A MANAGEMENT OF AUROFOOD PVT. LTD.

v.

S. RAJULU

(Civil Appeal No. 4735 of 2006)

APRIL 3, 2008

B

(TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.)

Labour Laws:

Industrial Disputes Act, 1947:

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Misconduct – Workman allegedly misbehaved and used filthy language against superiors including a lady officer – Dismissed from service – Correctness of – Held: Correct – Even the High Court has found the charges proved, though trivial –There exists bitter relations between the parties – Incumbent has not been reinstated in service in terms of the orders of the High Court and not in service since 1981 – Under the circumstances, it would be inappropriate to foist a cantankerous and abrasive workman on appellant-company – Appellant directed to make payment of Rupees ten lacs as compensation to workmen in full and final settlement of the claim – Directions issued.

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Constitution of India – Article 136 – Scope of – Discussed.

Respondent was working as a Packer with the appellant-company. He was put under suspension allegedly for not discharging duties properly and also for misbehaving with the superiors. A charge-sheet was served upon him alleging the charges of misconduct, however, he continued to use foul and filthy language and threatened the senior officers of dire consequences if any adverse report was made against him. He was also served a second charge-sheet for allegedly misbehaving with a lady Officer. A domestic enquiry was conducted against him, which indicted him on both the charges. The

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management accepted the findings of the enquiry officer and took a tentative decision to impose the punishment of dismissal in terms of the Standing Orders. A show-cause notice was also served to him. The reply furnished by the delinquent was found unsatisfactory and he was dismissed from service. The Government declined to refer the dispute for adjudication. The respondent thereafter moved a representation and the matter was referred to the Labour Court. The Labour Court passed an award holding the finding of enquiry Officer justified. Aggrieved, the delinquent filed a writ petition in the High Court. Single Judge of the High Court observed that the misconduct, even if held to be proved, really amounted to the use of "unparliamentary language" and was trivial in nature and the punishment of dismissal was not justified and the punishing authority had without notice to the respondent workman, taken his antecedents into account. Single Judge of the High Court directed the reinstatement of the respondent with full back wages. An appeal filed thereagainst by the appellant was dismissed by the Division Bench of the High Court. Hence the present appeal.

Appellant-employer contended that the Single Judge having found the domestic enquiry against the workman was properly conducted and that the workman indeed was guilty of misbehaviour, there was no justification in interfering with the quantum of the punishment by the High Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India; that the High Court was wrong in its finding that the punishing authority was not justified in taking into account the antecedents of the workman respondent as he had not been given the opportunity to rebut the allegations; and that very grave charges had been levelled against the respondent which included the use of filthy language in the presence of a lady supervisor and no interference ought to have been made in the writ jurisdiction.

A Respondent-employee submitted that the enquiry conducted against him was a biased one as the observation of the enquiry officer that the evidence given by the supervisor was to be preferred vis-à-vis the evidence given by respondent workman was, on the face B of it, unacceptable as each piece of evidence had to be examined as per its merit; and that the observation clearly pointed to the fact that the respondent had not been given a fair hearing and in this view of the matter, no interference with the impugned order was called for.

C Dismissing of the appeal, the Court

HELD: 1.1 The questions of fact which have been decided by the High Court call for no interference by this Court under Article 136 of the Constitution. (Para – 5) D [1085-G-H]

1.2 The workman has been out of employment since the year 1981 and despite succeeding before the Single Bench of the High Court he has not yet been reinstated in service because of the interim order passed in this E litigation. Accordingly it was suggested that on account of the situation as existed, it would, perhaps, be appropriate that the respondent be given a compensation package rather than an order of reinstatement. (Para –5) [1086-A-B]

F 1.3 Consequent upon the bitter relations between the parties and as even the High Court has found the charges proved though 'trivial' and the fact that the respondent has not been on duty with the appellant-management since the year 1981, it would be inappropriate to foist a G cantankerous and abrasive workman on it. Accordingly, it is directed that instead of reinstatement, the respondent would be entitled to the payment of Rs.10,00,000/- as compensation as full and final settlement with respect to his entire claim. (Para – 5) [1086-D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4735 of 2006. A

From the final Judgment and Order dated 18.4.2005 of the High Court of Judicature at Madras in W.A. 491/2001

R. Sundaravaradan, R.N. Keshwani, Ramlal Roy and Sumeera Raheja for the Appellant. B

S. Gurukrishna Kumar and S.R. Setia for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. The facts leading to the filing of this appeal are as under: C

2. The respondent, who was working as a Packer with the appellant company was put under suspension vide order dated 26th April 1981. A charge-sheet dated 28th April 1981 was thereafter served upon him alleging that on 24th April 1981 he had been found wasting his time eating biscuits near the store room and on being questioned by his superior, had answered insolently and told him that he too was dishonest and that he was not afraid to face the consequences. The respondent was then taken to one Moses, a senior officer, but he continued to use foul and filthy language and threatened Moses that if he made a report against him, he would break his legs. The respondent was also served a second charge-sheet on 11th August 1981 for another misconduct on the allegation that on 10th August 1981 he had misbehaved with one Mrs. Sasireka and used filthy language against her. A domestic enquiry was thereafter held against the respondent which indicted him on both charges. The management accepted the findings of the enquiry officer and took a tentative decision to impose the punishment of dismissal under the Standing Orders. A show-cause dated 13th October 1981 (Annexure P-3) was also issued to him calling upon to show cause as to why the aforesaid punishment should not be imposed on him. The respondent furnished his reply which was found unsatisfactory and vide order dated 5th November 1981 he was dismissed from service on D E F G H

account of the gravity of misconduct and for having used abusive language, vide order appended as Annexure P-4. The respondent thereafter raised an industrial dispute. The Government declined to refer the dispute for further adjudication by its order dated 23rd August 1982. The respondent thereafter moved a representation before the Government on 1st September 1986 and the matter was referred to the Labour Court vide order dated 10th August 1987. The Labour Court rendered its award on 30th March 1993 holding that the disciplinary action initiated against the respondent was not an act of victimization, that the charges raised against the respondent stood proved and that the finding of the enquiry officer was justified (a copy of the award has been appended as Annexure P-5). The respondent thereupon filed a writ petition in the High Court. The learned Single Judge in his judgment and order dated 9th February 2001 observed that the misconduct even if held to be proved really amounted to the use of "unparliamentary language" and was trivial in nature and as the punishment of dismissal had shocked "the conscience of the Court" and as the punishing authority had without notice to the respondent workman, taken his antecedents into account, he directed the reinstatement of the respondent with full back wages (a copy of this order has been appended as Annexure P-7). An appeal filed by the appellant-management to the Division Bench was also dismissed vide order dated 18th April 2005. The present appeal has been filed as a consequence thereof.

3. While issuing notice in this matter on 19th October 2005, an ad-interim stay was also granted to the appellant. Mr. R.Sundravardhan, the learned senior counsel for the appellant has raised three basic arguments before us in the course of the hearing – (1) the learned Single Judge having found that the domestic enquiry against the workman was properly conducted and that the workman indeed was guilty of misbehaviour, there was no justification in interfering with the quantum of the punishment in the writ jurisdiction under Article 226 of the Constitution of India, (2) that the High Court was wrong in its

finding that the punishing authority was not justified in taking into account the antecedents of the workman respondent as he had not been given the opportunity to rebut these allegations, and (3) very grave charges had been leveled against the respondent which included the use of filthy language in the presence of a lady supervisor and no interference ought to have been made in the writ jurisdiction. In support of the various pleas raised by him, Mr. Sundravardhan has relied upon (2005) 3 SCC 134 **Mahindra and Mahindra Ltd. v. N.B.Narawade,** (2006) 7 SCC 212 **State Bank of India & Ors. v. Ramesh Dinkar Punde** and (1963) (S) 1 SCR 648 **State of Orissa v. Bidyabhushan Mohapatra**.

4. Mr. S.Guru Krishna Kumar, the learned counsel for the respondent has, however, supported the judgment of the High Court and has pointed out that the enquiry conducted against the respondent was a biased one as the observation of the enquiry officer that the evidence given by the supervisor was to be preferred vis-à-vis the evidence given by respondent workman was, on the face of it, unacceptable as each piece of evidence had to be examined as per its merit. He has accordingly urged that the observation clearly pointed to the fact that the respondent had not been given a fair hearing and in this view of the matter, no interference was called for.

5. We have heard the learned counsel for the parties and gone through the record. The Division Bench has held that the workman had not been given the requisite material that was required by him to prepare his defence more particular as his antecedents had been taken into account depicting him as incorrigible, though he had not been given any opportunity to rebut these charges. The High Court has also found that the allegations against the workman even if taken to be true were trivial and could not justify an order of dismissal from service. The judgments cited by the learned counsel do not adequately meet the issues raised by the High Court. The questions of fact which have been decided by the High Court call for no interference by this Court under Article 136 of the Constitution.

A We also find that the workman has been out of employment since the year 1981 and despite succeeding before the single bench of the High Court on 9th February 2001 he has not yet been reinstated in service because of the interim order passed in this litigation. We had accordingly and at the very outset, B suggested to Mr. Sundravardhan that on account of the situation as now existed, it would, perhaps, be appropriate that the respondent be given a compensation package rather than an order of reinstatement. The learned counsel stated that the management was willing to give no more than Rs.5,00,000/- C towards that package. The respondent, on the othe'r hand who was present in Court, insisted that he was not interested in the compensation and would prefer that the orders of the High Court be implemented in letter and spirit. We are of the opinion that consequent upon the bitter relations between the parties and D as even the High Court has found the charges proved though 'trivial' and the fact that the respondent has not been on duty with the appellant-management since the year 1981, it would be inappropriate to foist a cantankerous and abrasive workman on it. We accordingly dismiss the appeal but direct that instead of reinstatement the respondent would be entitled to the payment E of Rs.10,00,000/- as compensation as full and final settlement with respect to his entire claim.

6. There will be no order as to costs.

S.K.S. Appeal dismissed.

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