

(2012) 09 CAL CK 0058

Calcutta High Court (Port Blair Bench)

Case No: MAT No. 37 of 2012 and CAN No. 104 of 2012

The Deputy Conservator of
Forests

APPELLANT

Vs

Smt. Parvati Upadhyay

RESPONDENT

Date of Decision: Sept. 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 11A, 12

Citation: (2013) LabIC 9

Hon'ble Judges: Jayanta Kumar Biswas, J; Harish Tandon, J

Bench: Division Bench

Advocate: S.K. Mandal, for the Appellant; Binnu Kumar, for the Respondent

Judgement

Jayanta Kumar Biswas, J.

The appellant in this MAT dated August 8, 2012 under cl. 15 of the Letters Patent is aggrieved by an order of a Judge of this Court dated July 5, 2012 disposing of his WP No. 474 of 2012 under art. 226. The appellant filed the WP questioning an award of the Labour Court, A & N Islands, Port Blair dated January 31, 2012 in an ID Case No. 4 of 2009. The ID Case had been registered by the Labour Court on receipt of an order of reference dated July 16, 2009 made by the A & N Administration under s. 10 of the Industrial Disputes Act, 1947. The schedule to the order of reference is quoted below:-

Whether the action on the part of the Deputy Conservator of Forest, Wild Life Division, Port Blair imposing upon penalty of compulsory retirement to Smti Parvathy Upadhyay, Workmen is legal and justified. If not, what relief the workman concerned is entitled to?

2. By a charge-sheet dated March 11, 2004 the Deputy Conservator of Forests, Wildlife Division-I of the Forest Department of the A & N Islands initiated a

disciplinary proceeding against the respondent. At that date she was working in the Department as a Regular Mazdoor.

3. It was, inter alia, alleged that while in employment as a Regular Mazdoor, the respondent "habitually absented herself from duty spot without obtaining prior approval of her immediate superior and did not attend the assigned works on several occasions."

4. The Deputy Conservator of Forests appointed an Assistant Conservator of Forests to conduct an inquiry. The respondent participated in the inquiry. The officer conducting the inquiry took down evidence and finally submitted his report dated May 26, 2005 that the allegations concerning absenteeism had been duly proved.

5. After giving the respondent opportunity of submitting representation against the findings of the officer conducting the inquiry, the Deputy Conservator of Forests, Wildlife Division-I, the Disciplinary Authority, passed the final order dated February 20, 2006 accepting the findings of the officer and inflicting the penalty of compulsory retirement.

6. The relevant part of the order dated February 20, 2006 is quoted below:-

AND WHEREAS, it is found that on earlier occasion a disciplinary proceedings in terms of clause 31(i) of Standing order applicable to the Industrial Employees (other than factory workers) of Wildlife Division-I were initiated against Smti. Parvathy Upadhyay, Regular Mazdoor on the charges set out in the memorandum No. LP/WD/54/418 dated 26th May, 2003 and Smti Parvathy Upadhyay is imposed with a penalty of withholding of increment for two years vide this office order No. WL/CON/PU/35 dated 8.7.2005.

7. The relevant part of the punishment order dated July 8, 2005 referred to in the order dated February 20, 2006 is quoted below:-

AND WHEREAS, the undersigned in terms of clause 31(viii) of the said standing order having carefully gone through the records of inquiry accepts the report of the Inquiry Officer and finds that the articles of charges namely habitual absence without leave for more than 10 days and in subordination as per provision of clause 26(vi), (vii), (viii) and (xiii) of Certified Standing Order.....are correct.

8. By an order dated August 8/14, 2006 the Principal Chief Conservator of Forests, A & N Islands, the Appellate Authority, dismissed the respondent's appeal against the order of the Deputy Conservator of Forests.

9. A union espousing the cause of the respondent approached the Conciliation Officer concerned under s. 12 of the Industrial Disputes Act, 1947 and finally the dispute was referred by the A & N Administration to the Labour Court for adjudicating the issue mentioned in the schedule to the order of reference dated July, 16, 2009.

10. At no stage the respondent made any allegation that her employer acted malafide, or that actions taken by her employer amounted to victimization or unfair labour practice. The Labour Court held that the respondent frequently absenting herself from office had committed the alleged misconduct. The Labour Court did not find any fault with the inquiry.

11. Though the Labour Court found no fault with the inquiry and the findings of the officer conducting the inquiry that the allegation of absenteeism had been duly proved, it examined the decision of the Disciplinary Authority on merits for ascertaining whether the inflicted punishment was disproportionate to the gravity of proven misconduct.

12. After noticing that the penalty of compulsory retirement from service was one of the eight penalties enumerated under Standing Order 30 of the Certified Standing Orders concerned, the Labour Court passed the award that the inflicted penalty was disproportionate to the gravity of proven misconduct.

13. The Labour Court said, held and ordered as follows:-

Here the Disciplinary Authority has imposed the graver punishment which is disproportionate to the action of the delinquent. Therefore, I am of the view that the Disciplinary Authority was not right in imposing said punishment. Considering the circumstances, I am of the view that the 1st party workman must be reinstated in her service and her period of unemployment should be treated as spent on duty. She will be allowed to count for leave and increment provided the workman furnishes a certificate to the effect that she has not been employed anywhere during the said period of unemployment. 2nd party is at liberty to impose penalties as incorporated in rule 30(i)(ii)(iii)(iv) & (vi) after observing legal formalities.

14. Feeling aggrieved by the award of the Labour Court that interfered with the penalty of compulsory retirement from service on the grounds that the inflicted penalty was disproportionate to the gravity of proven misconduct, and directed the Disciplinary Authority to inflict the penalties specified in the award, the petitioner filed the WP under art. 226.

15. The Judge of this Court disposing of the WP by the order under appeal first said as follows:-

In the opinion of this Court, when an adjudicatory authority comes to a conclusion that the punishment is disproportionate, then the matter should be left to the authority to impose any other or lesser punishment but the hands of the said authority should not be confined by saying that it must pass an order only in accordance with a particular Standing Order. In other words the employer cannot be compelled to impose any other punishment chosen by the adjudicator. On the contrary, the authority should be given liberty to inflict any other or lesser punishment, but in accordance with law.

16. Holding that the Labour Court was not competent to direct the employer to inflict the specified penalties, the Judge finally ordered as follows:-

This Court, therefore, is of the view that the impugned order should be modified by directing that the disciplinary authority should first reinstate the respondent in service and then the question as to whether her period of absence should be spent on duty or not or whether she should be imposed any other lesser penalty or any of the penalties as prescribed under the rule 30(i),(ii),(iii),(iv), and (vi), should be left entirely with the authority to decide independently, but in accordance with law.

17. The principal question involved in the MAT is whether the Labour Court and then the Judge of this Court possessed the power to interfere with the penalty inflicted on the respondent by her Disciplinary Authority.

18. Mr. Mandal appearing for the Deputy Conservator of Forests, the appellant, has submitted that on the facts of the case the Labour Court and the Judge of this Court ought not to have interfered with the penalty, especially when the respondent having only around a ten-month service left was to get all benefits according to law even after the penalty of compulsory retirement.

19. Mr. Kumar appearing for the respondent has considered the decision of the Supreme Court in South Indian Cashew Factories Workers" [The General Secretary, South Indian Cashew Factories Workers" Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others,](#)

20. While finding nothing to say against what has been said in the decision, Mr. Kumar, previously taking adjournment for ascertaining under what power the Labour Court could interfere with the penalty, has renewed his prayer for adjournment for ascertaining whether there is any subsequent decision of the Supreme Court on power to interfere with penalty by the forums established under the Industrial Disputes Act, 1947.

21. Mr. Kumar has, however, sought to justify the award of the Labour Court and the decision of the Judge of this Court disposing of the WP saying that the provisions of sub-s.(4) of s. 10 of the Industrial Disputes Act, 1947 conferred the requisite power on the Labour Court to interfere with the penalty inflicted on the respondent by her Disciplinary Authority.

22. We have heard Mr. Kumar and Mr. Mandal exhaustively and we think both of them have been given sufficient opportunity of presenting their respective cases. We do not think hearing should again be adjourned for enabling Mr. Kumar to ascertain whether there is any subsequent decision of the Supreme Court on power of Labour Court adjudicating an industrial dispute to interfere with penalty in such a case as this.

23. The law was clearly stated by the Supreme Court in [The General Secretary, South Indian Cashew Factories Workers" Union Vs. The Managing Director, Kerala State](#)

Cashew Development Corporation Ltd. and Others, In view of the decision and the provisions of s. 11A of the Industrial Disputes Act, 1947 we have absolutely no doubt that the provisions of s. 11A, applicable only to discharge or dismissal, were not applicable to the case.

24. It is evident from the decision of the Supreme Court in South Indian Cashew Factories Workers" Union that a forum, such as the Labour Court, established under the Industrial Disputes Act, 1947 can interfere with the penalty inflicted by an employer, even when the inflicted penalty is not discharge or dismissal, only if the allegation is that the decision to punish was taken malafide, or that it amounted to a victimization or unfair labour practice.

25. The Labour Court did not say anywhere in its award that the respondent alleged that the penalty of compulsory retirement from service had been inflicted on her malafide, or that the decisions of the Disciplinary Authority to inflict the penalty and of the Appellate Authority who affirmed the decision of the Disciplinary Authority amounted to a victimization or unfair labour practice.

26. Hence the Labour Court holding that the allegation concerning absenteeism had been proved was not competent to interfere with the inflicted penalty on the grounds that, in its opinion, it was disproportionate to the gravity of proven misconduct. The Judge of this Court upholding the interference of the Labour Court committed the same jurisdictional error that had been committed by the Labour Court.

27. In our opinion, both the award of the Labour Court and the impugned order of the Judge of this Court disposing of the WP are liable to be set aside. It is to be noted that there is absolutely no substance in the submission that the provisions of sub-s.(4) of s. 10 of the Industrial Disputes Act, 1947 empowered the Labour Court to interfere with the penalty. The provisions have no relevance to the issue that has arisen in the case. For these reasons, we allow the MAT and set aside the award of the Labour Court and the order of the Judge of this Court under appeal in this MAT. In view of the final disposal of the MAT, the CAN losing significance shall be deemed to be disposed of. No costs. Certified xerox.

Harish Tandon, J.

I agree.