

B. Balaraj Vs. the Management of Federal Sports, Rep. by Its Assistant Works Manager and ors.

B. Balaraj Vs. the Management of Federal Sports, Rep. by Its Assistant Works Manager and ors.

SooperKanoon Citation : sooperkanoon.com/440663

Court : Andhra Pradesh

Decided On : Jan-24-1996

Reported in : 1996(3)ALT40

Judge : Lingaraja Rath and ;D. Reddeppa Reddy, JJ.

Acts : [Constitution of India](#) - Article 226; [Industrial Disputes Act, 1947](#) - Sections 11A

Appeal No. : Writ Appeal No. 909 of 1990

Appellant : B. Balaraj

Respondent : The Management of Federal Sports, Rep. by Its Assistant Works Manager and ors.

Advocate for Def. : A. Krishna Murthy, Adv. for Respondent No. 1 and ;Govt. Pleader for Higher Education for Respondent Nos. 2 and 3

Advocate for Pet/Ap. : M. Panduranga Rao, Adv.

Disposition : Appeal allowed

Judgement :

Lingaraja Rath, J.

1. Modification of the award of the Labour Court, Hyderabad, which had directed reinstatement of the appellant-workman with 50% of the backwages, by the judgment of the learned single Judge to deny the back wages, has made the appellant to prefer this appeal. In the domestic enquiry, the appellant was found guilty of the charge of having abused and assaulted a co-workman as he refused to part with contribution to the union of which the appellant was the Secretary, and the punishment of dismissal was imposed. The matter being raised by way of reference before the Labour Court, it held, while finding the enquiry to have been properly held, the punishment of dismissal to be grossly disproportionate and directed his reinstatement with 50% of the backwages. The matter being assailed before this Court in W.P.No. 16556 of 1987 by the management, a view was taken that since the appellant was the Secretary of the Union he should have exercised more restraint and that hence the benefit of backwages should not be given to him.

2. The Labour Court relied upon two decisions of the Supreme Court in *Ved Prakash Gupta v. Delton Cable Indis (P) Ltd.*, 1984 (1) LLJ 546 and *Rama Kant Misra v. State of U.P.*, : (1982) IILLJ472SC to award the modified sentence. In both the cases, the Court took the view that where abusive language even with threat is used, though the mis-conduct discloses lack of culture, yet mere use of such language would not justify the extreme penalty of dismissal. In the first case, the punishment of withholding of two increments with future effect was considered adequate whereas in the second case reinstatement with full backwages was substituted for dismissal. It is no doubt true that in the present case, apart from the use of abusive language the fact of assault was also there. It has been agreed on all hands, as was indeed found by the learned single Judge also, that penalty of dismissal was excessive and hence reinstatement was directed. The only question was whether backwages were to be allowed. The Labour Court thought a cut of 50% of backwages was justifiable in the circumstances. Even though there is no doubt that power Under Section 11A of the Industrial Disputes Act is exercisable also by the High Court while sitting in certiorari over the award of the Industrial Tribunal, yet the discretion exercised by the Tribunal is not to be lightly interfered

with unless it is shown that the Tribunal has perverted itself in approaching the problem and considering the relevant circumstances. To us it appears reasonable, keeping in background the view of the Supreme Court in Ved Prakash Gupta's, 1984 (1) LLJ 546 that in a case where abusive language alone is used an order of dismissal may be set aside as being disproportionate and reinstatement with full backwages can be directed, that in the present situation where the fact of assault also is additionally there, a cut of 50% of backwages while directing reinstatement should meet the ends of justice instead of the extreme penalty of dismissal. Grant of full backwages would rather be lenient in proportion to the misconduct. In that view of the matter, we allow the appeal with costs while reversing the judgment in Writ Petition No. 16556 of 1987, and restore the award of the Labour Court. Hearing fee Rs. 500/-.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com