 6), the Supreme Court upheld the punishment of dismissal imposed on a workman who had used abusive and filthy language against his superiors. Similar view has also been taken in U.P. State Road Transport Corporation''s case (supra 7).

19. No doubt in Ramakanth Misra''s case (supra 9), a lenient view was taken where an employee had threatened a co-employee within the premises and a punishment of dismissal from service was substituted with the punishment of withholding of two increments. But on a reading of the said judgment, it is clear that there was no use of filthy abusive language and the person against whom the said language was used by the employee was a co-employee. It was also found in the facts of that case that there was no prior blame worthy conduct on the part of the employee in question. Therefore, in my opinion, the said decision is clearly distinguishable as in the present case the workman had not only threatened the superior officer but also abused him in filthy and vulgar language. Moreover the abuse was made to a superior officer and not to a co-employee.

20. In Ved Prakash Gupta''s case (supra 10), cited by Sri K.Lakshman, the Supreme Court had held that the charge of abusing a superior officer is not a serious one and even if proved did not warrant the punishment of dismissal from service and his shockingly disproportionate.

21. But the view taken in the above decision no longer seems to be valid in view of the subsequent judgments of the Supreme Court in Mahindra and Mahindra Limited''s case (supra 2), New Shorrock Mills''s case (supra 16), Hombe Gowda Education Trust''s case (supra 3), L.K. Varma''s case (supra 4), Biecco Lawrie Limited''s case (supra 6) and U.P. State Road Transport Corporation''s case (supra 7), wherein the Supreme Court had taken the view that verbal abuse by an employee of a superior officer warrants the punishment of dismissal from service. In my view the above mentioned judgments indicate the present trend and need to be followed. The change in the trend has been noticed in J.K. Synthetics Limited''s case (supra 5)

(paras 22 and 23) and in Hombe Gowda Educational Trust''s case (supra 3) (para 30).

22. In my view, discipline in the work place/industrial undertaking is very important and it is not proper to allow employees to break the discipline with impunity. Using vulgar and abusive language apart from threatening a superior officer is a serious misconduct and has to be severely dealt with. The Labour Court was thus not justified in interfering with the order of dismissal imposed by the management on the workman. I find that the discretion exercised by the Tribunal, in the facts and circumstances of the present case, is capricious and arbitrary and unjustified. It could not be said that the punishment awarded to the workman was in any way "shockingly disproportionate" to the nature of the charge found proved against him. Therefore Point No. 1 is answered in favor of the management and against the workman.

23. Point No. (b):- In regard to the issue whether the past conduct of a workman should be subject matter of the charge sheet or not, this Court in Nara Goud''s case (supra 13) had taken the view that past conduct of the delinquent employee has to be the subject matter of the charge and if not, the Labour Court is not entitled to take into consideration the previous conduct of the employee. However the Supreme Court in Mohd. Tahar Alil''s case (supra 8), had held that there is no hard and fast rule that merely because the earlier misconduct had not been mentioned in the charge sheet, it cannot be taken into consideration by the punishing authority. It held that consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. In view of this judgment of the Supreme Court, I hold that the decision in Nara Goud''s case (supra 13) is no longer good law.

24. In the present case, although the past conduct of the workman was not part of the charge sheet, but it was indicated in the second show cause notice Ex.M-3, dated 19-07-1993 issued by the management to the workman. In the said show cause notice, the three instances of past misconduct were mentioned apart from the prima facie opinion of the General Manager (Production) of the Company that he agreed with the findings in the enquiry report of the enquiry officer that the charges against the workman are proved and that he proposed to impose the punishment of dismissal from service. In his reply Ex.M-6 dated 10-08-1993 to the above show cause notice, the workman did not dispute the same and expressed regrets. Therefore, the management was entitled to take into account not only the past instances of misconduct but also the findings of the enquiry officer in the enquiry conducted against him in it''s order dated 16-08-1993 (Ex.M-7). In view of the fact that the past conduct was put to the employee in the second show cause notice and he did not dispute the same in his reply thereto, there is no illegality committed by the management in imposing a punishment of dismissal on the workman taking into account the past misconduct. In my view, no prejudice has been caused to the workman by non-mention of the past conduct in the charge sheet as he has had an opportunity to reply to the second show cause notice in which the past conduct was

mentioned. The fact that past misconduct is not mentioned in the charge sheet does not vitiate the action of the management in view of the decision of the Supreme Court in Mohd. Taher Ali''s case (supra 8). Point (b) is answered accordingly in favor of the management and against the workman.

25. Point No. (c):- As regards the question of the alleged discrimination shown between the workman and the co-employee K.L.P. Raju, the contention of the workman is that the management had imposed a lesser punishment of stoppage of three annual increments on K.L.P. Raju for the same misconduct of abusing the superior but it had imposed the punishment of dismissal from service on the workman. This point found favour with the Labour Court. The counsel for the workman relied upon Mansingh''s case (supra 15), TELCO''s case (supra 14) and K. Bajjanna''s case (supra 12) in support of his contention that the workman is entitled to such lesser punishment.

26. The counsel for the management, Sri C.R. Sridharan, would however contend that there were no previous instances of misconduct by Sri K.L.P. Raju whereas in the case of the workman in question there were three previous instances of misconduct. Therefore, the case of the workman and Sri K.L.P. Raju cannot be treated equally. He also contended that the punishment of dismissal has been held to be an appropriate punishment for the offence of abusing in filthy language a superior officer and threatening the superior officer and therefore, the workman cannot rely on the lesser punishment imposed on Sri K.L.P. Raju to obtain a relief of a similar lesser punishment in his case.

27. I have considered the submissions of both the counsel. The distinguishing factor between the case of the workman and that of K.L.P. Raju is that there are three instances of past misconduct in the case of workman whereas there is no such past misconduct in the case of K.L.P. Raju. That apart the nature of the misconduct found against the workman is too serious to be visited with a lesser punishment as discussed by me under point 1 (supra) and merits the punishment of dismissal from service. Therefore, on the facts of the present case and the nature of misconduct found proved in the present case, imposition of punishment of dismissal from service is proper. In my view, it is not a case where a lesser punishment can be imposed on the workman, whatever may be the correctness or otherwise of the action of the management in imposing lesser punishment on K.L.P. Raju. Therefore, point (c) is held against the workman and in favour of the management. For the above reasons, W.P. No. 953 of 2000 filed by the management is allowed and W.P. No. 7800 of 2001 filed by the workman is dismissed. No costs.