

GAHC010004002012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1368/2012

THE WORKMAN MD. SAFFAUDDIN ALI
OF KOOMTAI TEA ESTATE, REP. BY THE SECY., ASSAM CHAH
KARMACHARI SANGHA, GOLAGHAT CIRCLE, PIN- 785621, DIST.-
GOLAGHAT, ASSAM.

VERSUS

THE MANAGEMENT OF KOOMTAI TEA ESTATE and ANR.
P.O.- BADLIPAR, PIN- 785611, DIST.- GOLAGHAT, ASSAM.

2:THE PRESIDING OFFICER
LABOUR COURT
DIBRUGARH- 786001
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner	: Ms. A. Bhattacharya, Advocate
Advocate for respondents	: Shri P. Das, Advocate.

Date of hearing	:	04.01.2024
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Date of judgment	:	04.01.2024
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The legality and validity of an Award dated 31.12.2010 passed by the learned Labour Court of Assam at Dibrugarh in Reference Case No. 01/2007 is the subject matter of this writ petition. By the impugned Award, the dismissal order dated 07.01.2022 in respect of the workman concerned has been upheld.

2. Before going to the issue which has arisen for determination, it would be convenient if the facts of the case are narrated in brief.

3. The petitioner – Workman Md. Saffauddin Ali was working as an Office Clerk in the Koomtai Tea Estate, i.e., the respondent no. 1. On 19.07.2001, a Charge Memo was issued to the said respondent which pertains to non deposit of food-staff (ration money) to the labourers. The details of the period and the amount involved have also been given in the said Charge Memo. It has also been reflected that there have been earlier instances of similar nature and accordingly the workman was directed to submit his response. By the said order, the workman was also placed under suspension.

4. The aforesaid Charge Memo was replied to by the workman on 23.07.2001. In the said reply, the workman has admitted his guilt of not depositing the amount. He has however prayed for condoning his default and has cited certain personal reasons for utilizing the money for such purpose.

5. The matter was enquired into and vide the order dated 07.01.2002, the workman was dismissed from service. The dismissal order clearly reflects that there was a domestic enquiry and there has been earlier instance which was also documented in form of communication dated 21.02.2000.

6. The aforesaid order of dismissal was raised as a dispute on behalf of the workman by the Sangha by way of reference before the learned Labour Court of Assam at Dibrugarh and accordingly the aforesaid Reference Case No. 01/2007 was registered.

7. Both the Sangha and the Management had filed written statements. The Management had also filed additional written statement. The learned Labour Court after initiation of the proceedings had recorded the evidence of the workman and two numbers of Management witnesses, namely, one Bodhen Ch. Bora and one Romendra Nath Baruah. After discussion of the materials, the learned Labour Court had passed the Award dated 31.12.2010 whereby the order of dismissal has been upheld. As indicated above, it is the legality and correctness of the order which have been questioned by way of this writ petition.

8. I have heard Ms. A. Bhattacharya, learned counsel for the petitioner whereas the Management is represented by Shri P. Das, learned counsel. The LCR which have been transmitted to this Court have also been carefully perused.

9. Ms. Bhattacharya, the learned counsel has made the following submissions:

- (i) The charge is not of misappropriation and the expression of misappropriation has been incorrectly used.
- (ii) The amount in question has been returned back

and therefore there cannot arise any case of misappropriation at all.

(iii) The penalty of dismissal is not only harsh but disproportionate *vis-a-vis* the nature of the charge against the petitioner.

10. The learned counsel for the petitioner has submitted that the amount in question having been returned, there was no occasion for taking a decision of imposing the severe penalty of dismissal and this aspect of the matter was not taken into consideration by the learned Labour Court. The provisions of Section 11 A of the Industrial Tribunal Act, 1947 (herein after Act) has also been referred to which gives jurisdictional power to the Labour Court / Industrial Tribunal to make necessary change / amendments in the penalty in an appropriate case.

11. The learned counsel has however clarified that long after the order of dismissal, the petitioner has now been engaged as a TET Teacher and therefore would not pray for any reinstatement. She however submits that if the dismissal order is interfered with, appropriate orders for payment of back wages may be passed in accordance with law.

12. In support of her submission, Ms. Bhattacharya, the learned counsel relies upon the following case laws.

(i) *The Workmen of M/S Firestone Tyre and*

Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Ors. reported in ***(1973) 1 SCC 813.***

(ii) Collector Singh vs. L.M.L. Limited Kanpur
reported in ***(2015) 2 SCC 410***

13. In the landmark case of ***M/S Firestone Tyre*** (supra), the Hon'ble Supreme Court has held as follows:

“32.

(1)...

(2)...

...

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10)....

34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does indicate that a change in the law, as laid down by this Court has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has

been effected giving power to the Tribunal only to alter the punishment, after having held that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has been re-written."

14. In the case of **Collector Singh** (supra), the Hon'ble Supreme Court examined the scope of powers under Section 11-A of the Act.

15. Ms. Bhattacharya, the learned counsel accordingly submits that appropriate relief be granted to the petitioner by setting aside the Award of the learned Labour Court and also interfering with the order of penalty of dismissal.

16. *Per contra*, Shri P. Das, the learned counsel for the respondent no. 1 – Management has submitted that the charges against the petitioner are serious and grave. He submits that the records of the proceedings would clearly show that the petitioner has admitted his guilt. It is further submitted that offences of similar nature were earlier committed by the petitioner which were condoned.

17. Shri Das, the learned counsel further submits that the domestic enquiry was itself conducted by following the principles of natural justice and the fairness of the domestic enquiry itself was upheld by the learned Labour Court. He also submits that the charge was duly proved in the learned Labour Court by two numbers of Management witnesses and the fairness of the procedure adopted by the learned Labour Court has not been questioned in this writ petition. He accordingly submits that no case for interference is made out and accordingly the writ petition be dismissed.

18. The learned counsel for the Management has referred to the following decisions in support of his argument.

(i) *Managing Director, North-East Karnataka Road Transport Corpn. Vs. K. Murti* reported in *(2006) 12 SCC 570*;

(ii) *U.P. State Road Transport Corporation vs. Suresh Chand Sharma* reported in *(2010) 6 SCC 555*;

(iii) *U.P. State Road Transport Corporation vs. Mohan Lal Gupta & Ors.* reported in *(2000) 9 SCC 521*.

19. The aforesaid cases mainly relates to the charge of misappropriation which the Hon'ble Supreme Court, in no uncertain terms have held such misconduct to be grave in nature. In the case of ***Suresh Chand Sharma*** (supra) it has further been held that in cases of misappropriation, the penalty of dismissal is appropriate.

20. The rival contentions made by the learned counsel have been duly considered and the materials placed before this Court have been duly examined.

21. The writ petition has not raised any issues with regard to the procedure adopted either in the domestic enquiry or before the learned Labour Court. The emphasis is mainly on the proportionality of the penalty imposed *vis-a-vis* the

charges.

22. To appreciate the contentions raised on behalf of the petitioner, it would be necessary to understand the nature of the charges and the response of the workman.

23. The Charge Memo dated 19.07.2001 clearly reflects the charge of not depositing the Ration Money and the details, including the period in question have been clearly reflected in the said Charge Memo. The memo also mentions that on an earlier occasion a charge sheet was issued on 21.02.2001 on similar allegations which was leniently viewed and was closed with a warning to the petitioner. What is more intriguing is the reply of the petitioner dated 23.07.2001. In the said reply, the petitioner has clearly admitted the charges of not depositing the amount in question and has only prayed for condonation of his misconduct. The order of dismissal dated 07.01.2002 is preceded by a domestic enquiry wherein the earlier instance have also been taken into consideration with reference to the Charge Sheet dated 21.02.2001.

24. The Court has also noted that such admission was not only confined in the domestic enquiry but even in the written statement filed by the workman before the learned Labour Court, there is a clear admission of the charge. For ready reference, the averments made in paragraph 3 of the written statement dated 10.06.2008 is extracted herein below:

“3. That the workman has deposited the amount of Rs.10,000/- (Rupees Ten Thousand) only in cash immediately on receipt of the Charge Sheet

dated 19.07.2001 and subsequently deposited Rs. 6000/- (Rupees Six Thousand) only in cash after few days. And rest amount of Rs. 6000/- (Rupees Six Thousand) only has recovered from his suspension pay as prayed by the workman to recover from the pay with a prayer to excuse for such lapses. But the workman has been dismissed without considering the prayer.”

25. Even in the writ petition, there is a specific pleading in paragraph 5 to the following effect:

“3. That, accordingly the workman had deposited an amount of Rs.10,000.00 (Rupees Ten Thousand) only in cash immediately on the same day on which he received the Charge Sheet dated 19.07.2001 and subsequently deposited another amount of Rs. 6000.00 only in cash after few days and the workman prayed before the management to recover the rest amount of Rs. 6000.00 from his subsistence allowance and thus the workman deposited the entire amount that was alleged to have been misappropriated by the workman.”

26. The workman has clearly admitted that Rs. 10000/- was paid in cash immediately on receipt of the Charge Sheet dated 19.07.2001 and subsequently deposited Rs. 6000/-. He has also admitted that the balance of Rs. 6000/- has been recovered from his pay.

27. It has been contended on behalf of the petitioner that the penalty of dismissal is harsh and the charge is not of misappropriation. This Court is

however unable to accept the said submission as misappropriation is not necessary to be of permanent nature and the mere fact of depositing the amount, that too, after receipt of the Charge Sheet will not obliterate the charge of misappropriation. With regard to the proportionality of the penalty, this Court takes into account the following factor.

- (i) There is a clear admission of the misconduct by the petitioner not only at the stage of domestic enquiry but also in the written statement filed in the learned Labour Court and even in the pleadings of this writ petition.
- (ii) The fact that the misconduct was repeated has not been denied by the petitioner.
- (iii) The misconduct though would be of misappropriation cannot be confined only to that as the same is concerning ration money which is meant for the labourer of the tea estate.
- (iv) Apart from the issue of integrity of the petitioner to remain in service with the management, the hardships caused to the labourers would also be an equally important factor, if not more.

28. The cases relied upon on behalf of the petitioner are mainly on the powers and jurisdiction of a Labour Court under Section 11-A of the Act. In the instant case, this Court is of the opinion that the conclusion reached by the learned Labour Court is based on relevant factors and considerations and the Labour Court being a court on facts, this Court would be loath to interfere with the conclusion unless such conclusion is perverse or based on no evidence.

29. In the case of ***K. Murti*** (supra) relief upon by the management, the Hon'ble Supreme Court has also taken into consideration the history of previous misconduct which is also applicable in the present case.

30. A contention has been raised on behalf of the petitioners that in view of the present engagement of the petitioner, reinstatement may not be prayed for and appropriate orders be passed for back wages. This Court is however of the opinion that unless the order of dismissal which has been upheld by the learned Labour Court is interfered with, there will be no occasion to issue any subsequent directions. In any case, mere interference with an order of dismissal / removal would not automatically lead to a direction for payment of the back wages and it would all depend on the facts and circumstances of a particular case.

31. In view of the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed.

32. Let the records be send back forthwith.

JUDGE

Comparing Assistant