

# **Anand Regional Co. Op Oil S. Union Ltd vs Shaileshkumar Harshadbhai Shah on 8 August, 2006**

**Equivalent citations: AIRONLINE 2006 SC 234**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, Dalveer Bhandari**

CASE NO.:

Appeal (civil) 3417 of 2006

PETITIONER:

Anand Regional Co. OP Oil S. Union Ltd.

RESPONDENT:

Shaileshkumar Harshadbhai Shah

DATE OF JUDGMENT: 08/08/2006

BENCH:

S.B. Sinha & Dalveer Bhandari

JUDGMENT:

**J U D G M E N T** (Arising out of SLP (C) No. 18951 of 2005) S.B. SINHA, J.

Leave granted.

The Respondent was working as an Assistant Executive in the Quality Control Department of the Appellant Cooperative Society. On an allegation that he had committed a misconduct, a disciplinary proceeding was initiated against him. The disciplinary proceeding was initiated relying on or on the basis of a letter dated 16.9.1993 of Shri Shreedharani, the then Chief Executive working in the Appellant's, addressed to the Chairman complaining about the serious misconduct committed by certain employees including the Respondent on 15.9.1993. In the departmental proceeding Shri Shreedharani and other persons were examined as witnesses. The Enquiry Officer found the Respondent guilty of the alleged misconduct on his part, holding:

(a) the respondent held a meeting in the lawns of Appellant without permission and levelled false allegations against his Senior Officer Mr. Shreedharani and behaved badly with him.

(b) The respondent alongwith his other colleagues forcibly entered into the cabin of Mr. Shreedharani who was at that point of time in serious discussions with his accountant despite his raising objections to the same.

(c) The respondent also threatened Shri Shreedharani by stating inter alia that 'if he does not leave directly then they will show him the way'.

(d) The respondent crushed paper into ball and threw towards Shri Shreedharani.

(e) The Respondent misbehaved, shouted slogans against Shri Shreedharani and also closed the AC switch of the room where Shri Shreedharani was sitting.

Punishment of dismissal from service was imposed upon him. An industrial dispute was raised culminating in a reference made by the appropriate Government to the Labour Court, Anand on 25.10.1996. Before the Labour Court, the Appellant inter alia raised a contention that in view of the nature of duties performed by the Respondent herein he does not fall within the definition of 'workman' as contained in Section 2(s) of the Industrial Disputes Act, 1947 (for short "the Act"). The Labour Court negated the said contention of the Appellant.

In regard to the quantum of punishment, the Labour Court, however, having regard to the manner in which the incident took place as also the alleged extent of participation of the Respondent therein, opined:

" Thus, looking to the facts as aforesaid, even if the concerned workman has committed some offence, even then the punishment imposed on the concerned workman on the basis of the findings recorded by the Inquiry Officer is excessive/exorbitant. If the offence committed was the first offence of the concerned workman, the concerned workman ought to have been inflicted lighter (minor) punishment. The concerned workman could have been inflicted punishment of non-

payment of wages. If the nature of offence is grave, he could have been inflicted punishment of stoppage of two increments with future effect (on permanent basis). However, in the present case, the concerned workman has been imposed punishment which is disproportionate to the nature of offence as he has been suspended from service/ employment with effect from 17.09.1993. Thus, the punishment imposed on the concerned workman of suspending him from employment, is excessive/exorbitant."

He was directed to be reinstated with 25% backwages.

A writ petition was filed thereagainst by the Appellant and a learned Single Judge of the High Court in his judgment opined that the Labour Court having found that the workman was not involved in the incident, it did not commit any illegality in passing the award in question and, thus, no interference therewith was called for.

An intra-court appeal taken by the Appellant was also dismissed holding:

" In our considered opinion, when an allegation is made against the Inquiry Officer that the findings recorded by him are perverse, then the Id. Labour Court is obliged to

reconsider the entire evidence and re-record the findings not as an appellate Court but as a Court having distinct and separate jurisdiction taking into consideration that whether the findings can validly survive as judicial finding or an administrative finding based upon due appreciation of the evidence. It is also true that the principles of Evidence Act would not apply to the inquiry proceedings but the basic principles of appreciation cannot be sacrificed especially in a case where the findings are lopsided, ex-parte and without taking into consideration the say of the other side. In the present case, we are unable to hold that the ld. Labour Court committed any wrong in re- recording the finding. Under these circumstances, Letters Patent Appeal No. 117 of 2005 arising out of Special Civil Application No. 8971 of 2003 is dismissed."

Mr. L. Nageshwara Rao, learned senior counsel appearing on behalf of the Appellant took us through the records of the case and submitted that having regard to his own admission in the departmental proceedings that the Respondent was not only the Head of the Department but also had been supervising the works of nine assistants, the Tribunal committed an error in opining that he was a workman. Strong reliance in this behalf has been placed on Heavy Engineering Corporation Ltd v. Presiding Officer, Labour Court and Others [(1996) 11 SCC 236].

It was contended that in any view of the matter, the Labour Court committed a manifest error in exceeding its jurisdiction under Section 11-A of the Act as having regard to the facts and circumstances of this case it could not have interfered with the quantum of punishment.

Mr. Ramesh P. Bhatt, learned senior counsel appearing on behalf of the Respondent, on the other hand, contended that the jurisdiction of the Labour Court in terms of the Act being plenary in nature, it could interfere with the quantum of punishment awarded against the Respondent having regard to the fact that:

- (i) he had worked for 18 years;
- (ii) his presence was not proved even by the Disciplinary Authority;
- (iii) except naming the Respondent as one of the seven persons entering into his Chamber, Shri Shreedharani in his letter dated 16.9.1993 did not attribute any specific overt act against him.

It was further contended that the finding of the Labour Court that the Respondent is a workman being a finding of fact, this Court should not interfere therewith.

In the disciplinary proceeding while asserting that he did not take part, the Respondent in his evidence stated that he was the Head of the Department and there was no officer superior to him except the Managing Director. To a query made, whether the employees named by him were under his control; he, however, stated that as a senior he gives guidance. He, however, did not state that he was authorized to initiate any departmental proceedings against his subordinates.

Section 2(s) of the Industrial Disputes Act defines 'workman' as under:

""workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950). or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The ingredients of the definition of 'workman' must be considered having regard to the following factors:

(i) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.

(ii) There must exist a relationship of employer and employee.

(iii) The persons inter alia excluded are those who are employed mainly in a managerial or administrative capacity.

For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a

small one and relating to quality control would not answer the test.

The precise question came up for consideration in *Ananda Bazar Patrika (P) Ltd. v. Workmen* [(1970) 3 SCC 248] wherein it was held:

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity "

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. *Ananda Bazar Patrika* (supra) was followed by the court in a large number of cases.

The ratio in *Heavy Engineering Corporation Ltd. (supra)* to which our attention was drawn by Mr. Nagewhwara Rao must be held to be confined to the fact of the said case. In that case the Respondent No. 2 was not only supervising the work of the sweeper, etc., he had also been counter-signing on the casual leave register. The ingredients of a workman as deliberated upon in *Ananda Bazar Patrika* (supra) had not been taken into consideration therein. The ratio of the said decision, therefore, cannot be said to be attracted in the present case.

The First Respondent, however, was working as Assistant Executive in the Quality Control Department. Allegations against him made by Shri Shreedharani are serious in nature. The allegations were proved against him in the departmental proceedings.

The Enquiry Officer found:

"That on 15.9.1993, Shri Shaileshbhai Shah, in collusion with his co-employees Shri Rameshbhai Gokalbhai Patel, Rajendrakumar N. Shah, Rajendrasingh, Rashmibhai M. Patel, Manubhai B. Patel, Gulam Haider A. Pathan, held meeting at 11.00 A.M. in the garden which is situated just adjacent to the office building. In the said meeting, staff members were called. No permission was obtained from the management for convening the said meeting.

In the said meeting Shri Shaileshbhai Shah made allegations against the Chief Executive of the Institution Shri Shreedharani and stated that "Shreedharani does

not know anything in oil business. By making non-technical persons as Chief Executive, reputation of the Institution has been spoiled/ tarnished. He is issuing every day now orders. He is not doing the work which he is required to do. He is not bringing any business. If he leaves, then Institution will prosper/ progress and so he should leave at the earliest opportunity. We will not take rest without obtaining his resignation."

On the date of incident, at about 12.00 noon, Shri Shaileshbhai Shah alongwith his co-employees/ co-workers Shri Rameshbhai Patel, Rajendrakumar Shah, Rashmibhai, Manubhai, Pathan all of them rushed into the cabin of Shreedharani when discussion on some important aspects was going on between Shreedharani and Shri R.N. Shah, Account Consultant of the Institution and so Shreedharani objected to their entry in the manner in the cabin by all of them and so at that time, Shri Shaileshkumar Shah told Shreedharani that "you are a bogus Chief Executive. After your joining the Institution has progressed towards bottom. If you leave, then, only the Institution will prosper/ progress. You have thrown the Institution into loss. From where such non-sense people arise. If you do not leave straight way, we will show you the way (to leave). You are enjoying cooling by sitting here and so you are showing power." By telling so, Shri Shaileshbhai Shah switched off the switch of A.C. machine and by preparing small ball from piece of papers, he threw it at Shreedharani. After said incident, by raising fists and by shouting slogans "Shreedharani Hai Hai ", he took the staff with him outside the cabin.

Thus, without obtaining permission from the management, meeting was held in the lawn on 15.9.1993. That by making allegations against and behaving in an impolite / rude manner with his superior officer i.e. Chief Officer Shri Shreedharani he has committed misconduct.

Thus, all the misconducts enumerated in the show cause notice dated 16.10.1993, issued to Shri Shaileshbhai Shah, have been established and proved beyond doubt."

The said findings inter alia were based not only on the basis of the statement of Shri Shreedharani but also on the basis of the statements of Shri Ramanlal Nathjidas Shah, Shri Nirbhaykumar Rana, Shri Babubhai Mangalbhai Patel besides other evidences.

The learned Presiding Officer, Labour Court in his award did not assign any reason as to how the findings of the Enquiry Officer were perverse. There may or may not be any specific allegation. The question which arose for consideration before the Labour Court was as to whether an officer having enormous responsibilities could have behaved in such a manner. The Labour Court did not advert to the said question.

The learned Single Judge of the High Court also without any material on record opined that the Respondent workman was not involved in the incident. The Division Bench of the High Court did not consider these aspects of the matter at all.

The Labour Court although has jurisdiction to consider the question in regard to the quantum of punishment but it had a limited role to play.

It is now well-settled that the industrial courts do not interfere with the quantum of punishment unless there exists sufficient reasons therefor. [See North Eastern Karnataka R.T. Corpn. V. Ashappa, 2006 (6) SCALE 89 State of U.P. v. Sheo Shanker Lal Srivastava and Others, (2006) 3 SCC 276, A. Sudhakar v. Post Master General, Hyderabad & Anr., JT. 2006 (4) SC 68, Mahindra and Mahindra Ltd. v. N.B. Narawade, (2005) 3 SCC 135, M.P. Electricity Board v. Jagdish Chandra Sharma, (2005) 3 SCC 401, Hombe Gowda Educational Trust and Another v. State of Karnataka and Others, (2006) 1 SCC 430, and Chairman & M.D., Bharat Pet. Corpn. Ltd. & Ors. v. T.K. Raju, 2006 (2) SCALE 553].

A wrong test was applied herein by the Labour Court in observing "If the nature of the offence is grave he could have been inflicted punishment of stoppage of the increments". On what premise the said observations were made is not known.

There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

The First Respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the First Respondent has succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the First Respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

The impugned judgment is modified to the aforementioned extent. This appeal is allowed in part and to the extent mentioned hereinbefore. There shall be no order as to costs.