Mahindra And Mahindra Ltd vs N.B. Narawade on 22 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1993, 2005 AIR SCW 1115, 2005 LAB. I. C. 1333, 2005 AIR - JHAR. H. C. R. 1032, (2005) 1 CLR 468 (SC), (2005) 5 ALL WC 3905, (2005) 2 JCR 5 (SC), 2006 (1) SERVLJ 204 SC, 2005 (2) SLT 580, (2006) 1 SERVLJ 204, 2005 (2) UJ (SC) 792, (2005) 2 JT 583 (SC), 2005 (3) SRJ 414, 2005 (1) CLR 468, (2005) 27 ALLINDCAS 14 (SC), 2005 UJ(SC) 2 792, 2005 (2) SCALE 302, 2005 (3) SCC 134, 2005 LAB LR 360, 2005 SCC (L&S) 361, (2005) 2 SERVLR 765, (2005) 65 CORLA 93, (2005) 2 SUPREME 140, (2005) 2 SCALE 302, (2005) 2 CALLT 121, (2005) 104 FACLR 1218, (2005) 1 LABLJ 1129, (2005) 1 LAB LN 1074, (2005) 117 DLT 697, (2005) 2 GCD 1552 (SC), (2005) 1 CURLR 803, (2005) 2 KER LT 32, (2005) 2 SCT 236, (2005) 2 SCJ 535, 2005 (2) BOM LR 848, 2005 BOM LR 2 848

Bench: N. Santosh Hegde, Tarun Chatterjee, P.K.Balasubramanyan

CASE NO.:
Appeal (civil) 1508 of 2003

PETITIONER:
Mahindra And Mahindra Ltd.

RESPONDENT:
N.B. Narawade

DATE OF JUDGMENT: 22/02/2005

BENCH:
N. Santosh Hegde,Tarun Chatterjee & P.K.Balasubramanyan

JUDGMENT:

J U D G M E N T With CIVIL APPEAL NO. 1507 OF 2003 SANTOSH HEGDE, J.

This appeal is preferred against an order dated 23.8.2002 passed by the Division Bench of the High Court of Judicature at Bombay dismissing an appeal filed by the Management against an order of the learned Single Judge who in turn had confirmed the award of the labour court which while upholding the finding of the domestic inquiry that the respondent workman herein had committed the misconduct charged against him interfered with the quantum of punishment awarded to him still chose to alter the punishment of dismissal to one of reinstatement with continuity of service and 2/3rd back wages w.e.f. 5.3.1993.

The basic facts necessary for the disposal of this appeal are as follows:

> It is stated by the appellant Management that the respondent workman was initially appointed by it on temporary basis from May, 1978 and was made permanent on 9.8.1981 and was designated as a fitter in the Chassis Assembly Department of the appellant industry. With reference to an incident which took place on 7.111991 wherein it is alleged that the respondent workman used abusive and filthy language against his supervisor, an inquiry was instituted against the said workman and the Inquiry Officer after considering the material produced in the proceedings before him found him guilty of misconduct and recommended his dismissal and based on such recommendation service of the respondent was terminated by the disciplinary authority on 5.3.1991.
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> At the instance of the workman a reference was made for adjudication of the dispute to the labour court. The labour court by its order dated 5.9.1996 held that the charge-sheet issued to the respondent-workman was vague. Hence, the Management issued a fresh charge- sheet and initiated a fresh inquiry in which both the parties led evidence and the Inquiry Officer on consideration of such evidence once again came to the conclusion that the alleged misconduct was proved and the said misconduct attracted a punishment of dismissal under the standing orders of the Management, accordingly proposed his dismissal which was accepted by the disciplinary authority and the respondent-workman was dismissed from the service.
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> In the second round before the labour court, the said court after considering the evidence that was brought on record, specifically came to the conclusion that from the evidence of witnesses of the company it is clear that the respondent-workman had abused his superior on 22nd November, 1991 in filthy language without any provocation. It also held that the said respondent- workman did not bring any cogent evidence on record in his favour that he did not commit any misconduct. However, in regard to punishment of dismissal imposed on the respondent-workman the labour court came to the conclusion that the same was harsh and improper hence, deserved to be set aside and substituted the said punishment by directing the respondent's reinstatement with continuity of service but with 2/3rd back wages w.e.f. 5.3.1993.

Being aggrieved by the said modification of the punishment the appellant herein preferred a writ petition before the learned Single Judge of the High Court of Bombay. The learned Single Judge in the said writ petition by a short order dismissed the same. The said order of the learned Single Judge reads as follows:

> "The labour court has exercised its jurisdiction under Section 11A of the I.D. Act. It has given its own reasons and he is right in observing that denial of 1/3 back wages for the intervening period from 5.3.93 till 13.3.2001 would be good punishment of the allegations proved before the Court. It would act as deterrent and reformative. He has learnt the cost of the abusive words used by him. He will not get 1/3 wages for the

> whole intervening period. In my opinion there is no illegality or infirmity in the exercise of the jurisdiction under Section 11-A of the Act to warrant any interference by this Court under Article 226 of the Constitution of India. There is no miscarriage of justice as the guilty workman has received proportionate punishment. There is no merits in the writ petition hence it is rejected."

As could be seen from the above order of the learned Single Judge while dismissing the writ petition the learned Single Judge held that the misconduct alleged against the workman has been proved still it was of the opinion, the modification of the punishment as done by the labour court would act as deterrent and reformative and there is no miscarriage of justice as the guilty workman has received proportionate punishment.

Against the said order of the learned Single Judge the appellant preferred writ appeal before the Division bench of the High Court. The Division Bench of the High Court considering the various judgments cited before it came to the conclusion that the power of the labour court or industrial tribunal under Section 11 A or the equivalent provisions of the said Act are not restricted and the court is vested with the jurisdiction to alter the punishment imposed on a workman by the management, if in its opinion, the court is of the view that the punishment is disproportionate with the misconduct proved against the workman. According to the High Court by the introduction of Section 11A in the Industrial Disputes Act what was once largely in the realm of the satisfaction of the employee has ceased to be so and presently the satisfaction lies with the labour court or the tribunal which finally decides the matter.

While on the merit of the charges framed against the respondent and the findings given by the courts below in regard to the misconduct committed by the workman it held: "it is true that the respondent-workman has been found guilty of the misconduct of using foul, intemperate and abusive language, but this would not in our opinion, be sufficient to warrant the punishment of dismissal." However, in the later part of the judgment it held: " since the misconduct has been proved and in view of the nature of the past service record, we are of the opinion that depriving the workman of 60% of his back wages would be a punishment commensurate with his past record and the misconduct proved against him. Dismissal from service will be too harsh considering the totality of service, gravity of misconduct and 15 years of service put in by him."

On the above basis the Division Bench also dismissed the appeal of the Management. Hence, Management is before us in this appeal.

Mr. Dushyant A. Dave, learned Senior counsel appearing for the appellant-Management submitted that the courts below have totally misconstrued the scope of Section 11-A of the I.D. Act and it is because of this misconception as to the scope of the Act, the courts below have wrongly come to the conclusion that irrespective of the gravity of misconduct the labour court had a wide discretion in altering or interfering with the punishment awarded by the disciplinary authority. On facts he submitted that this workman had been charge sheeted several times earlier and on every such case of misconduct, Management took a lenient view and imposed minor punishments. He pointed out from the records that in one incident that took place on 6th September, 1988 this workman had

assaulted his co- worker by name Shri G.I. Puranik with a galvanized pipe weighing about 2 kg. causing grievous injury. Even in such a situation, the respondent was only punished with suspension of 4 days. According to the learned counsel the incident of 22.11.1991 was unprovoked incident when his supervisor asked him to do a particular job which was entrusted to him, he allegedly told the supervisor to call the Engineer-in-charge so that he could talk to him rather than the supervisor and when the Engineer came and requested him to carry on with the work he abused the supervisor in a very filthy language in the presence of his subordinates and later on when the Engineer went back to his cabin he followed him to the cabin and again abused him in the presence of a member of the Labour Union in similar language and even threatened him which act of the respondent-workman, according to the learned counsel, is subversive of discipline and good behaviour within the premises of the company and would undermine the discipline in the industry.

The learned counsel further submitted that the language used against the superior officer are such that, that by itself should have been sufficient for the labour court to accept the punishment awarded by the Management.

The learned counsel then pointed out that the labour court under a misconception in regard to its jurisdiction under Section 11-A of the Act without properly considering the decision of this Court in the case of U.P. State Road Transport Corpn. Vs. Subhash Chandra Sharma & Ors. [(2000) 3 SCC 324] which according to the learned counsel clearly laid down the parameters within which the labour court or any other court could operate while considering the question of proportionality of punishment erroneously proceeded to pass the impuged order. He placed special emphasis on the following paragraph of the above judgment of this Court:

> "Whether it is open to the Industrial Tribunal or the labour court or the High Court to interfere with the quantum of punishment is, no longer, res integra, as the question as the question has been answered by this Court several times it its various decisions in B.C. Chaturvedi Vs. Union of India [1995(6) SCC 749] a three-Judge Bench of this Court held that that Section 11-A of the Industrial Disputes Act, 1947 confers power on the Industrial Tribunal/Labour Court to apply its mind on the question of proportion of punishment or penalty . that this power is also available to the High Court under Article 226 of the Constitution, though it was qualified with a limitation that while seized as a writ court, interference is permissible only when the punishment/penalty is shockingly disproportionate."

Relying upon the ratio laid down by this Court in the said case B.C. Chaturvedi Vs. Union of India (supra), the learned counsel submitted that unless courts below come to a definite conclusion that the punishment awarded by the Management is shockingly disproportionate to the misconduct as proved, it is not open to the court to substitute such punishment merely because some power to alter the punishment is vested in it.

On this point the learned counsel also relied on another judgment of this Court in the case of Kailash Nath Gupta Vs. Enquiry Officer, (R.K.Rai) Allahabd Bank & Ors. [(2003) 9 SCC 480], wherein this Court went one step further than in the earlier case of U.P. State Road Transport Corpn.(supra) and

held:

"In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment, is extremely limited." (emphasis supplied).

From the above he contended that view taken by the courts below in this case that the power of the labour court under Section 11 A is very wide and unlimited is wholly erroneous.

On facts, the learned counsel pointed out from the judgment of the labour court that it had come to a definite conclusion that the misconduct of the respondent- workman was committed without provocation and as a matter of fact the workman did not even have an excuse for the same, and hence there was no basis for the courts below to reduce the punishment. From the judgment of the learned Single Judge the learned counsel pointed out that he also had agreed with the finding of the labour court as to the gravity of the misconduct. Still without considering the condition precedent for interfering with the punishment by merely using words like miscarriage of justice and proportionate punishment, dismissed the petition.

From the judgment of the Division Bench the learned counsel pointed out that the Bench was totally carried away by a misconception of law that the power of the labour court under Section 11-A is unlimited hence, upheld the order of the labour court in reducing the punishment. He submitted that the Division Bench fell in error in distinguishing the various judgments cited before it without any legal basis. For example, he pointed out that the decision of this Court in the case of Christian Medical College Hospital Employees Union and Anr. Vs. Christian Medical College Vellore Association and Ors. [(1987) 4 SCC 691], the Division Bench observed that the said judgment is applicable only to minority educational institutions which according to the learned counsel is wholly erroneous. Similarly with regard to the decision of this Court in U.P. State Road Transport Corpn.(supra) the learned counsel pointed out that the Division Bench distinguished the same on facts without even referring to the principle of law laid down in the said case.

The learned counsel for the appellant relied on the judgment of this Court in the case of Orissa Cement, Ltd. Vs. V.Adikanda Sahu [1960 (1) LLJ ° 518-SC], wherein a three Judge Bench of this Court noticing the filthy language used by the workman therein held:

"Besides, the words used by the respondent in abusing the labour officer not once but twice without any provocation are absolutely indecent and vulgar and in such case, he could not keep in its employment a person who was capable of such indecent conduct, it would be justified in dismissing him."

Relying on the said observation the learned counsel submitted that the same applied with full force to the issue involved in this case and submitted that even though there was an apology in the case of Orissa Cement Ltd. (supra), still this Court came to the conclusion that a punishment of dismissal was justified for using a filthy and abusive language against a superior officer. The learned counsel also relied another judgment of this Court in the case of New Shorrock Mills Vs. Maheshbhai T. Rao [1996 (6) SCC 590] wherein this Court again considering the case of workman abusing his superior and threatening him held :

> "The labour court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the order 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 awarded was shockingly disproportionate to the employee's conduct and his past record .."

Learned counsel appearing for the respondent, however, contended that even though all courts below in regard to the factum of misconduct have held against the workman/respondent still rightly came to the conclusion that the punishment of dismissal was too harsh a punishment and was totally disproportionate to the misconduct proved. In support of this contention the learned counsel pointed out from the award of the labour court that it had taken into consideration that the respondent-workman had worked with the appellant company for a large of number years and held that knowing the consequences of dismissal he would have by now learnt a lesson not to misbehave in future, hence, he must be given an opportunity to redeem himself. He submitted that the Labour Court with the said view in mind had reduced the punishment. He also relied on the observation of the learned Single Judge that a punishment of dismissal for the proved misconduct on the facts of this case would lead to miscarriage of justice and by reducing the said punishment workman has now received a proportionate punishment. From the judgment of the Division Bench the learned counsel pointed out that it has held that even intemperate and abusive language would not be sufficient to warrant the punishment of dismissal. Relying on these observations of the courts below the learned counsel for the respondent-workman submitted that since the courts below have taken a lenient view of the matter which is permissible under Section 11- A of the Act we should not interfere with the orders of the courts below in altering the punishment. 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. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the

punishment. As noticed herein above atleast in two of the cases cited before us, i.e. Orissa Cement Ltd. (supra) and New Shorrock Mills (supra), 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 civilized 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 herein above.

Learned counsel for the respondent contended that there was sufficient provocation for the use of such words because the workman was asked to do certain work which was impossible to be done by any person without causing harm to himself, but this is not the defence that was taken in the enquiry or before the Labour Court and is being argued for the first time before this Court. On the contrary, the sole defence of the workman was that he did not remember abusing the engineer concerned. We may also note here that the learned counsel for the appellant has pointed out from the records that the workman was charge-sheeted more than once on earlier occasions and inspite of the gravity of the offence he was dealt with leniently. He pointed out that in one such earlier instance this workman had assaulted his co-worker with a galvanized pipe causing grievous injury, even then he was punished with 4 days suspension only which according to the learned counsel clearly shows that the Management- appellant is not being vindictive. Taking into consideration the over all fact situation and the law laid down by this court and inspite of the fact that three courts have concurrently come to the conclusion that the punishment of dismissal would be disproportionate to the misconduct, we will have to disagree with those findings.

For the reasons stated above, this appeal succeeds. The order of the Division Bench, Single Judge of the High Court and that of the Labour Court to the extent that it sets aside the order of dismissal and directs the reinstatement, is quashed. We uphold the order of the disciplinary authority dismissing the respondent- workman from service.

The appeal is allowed.

CIVIL APPEAL NO. 1507 OF 2003 This is an appeal filed by the workman who is the respondent in the above civil appeal questioning the quantum of reduction in his back wages. In view of the fact that we have allowed the appeal of the Management by our judgment in Civil appeal No. 1508 of 2003 this appeal becomes infructuous and the same is dismissed.