

U.P.S.R.T.C
v.
RAM KISHAN ARORA

MAY 09, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Labour Laws—Dismissal from service—By Disciplinary Authority—On charge of criminal breach of trust—Industrial dispute—Labour court directing reinstatement of workman with full back wages—In Writ Jurisdiction, punishment of dismissal reduced to stoppage of two increments by High Court—On appeal, held : Punishment of dismissal appropriate, in view of serious nature of misconduct—High Court not right in reducing the punishment in exercise of writ jurisdiction, without assigning any reason—Constitution of India, 1950—Article 226—Writ Jurisdiction.

Respondent was employed as a conductor with the appellant-Corporation. While the respondent was on duty on a bus, the bus was checked by an inspection team. Respondent obstructed the checking process and also misbehaved with the authorities. Charges were issued against him. The same were proved in the departmental proceedings. Appointing authority removed him from service. Departmental appeal thereagainst was also dismissed. Respondent raised industrial dispute. Labour Court directed his reinstatement with full back wages. Writ Petition by the employer was partly allowed directing his reinstatement with stoppage of two increments with cumulative effect. Back wages were denied. Hence the present appeal by the Corporation.

Allowing the appeal, the Court

HELD: 1. The punishment of removal imposed by the disciplinary authority is correct. The commission of a criminal breach of trust by a person holding a position of trust is a misconduct of serious nature. The charges levelled against the respondent having been proved, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was not at all justified in reducing the punishment and imposing the punishment of stoppage of two increments only. [Paras 11 and 6] [210-B; 208-B, C]

2. The High Court has not arrived at the conclusion that the quantum

A of punishment imposed upon the respondent was disproportionate to the gravity of his misconduct. Even in such a situation, the course which would have been ordinarily open to the High Court was to remit the matter to the employer for reconsideration of the question in regard to the quantum of punishment. The High Court without assigning any reason could not have substituted its opinion to that of the Disciplinary Authority. [Para 7] [208-C, D]

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Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shai, [2006] 6 6 SCC 548; *U.P.State Road Transport Corporation, Dehradun v. Suresh Pal*, [2006] 8 SCC 108 and *Amrit Vanaspati Co. Ltd. v. Khem Chand and Anr.*, [2006] 6 SCC 325, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2410 of 2007.

From the Final Judgment and Order dated 05.08.2005 of the High Court of Uttaranchal at Nainital in Writ Petition No. 1169 of 2001 (M/S) (Old No. 1209 of 2000.

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Pradeep Misra for the Appellant.

C.L. Sahu, Rishabh Sahu and Hema Sahu for the Respondent.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

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2. Respondent was working with the appellant - Corporation constituted under the Road Transport Corporation Act as a conductor. He was discharging his duties in the said capacity in the bus bearing registration No. UP-07B/2932 plying on Dehradun Bhukki route. The said bus was checked by an inspection team. 35 passengers were travelling in the said bus without any travelling ticket although the respondent allegedly had realised fare from them. He obstructed in the checking process by threatening and abusing the authorities. He even did not permit them to make any entry in the way bill. A report in regard to his misconduct was submitted whereupon a chargesheet was issued on 4.04.1996. One Shri T.K. Vishen, Assistant Regional Manager, Dehradun was appointed as the Enquiry Officer. The Enquiry Officer was transferred and in his place one Shri R.K. Gupta prepared the Enquiry Report. The charges of misconduct stood proved against him in the departmental proceedings. Upon issuance of a second show cause notice and upon consideration of the cause shown by him, the appointing authority came to the opinion that it will

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the interest of the Corporation to keep the respondent in service. He was, therefore, removed from service by an order dated 7.11.1997. A departmental appeal preferred by the respondent thereagainst was also dismissed. He thereafter raised an industrial dispute. A

3. The Labour Court inter alia held that the finding of guilt arrived at against the respondent in the departmental proceeding was perverse. It was further found that the Enquiry Officer Shri T.K. Vishen having been transferred, Shri R.K. Gupta could not have submitted the Enquiry Report. The Labour Court, therefore, directed reinstatement of the respondent with full back wages. A writ application questioning the correctness of the said award was filed by the appellant herein wherein a learned Single Judge of the Uttaranchal High Court held: C

“6. I am not in full agreement with the findings recorded by the learned Tribunal. The Tribunal ought not to have recorded the finding that there is no evidence of record regarding the critical behaviour against the officials. Shri Damodar Kala, the eyewitness produced by the employers, who stated on oath that at the time of checking, some wrangling between the workman and the officials were going on. The Respondent No. 3 had himself completed/forged the details on the way bill. Therefore, I find that there was some bad intention on the part of Respondent No. 3. The critical behaviour of Respondent No. 3 was also proved against the officials. D E

7. Therefore, in my opinion, in view of the facts and circumstances of the case, I find some fault in the behaviour of the Respondent No. 3. The critical behaviour of Respondent No. 3 against the officials is shocking one. Therefore, it is provided that Respondent No. 2 shall be reinstated in service with stoppage of two increments with cumulative effect. However, he shall not be entitled for any back wages. F

8. The writ petition is partly allowed. The Respondent No.2/ Workman shall be reinstated in service with stoppage of two increments with cumulative effect. However, it is made clear that he will not be entitled for any back wages.” G

4. The Appellant Corporation alone is before us in this appeal. The respondent has not filed any appeal. H

A 5. The respondent, having not questioned the finding arrived at by the High Court, as noticed hereinbefore, that he was guilty of commission of a serious misconduct, the only question which arises for consideration is as to whether it was open to the High Court to substitute the punishment awarded by the disciplinary authority.

B 6. It is now well-settled that commission of a criminal breach of trust by a person holding a position of trust is a misconduct of serious nature. The charges levelled against the respondent having been proved, in our opinion, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was not at all justified in reducing the punishment and imposing the punishment of stoppage of two increments only.

C 7. The High Court has not arrived at the conclusion that the quantum of punishment imposed upon the respondent was disproportionate to the gravity of his misconduct. Even in such a situation, the course which would have been ordinarily open to the High Court was to remit the matter to the employer for reconsideration of the question in regard to the quantum of punishment. The High Court without assigning any reason could not have substituted its opinion to that of the disciplinary authority.

D 8. In *Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shai*, [2006] 6 SCC 548, this Court opined:

E “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 exist sufficient reasons therefor.”

F 9. In *U.P. State Road Transport Corporation, Dehradun v. Suresh Pal*, [2006] 8 SCC 108, this Court stated the law, thus:

G “Normally, the courts do not substitute the punishment unless they are shockingly disproportionate and if the punishment is interfered or substituted lightly in the punishment in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of court. If such kind of misconduct is dealt with lightly and the courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of the Constitution then it will give a wrong signal in the society. All the State Road Transport Corporations in the country

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have gone in red because of the misconduct of such kind of incumbents, therefore, it is time that misconduct should be dealt with an iron hand and not leniently. Learned counsel for the appellant invited our attention to a decision of this Court in *Regional Manager, U.P. SRTC v. Hoti Lal wherein*, this Court has very categorically held that a mere statement that it is disproportionate would not suffice to substitute a lighter punishment. This Court held as under: (SCC p.606)

“The court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court are not proper.”

In view of the above observation made by this Court there remains nothing more to be added.”

10. In *Amrit Vanaspati Co. Ltd. v. Khem Chand and Anr.*, [2006] 6 SCC 325, this Court held:

“...In our opinion, the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the

A High Court has gravely erred in holding that the evidence of Respondent 1 was not considered by the Labour Court and had returned the finding that the evidence of Respondent 1 did not inspire any confidence. We are of the opinion that the High Court is not right in interfering with the well-considered order passed by the Labour Court confirming the order of dismissal....”

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11. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The award of the Labour Court is also set aside and the punishment of removal imposed by the disciplinary authority is upheld. The appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs.

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K.K.T. Appeal allowed.