

Parshuram Vs. M/S Dutt Medi Product Limited and Another

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Court : Punjab and Haryana

Decided On : Aug-13-2014

Appellant : Parshuram

Respondent : M/S Dutt Medi Product Limited and Another

Judgement :

In the High Court of Punjab and Haryana, at Chandigarh Civil Writ Petition No.16020 of 2014 Date of Decision: 13.8.2014 Parshuram ..Petitioner Versus M/s Dutt Medi Product Limited and Another ..Respondents CORAM: Hon'ble Mr.Justice G.S.Sandhawalia.

Present: Mr.Vineet Yadav, Advocate for the petitioner.

G.S.Sandhawalia (Oral) The challenge, in the present writ petition, is to the award dated 14.1.2013 (Annexure P1) whereby the Labour Court, Gurgaon has declined the reference on the ground that the termination of the services of the workman was justified and no interference is required regarding quantum of punishment awarded to the workman.

Perusal of the paper-book would go on to show that the pleaded case of the petitioner is that he joined respondent company as Electrician Foreman on 29.9.1996 and his service was terminated on 29.3.1999 when he was drawing salary of ` 4,500/- per month.

It was his case that he was an active member of the Trade Union and his service was terminated because of victimization without conducting any domestic enquiry.

An industrial dispute has been sought to be raised by issuance of a demand notice on 2.9.1999 and thereafter, the matter was referred to the Labour Court.

Bhardwaj Deepak Kumar 2014.08.19 17:03 I attest to the accuracy and integrity of this document Civil Writ Petition No.16020 of 2014 2 The plea taken by the respondent-Management was that the petitioner had started absenting from duty w.e.f.March 1999 and on 16.4.1999 & 29.4.1999, complaints were lodged against the petitioner for threatening the staff and workeRs.It is alleged that on 2.6.1999, the workman reached at the gate to defy the injunction order dated 12.4.1999 and committed acts of indiscipline in association with his Co.workers and they hurled abuses and threat to life of the staff and Co.workeRs.His services were dispensed with as no domestic enquiry was possible.

The Labour Court took into consideration the Certified Standing Orders No.37 (Ex.M-35) and noticed that as many as five FIRs had been registered against the workman, which were admitted by him.

It was also noticed that the workman was arrested by the police and he and his associates had entered into the factory premises with 40/45 persons in three Jeeps and caused damage to the property of the factory.

FIR Ex.M9 has been taken into consideration while noticing the statement of G.M.Bhatt, MW.1.

Similarly regarding the incident of 2.6.1999, it was noticed that he had come to the gate of the factory to defy the injunction orders in association of his co-workers and hurled abuses and threat to life of the staff and the co-workeRs.The plea that the workman had been acquitted by the Judicial Magistrate Ist Class, Gurgaon in FIR No.124 dated 15.4.1999 registered under Sections 148, 149, 323, 341, 506 IPC & 25/54/59 of the Arms Act, 1959 was rejected on the ground that evidence of the prosecution was closed by Court order and the accused has been acquitted because of benefit of Bhardwaj Deepak Kumar 2014.08.19 17:03 I attest to the

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doubt.

It is also noticed that in the FIR No.123 dated 15.4.1999, registered under Sections 452, 285, 336, 427, 307, 506 IPC and 25/54/59 of the Arms Act, 1959, the acquittal had only been given on the ground that most of the prosecution witnesses except G.M.Bhatt, who appeared as MW.1 before the Labour Court, had turned hostile.

The finding was recorded that once unlawful activities have been resorted to by the petitioner, the discipline was being affected.

Clause 44.3 reads as under:- DISCIPLINARY PROCEDURE FOR IMPOSING PENALTIES: 44.3 No order imposing any of the penalty appellate in Clause (f).(g) and (h) of the order No.37 shall be made after holding an inquiry.

However, in special circumstances like trouble etc., when it is found that it is not feasible to hold a Domestic Enquiry.

The Management will have the right and to justify, the termination/dismissal before labour court.

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The above said clause is in consonance with the observations made by the Apex Court in The Workmen of M/s Firestone Tyre and Rubber Co.of India P.

Ltd.v.The Management and Others 1973 AIR (Supreme Court) 1227, wherein it was held that the employer had a right to adduce evidence before the Labour Court to prove the misconduct of the workman.

In the present case, the Management had examined the witnesses, who were also examined in the criminal case, to prove misconduct of the workman.

The relevant observation reads as under:- Bhardwaj Deepak Kumar 2014.08.19 17:03 I attest to the accuracy and integrity of this document Civil Writ Petition No.16020 of 2014 4 It is to be noted that an application made,, by an employer

under section 33(1) for permission or 33(2) for approval has still to be dealt with according to the principles laid down by this Court in its various decisions.

No change has been effected in that section by the Amendment Act. It has been held by this Court that even in cases where no enquiry has been held by an employer before passing an order of dismissal or discharge, it is open to him to adduce evidence for the first time before the Tribunal.

Though the Tribunal is exercising only a very limited jurisdiction under this section, nevertheless, it would have applied its mind before giving permission or approval.

Section 33 only imposes a ban.

An order of dismissal or discharge passed even with the permission or approval of the Tribunal can form the subject of a dispute and as such referred for adjudication.

Quite naturally, when the dispute is being adjudicated, the employer will rely upon the proceedings that were already held before a Tribunal under section 33.

They will form part of the materials on record before the Tribunal.

The contention of Mr. Deshmukh that if no enquiry is held, the order of dismissal will have to be set aside, if accepted, will lead to very incongruous results.

The Tribunal would have allowed an employer to adduce evidence before it in proceedings under Section 33 for the first time.

even though no domestic enquiry had been held.

If it is held that another Tribunal, Bhardwaj Deepak Kumar 2014.08.19 17:03 I attest to the accuracy and integrity of this document Civil Writ Petition No.16020 of 2014 5 which adjudicates the main dispute, has to ignore those proceedings and straightaway order reinstatement on the ground that no domestic enquiry had been held by an employer, it will lead to very startling results.

Therefore, an attempt must be made to construe section 11A in a reasonable manner.

This is another reason for holding that the right to adduce evidence for the fiRs.time recognised in an employer, has not been disturbed by section 11A.

The offences which were levelled against the workmen were not minor offences.

He was tried by the Additional Sessions Judge for the offences under Sections 307, 506, 452 IPC and under the Arms Act.

It is settled principle of law that the standard of proof, which is to be taken before the Criminal Court, is much higher than the one which is to be adduced in the departmental proceedings, and termination can be on the basis of probabilities.

In the present case, the Labour Court was well justified in holding that the misconduct of the workman was of such nature which justified the punishment.

In such circumstances, the interference in the well reasoned award passed by the Labour Court is not justified.

Accordingly, the writ petition stands dismissed.

(G.S.Sandhawalia) Judge August 13, 2014 DK.

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