Madhya Pradesh Electricity Board vs Jagdish Chandra Sharma on 4 March, 2005

Equivalent citations: 2005 (3) JT 102, 2005 (4) SRJ 205, AIR 2005 SUPREME COURT 1924, 2005 (3) SCC 401, 2005 AIR SCW 1352, (2005) 2 KHCACJ 253 (SC), (2005) 31 ALLINDCAS 722 (SC), 2005 (31) ALLINDCAS 722, 2005 (2) ALL CJ 1131, 2005 (2) SERVLJ 325 SC, 2005 (1) LABLN 67, 2005 (3) SCALE 1, (2005) 3 JT 102 (SC), 2005 (2) KHCACJ 253, 2005 LAB LR 420, 2005 ALL CJ 2 1131, 2005 (3) SLT 15, 2005 SCC (L&S) 417, (2005) 65 CORLA 101, (2005) 2 SUPREME 497, (2005) 3 SCALE 1, (2005) 105 FACLR 155, (2005) 2 JAB LJ 369, (2005) 2 KER LT 147, (2005) 1 CURLR 1074, (2005) 2 LABLJ 156, (2005) 2 SCT 398, (2005) 2 SCJ 567, (2005) 3 SERVLR 304

Author: P.K. Balasubramanyan

Bench: Tarun Chatterjee, P.K.Balasubramanyan

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           CASE NO.:
Appeal (civil)  1339-1340 of 2003

PETITIONER:
Madhya Pradesh Electricity Board

RESPONDENT:
Jagdish Chandra Sharma

DATE OF JUDGMENT: 04/03/2005

BENCH:
N.SANTOSH HEGE,TARUN CHATTERJEE & P.K.BALASUBRAMANYAN

JUDGMENT:
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J U D G M E N T P.K. BALASUBRAMANYAN, J.

1. The appeal C.A. No. 1339 of 2003 is by the employer. C.A. No. 1340 of 2003 is by the employee. The employee was working as a muster roll labourer in the employer-Organization. On 19.01.1984, while in employment, he allegedly physically assaulted a superior officer A.K. Singh, Sub-Engineer. He hit him with a tension screw on his back and on his nose. The blow on the nose allegedly resulted in fracture of the nose and severe bleeding. According to the employer, consequent on the incident, the employee remained unauthorizedly absent for about three weeks. A show cause notice along with a memo of charges based on his assault on the superior officer and his unauthorized absence from duty, was served on him. He was charged with violating the service rules of the employer-organization. Pursuant to the objections filed by the employee, an enquiry officer was

appointed to hold a domestic enquiry. A proper enquiry was held. The Enquiry Officer found the charges proved and submitted a report on that basis. On 14.9.1984, based on the findings, the services of the employee were terminated with effect from 15.9.1984.

2. At the instance of the employee, a reference was made to the Labour Court. The Labour Court did not disagree with the finding at the enquiry either on the inflicting of injuries on the superior officer or on the unauthorized absence and the consequent violations of the service rules. The Labour Court took the view that the punishment of termination inflicted on the employee was punitive in nature. The employee had been kept out of service till the date of the decision by that Court and that was enough punishment in the circumstances. Therefore, exercising its powers under Section 107 A of the Madhya Pradesh Industrial Relations Act, 1962, which correspondents to Section 11A of the Industrial Disputes Act, the Labour Court set aside the punishment of termination and ordered reinstatement of the employee but without back wages. The employer filed an appeal before the Industrial Court challenging the interference with the punishment. The employee filed an appeal challenging the denial of back wages. In the appeal filed by the employer, the Industrial Court took the view that the Labour Court acted illegally and perversely in interfering with the punishment awarded on the findings at the enquiry accepted by the Labour Court. Therefore, the Appellate Authority, the Industrial Court, set aside the interference by the Labour Court with the punishment awarded and held that the termination of service as a punishment was justified in the circumstances. Thus, the order of termination issued by the employer was upheld. As a consequence, the appeal filed by the employee claiming back wages was dismissed.

3. Feeling aggrieved by the decision of the Industrial Court, the employee filed W.P. No. 460 of 1999 in the High Court of Madhya Pradesh invoking Articles 226 and 227 of the Constitution of India. The High Court held that the charges against the employee stood proved and the finding in that behalf by the Labour Court had not been challenged by the employee in the appeal filed by him before the Industrial Court, since his appeal challenged only that part of the order of the Labour Court which denied him back wages. Though, the High Court found no reason to interfere with the finding that the charges were proved, it interfered with the punishment. The reasons given were, that taking into account the entire facts and circumstances of the case, the gravity of the misconduct proved, the past behaviour and all other attendant circumstances appearing on record, the Labour Court was justified in interfering with the quantum of punishment. As an added reason, it stated that while entertaining the Writ Petition, the High Court had stayed the operation of the order of the Industrial Court, upholding the dismissal and that was also a ground for interfering with the punishment. The High Court had no difficulty in observing that the charge leveled against the employee was a major one, but since the Labour Court had decided to award a lesser punishment, the same should not have been interfered with by the Industrial Court. Thus, the High Court set aside the decision of the Industrial Court and restored the decision of the Labour Court. This meant that the employee's reinstatement was ordered but back wages were denied to him.

4. The employer and the employee have challenged this decision of the High Court in these appeals. The employer has questioned the interference with the punishment awarded and the employee, the denial of back wages to him.

5. Learned counsel for the employer submitted that the High Court and the Labour Court have totally misunderstood the nature of their jurisdiction under Section 107A of the Act. Learned counsel submitted that the charge proved against the employee was a serious one affecting the discipline in the entire organization. Even otherwise, inflicting of a grave injury on a superior officer while at work, could not be countenanced by any organization and this coupled with the unauthorized absence by the employee, clearly justified the order of termination. Learned Counsel relied on the decisions of this Court rendered on Section 11A of the Industrial Disputes Act to contend that the interference with the punishment under the circumstances was clearly unjustified and the decision of the High Court calls for interference. He also pointed out that the fact that an interim stay was granted while admitting the Writ Petition filed by the employer, was not at all a ground to interfere with the punishment of termination. Learned counsel for the employee submitted that the Labour Court had taken note of the circumstances as a whole to come to the conclusion that the punishment imposed was punitive in nature and called for interference in exercise of its jurisdiction under Section 107A of the Act and that there was no reason to interfere with the award of such punishment upheld by the High Court. Learned counsel also relied on some of the decisions of this Court in support of his contention. He also made an attempt to argue that the charge against the employee had not been proved though the employee had not filed an appeal against that part of the decision of the Labour Court in the Industrial Court and had confined himself to challenging the refusal to award back wages.

6. It is clear from the findings recorded and the materials available before us, that the charge against the employee of hitting a superior officer with an implement and causing him injury stood proved, as also his absence from duty without intimation. In fact, the Labour Court has found nothing wrong with the domestic enquiry wherein the charges were found to have been proved. The Labour Court also proceeded on the basis that the charges were proved. The Industrial Court in appeal accepted the finding that the charges against the employee were proved. The High Court also held that the charges against the employee stood proved on the facts of this case. The High Court also took note of the fact that the employee did not even challenge this part of the finding of the Labour Court in the appeal, he filed before the Industrial Court. Thus, it is clear that there is no reason for this Court to interfere with the finding that the charges against the employee stood proved, even assuming that the employee, the appellant in Civil Appeal No. 1340 of 2003, is permitted to raise the question regarding the proving of the charges against him. We were taken through the relevant materials. The materials clearly disclose that the charges were proved. We have, therefore, only to ask ourselves whether in the face of the charges proved, it was proper for the Labour Court or for the High Court to interfere with the punishment imposed by the employer.

7. On a comparison, it is seen that Section 107A of the Act is almost a reproduction of Section 11A of the Industrial Disputes Act. Learned counsel also agreed that its scope was the same as that of Section 11A of the Industrial Disputes Act.

8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer

with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorized absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution of India only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P. State Road Transport Corpn. Vs. Subhash Chandra Sharma and others , (2000) 3 SCC 324, this Court, after referring to the scope of interference with punishment under Section 11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh and another, (2004) 8 SCC 200, this Court after referring to the decision in State of Rajasthan vs. B.K. Meena ,(1996) 6 SCC 417, also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-`-vis the establishment, interference with punishment of dismissal could not be justified. In Bharat Forge Company Ltd. vs. Uttam Manohar Nakate, 2005(1) SCALE 345, this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in Mahindra and Mahindra Ltd. v. N. B. Narawade, 2005 (2) SCALE 302. This Court summed up the position thus: "It is no doubt true that after introduction of Section 11-A 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 concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A 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 requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment." It may also be noticed that in Orissa Cement Ltd. vs. V. Adikanda Sahu (1960 (1) LLJ-518-SC) and in New Shorrock Mills vs. Maheshbhai T. Rao, (1996) 6 SCC 590, this Court held that use of abusive language against a superior, justified punishment of dismissal.

This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in Employers, Management, Muriadih Colliery M/s BCCL Ltd. v. Bihar Colliery Kamgar Union, Through Workmen (JT 2005 (2) SC 444) this Court after referring to and quoting the relevant passages from Management of Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh & Anr. [2004 (7) SCALE 608] and The Management of Tournamulla Estate Vs. Workmen, [(1973) 2 SCC 502] held :-

> "The courts below by condoning an act of physical violence have undermined the discipline in the organization, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11(A) of the Act to interfere with the punishment of dismissal."

9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the work place, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the work place in an organization like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large." Obviously this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.

10. We, therefore, allow C.A. No. 1339 of 2003 filed by the employer and setting aside the decision of the High Court, restore the decision of the Industrial Court. That means that the punishment of termination awarded to the employee will stand. The appeal C.A. No. 1340 of 2003 filed by the employee is dismissed.