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Court : Karnataka

Decided On : Mar-24-1998

Reported in : 1998(6)KarLJ202; (1999)ILLJ226Kant

Judge : Ashok Bhan and; Mohamed Anwar, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1) and 11-A; Karnataka High Court Act, 1961 - Sections 4

Appeal No. : Writ Appeal No. 4013 of 1997

Appellant : G. Shashikumar

Respondent : The Management of Indian Telephone Industries Limited, Bangalore and Another

Advocate for Def. : Sri Ram Mohan Reddy, Adv.

Advocate for Pet/Ap. : Sri K. Subba Rao, Adv.

Judgement :

Ashok Bhan, J.

1. Workman-appellant (hereinafter referred to as 'the appellant') has filed this appeal against the order of the learned Single Judge dated 16th June, 1997, insofar as it modifies the award of the Labour Court reducing the back wages from 50% to 10%.

2. Appellant was the employee of Indian Telephone Industries, (hereinafter referred to as 'the management'). Appellant was charge-sheeted by memo dated 1-8-1986 for an act of misconduct committed by him. On 22nd July, 1986 at about 2.25 p.m. while he was going out of his factory through the Colony Gate No. G-5 after closure of 'A' Shift, he was checked by the security staff at the gate and was found in possession of old curtain spring measuring 97 inches. On a further search he was found to be in possession of a small paper packet containing 3 drill bits in his inner waist band pocket of his trouser. Appellant submitted his explanation to the charge which did not satisfy the management. An enquiry was ordered to be held against him. Enquiry Committee submitted its report holding that the appellant was guilty of the misconduct. Disciplinary Authority accepted the report of the Enquiry Committee and passed an order dismissing the workman from service vide its order dated 21st July, 1987.

3. Appellant being aggrieved by the order of dismissal moved the State Government for a reference under Section 10(1)(c) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'the Act'). Labour Court found that the domestic enquiry held was fair and proper. After hearing the parties on merits the Labour Court passed an award on 8-5-1995 holding that though the misconduct was proved, the order of dismissal from service was disproportionate to the offence committed. The management was directed to reinstate the workman to his original position with continuity of service and 50% back wages.

4. Aggrieved by the award and judgment of the Labour Court the management preferred the writ petition which has been partly accepted by the impugned judgment.

5. Counsel appearing for the management had submitted before the learned Single Judge that once the domestic enquiry was held to be fair and proper and Labour Court on merit also came to the conclusion that the misconduct is proved,

the Labour Court ought to have reinstated the workman without back wages or granted him back wages without being reinstated. Reliance on behalf of the management was placed upon a decision of the Supreme Court in *M/s. Mukund Engineering Works v Bansi Purshottam*. Learned Single Judge accepting the argument of the counsel for the management came to the conclusion that taking into account the facts and circumstances of the case the award so far as reinstatement is concerned deserves to be affirmed but the back wages were reduced to 10% from 50% which had been awarded by the Labour Court.

6. Learned Counsel appearing for the appellant has argued that punishment and penalty has to be proportionate and commensurate to the misconduct committed. Charge against the appellant was that he was in possession of an old curtain spring measuring 97 inches and 3 drill bits. No doubt the charge against the appellant stood proved, but to withhold back wages to the extent of 90% for a period of 10 years would be totally disproportionate to the misconduct committed by him. As against this submission of the Counsel for the management is, that commission of theft is a serious matter and once the charge of theft is proved then either the appellant could be reinstated in service without back wages or the workman could be paid back wages without reinstatement. It was further submitted by him that against the impugned judgment, the management had filed an appeal which was dismissed at the preliminary stage. Judgement of the learned Single Judge having been affirmed in appeal the same would operate as *res judicata* and on this ground as well the present appeal deserves to be dismissed.

7. After hearing the Counsel for the parties we are of the opinion that withholding of 90% of back wages for a period of 10 years is disproportionate to the misconduct committed by the appellant. No doubt the commission of theft is a very serious misconduct, but, the theft of a small quantity of an old curtain wire and 3 drill bits (of the size of nail) would not be sufficient either to dismiss a workman from service or to deny him back wages to the extent of 90%. The penalty imposed is too harsh and highly disproportionate. In Service Rules invariably we find that minor or major penalties are provided keeping in view the nature of misconduct. There is gradation in penalties as well. Say for example under the head of major penalties different punishments are provided. It may be dismissal,

removal, compulsory retirement or stoppage of one increment with cumulative effect. Punishing authority has to choose which penalty minor or major or which of the penalties provided under a particular head has to be imposed keeping in view the nature of misconduct. There are no such provisions under the Industrial Disputes Act. By introducing Section 11A, the Labour Court has been empowered to interfere with the quantum of punishment if it is of the opinion that the punishment awarded was not proportionate to the Act of misconduct and that the punishment awarded was not justified keeping in view the facts of the case. The power under Section 11A is akin to the appellate power. While upholding the finding recorded regarding the guilt recorded by the employer, the Labour Court can interfere with the quantum of punishment. In the present case although a charge of theft was held to be proved but keeping in view stolen items and their value, punishment of dismissal was held to be not justified. For the same reasons the denial of 90% of the back wages is not justified. Penalty has to be commensurate with the nature of misconduct. In the instant case the penalty imposed is not commensurate to the nature of misconduct committed by the appellant. Reliance placed by the Counsel for the management on M/s Mukund Engineering Works case, supra, is not of much assistance to him because in that judgment their Lordships on the given facts of the case held that the workman be paid Rs. 20,000/- in addition to the back wages in lieu of reinstatement. No principle of law as such was laid down which could be cited as a precedent. The case had been decided on the facts present before their Lordships.

8. The order of dismissal of writ appeal filed by the management against the same impugned judgment would not operate as *res judicata* between the parties because the management in the said appeal had challenged the grant of 10% of back wages whereas in the present case the appellant is seeking 40% of the back wages which have been ordered to be reduced by the impugned judgment. The Labour Court had granted reinstatement with continuity of service with 50% of back wages, whereas the learned Single Judge has reduced the same to 10%. The matter in issue in the present appeal is not the same as the matter which was in the writ appeal filed by the management. It would not operate as *res judicata*/constructive *res judicata*. At times, a judgment or an award leaves both the parties dissatisfied which gives rise to the filing of cross-appeals. The

dismissal of appeal preferred by one party would not render the appeal filed by the other party covered by the decision in the cross appeal because the decision would not cover on merit the dispute in the other appeal as the same was not before the Appellate Court. Take an illustration. In a suit filed by the plaintiff for recovery of Rs. 1,00,000/- against the defendant the Court grants a decree for Rs. 50,000/- and dismisses the claim for the remaining 50% leaving both the parties dissatisfied with the judgment. Dismissal of appeal preferred by the plaintiff for recovery of the remaining 50% would not result in the dismissal of appeal which may be preferred by the defendant challenging the grant of decree of Rs. 50,000/- as the latter point was not before the Court. There is no application of mind to that point. Even a claim in cross-objections and counter claim does not get negated on the dismissal of the appeal or the suit.

9. The finding that charge is proved is not disturbed. However, in the facts and circumstances of the case penalty of withholding of 90% of the back wages for a period of approximately 10 years is held to be harsh and totally disproportionate to the misconduct committed by the appellant.

10. For the reasons stated above, the appeal is accepted. Order of the learned Single Judge reducing the back wages to 10% is set aside. The award and judgment of the Labour Court is upheld. The workman shall be entitled to reinstatement with continuity of service with 50% back wages. No costs.