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Court : Jharkhand

Decided On : Jun-28-2004

Reported in : [2004(4)JCR251(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 564 of 1996 (R)

Appellant : Janathan Das

Respondent : State of Bihar and ors.

Advocate for Def. : Saurav Arun and; Krishna Shanker, Adv.

Advocate for Pet/Ap. : Delip Jerath, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Tapen Sen, J.

1. Heard Mr. Delip Jerath, learned counsel for the petitioner and Mr. Saurav Arun assisted by Mr. Krishna Shankar for the respondent No. 3.

2. The petitioner in the instant case has prayed for quashing of a portion of the award dated 8.4.1984 passed in Reference Case No. 20 of 1987 whereby and whereunder the learned Presiding Officer, Labour Court, Jamshedpur refused the relief of reinstatement after holding that the order of dismissal passed against him was proper and therefore, instead of passing an order of reinstatement, he proceeded to award compensation to the extent of Rs. 40,000/- which was supposed to be paid by the Management within six weeks from the date of pronouncement of the award failing which, it was ordered that the workman concerned would be entitled to realise the amount with interest at the rate of 12% per annum from the date of pronouncement of the award till the date of payment-

3. The petitioner underwent, the disciplinary proceedings on the basis of a charge-sheet which was issued to him the charge-sheet pertains to an allegation that on 20.10.1983, while the petitioner was in 'B' shift duty from 2.00 pm to 10.00 pm, he stole 30 pieces of Lead Openers from the department which was kept concealed in a tiffin box. He then handed over the same to his son namely Shanker Das who was 14 years old. This was detected by the security guards and the materials were therefore prevented from going out of the gate. This charge-sheet was issued on 21.10.1983 observing that the above act amounted to a misconduct on the part of the petitioner as per the Company's Certified Standing Orders and accordingly, he was asked to show cause as to why disciplinary action should not be taken against him. Normally, this Court, exercising jurisdiction under Article 226 of the [Constitution of India](#) does not sit as an Appellate Authority in respect of an award passed by the Labour Court unless it is established that the award is patently illegal, arbitrary or perverse.

4. After having looked into the award and the various documents brought on record, this Court is clearly of the opinion that the instant case fails within the category of being patently absurd and/or perverse and consequently illegal and therefore deserves to be set aside by this Court. The reasons which compel this Court to come to the aforementioned conclusion are many. In this context it would be relevant to advert to the award itself at the outset.

5. At paragraph 4 of the award, the Labour Court refers to an earlier order passed on 23.8.1991 holding that at the preliminary stage, it was held that the domestic inquiry was found to be fair, proper and in accordance with the principles of nature justice without realizing that the said order itself was perceived mechanically and had been passed in a routine manner. In this context, Annexure-4/1 which is the order dated 23.8.1991 clearly points out the manner in which the Labour Court proceeded while coming to the conclusion at the preliminary stage that the domestic inquiry was fair and proper. The language used in the order dated 23.8.1991 tallies line by line, word by word and sentence by sentence with another order passed in Reference Case No. 2/86 in the case of TELCO v. Kedar Nath Jha which the petitioner has appended as Annexure-4 to the writ petition. Reading the two orders in juxtaposition to each other, it is evident that the same Officer namely S.P. Thakur, Presiding Officer, Labour Court, Jamshedpur passed two orders in two different cases--the 1st of which being case No. 2 of 1986 and the other, on 26.10.1991, in the instant case. The language used in both the cases, while deciding preliminary issues, are absolutely the same. In that view of the matter, the finding to the effect that the domestic inquiry was fair and proper cannot be held to be a proper finding. On the contrary, this Court is compelled to take the view that the Presiding Officer acted perfunctorily and in a routine manner while coming to the aforementioned conclusion.

This apart and the most striking feature of this case is that the Labour Court himself admits at paragraph 15 that there was no direct evidence of theft. He further records that nobody has seen the petitioner keeping the Lead Openers in the tiffin box. Let it be recorded that the charge-sheet clearly makes an allegation that on 20.10.1983, while the petitioner was in 'B' shift duty, he stole 30 pieces of Lead Openers. Thus, the gist of the allegation was that the petitioner had actually committed theft of 30 pieces of Lead Openers. But the finding at paragraph 15 is that there is no direct evidence of theft. Another interesting feature is that at paragraphs 3, the Labour Court records the explanation given by the petitioner to the effect that. 'Yes, it was true that these things were recovered from tiffin box but somebody else had put it there and handed over to his son.' This explanation has not been taken into consideration by the Labour Court. On the contrary, in paragraph 14, the petitioner has stated that all along, he had maintained that there

was no evidence at all regarding theft of company's property and that there was no evidence that the alleged Lead Openers belonged to the company as they were never produced before the company although, the fact relating to recovery of these 30 Lead Openers is a fact stated in the charge-sheet itself.

6. Moreover, during the course of inquiry, a question was put to Jogendra Singh who was the Management's witness and who was the Foreman (S & O) Department. During the course of cross-examination, he was asked a question as to whether he could explain how the lead metals were kept and distributed. In answer, Joginder Singh has stated as follows :--

'In the 'A' shift one man Behra of S & O department prepares the lead in the shop. He keeps them under his custody. There are men in each shift who collect new lead metals from him after returning the old and used metals. Lead metal is issued only one piece to each opener of small size material opener. The metal is issued when the old one is used and became thinner. I cannot say how many pieces are made by Behra every day. There is no record of it with me.'

7. It is surprising that in paragraph 15, while the Labour Court holds that there was no direct evidence of theft, yet he came to the conclusion that there was ample evidence that the workman handed over the tiffin box to his son which was later on caught by the Security Guard. Handing over of tiffin box is a natural conduct of an employee who passes it to somebody from his family to take the box back home after lunch, but the most crucial question as to whether the petitioner, had, in fact, committed the theft remains totally unanswered both lay the Enquiry Officer as also by the Labour Court.

8. If a charge relating to theft was not established then the Labour Court could not have refused the relief of reinstatement to the petitioner. Apart from this, the value of the concerned Lead Openers appears to be @ Rs. 30/- per piece as gathered from the statement recorded by the Labour Court in paragraph 9. In paragraph 19, however, the Labour Court himself says that the price was not very high in the market.

9. Taking the aforesaid facts into consideration, it is evident that the punishment of dismissal from service is very harsh and disproportionate. This apart, the dismissal order appears to have been passed by one K.K. Mishra who was the Hot Mill Superintendent of the company although from a perusal of paragraph 17 of the award, it is evident that power was a delegated power derived from Managing Director. The Board of Directors had delegated the power to the Managing Director. It is well known that the power of dismissal cannot be redelegated. If this be the position, then the power to dismiss could not have been delegated to K.N. Mishra, the Hot Mill Superintendent of the company.

10. Taking all these features into consideration, this Court is of the opinion that the impugned award cannot be sustained in so far as it relates to refusal on the part of the Labour Court in granting relief of reinstatement. In view of the findings of the Labour Court, the petitioner was entitled to a finding that there was nothing which could prove or establish that he had committed theft. This observation is further fortified upon reading paragraph 15 of the award.

11. That being the position, the impugned award in so far as it relates to refusing the relief of reinstatement is set aside. The petitioner will therefore stand reinstated with all consequential benefits. The writ petition is allowed but there shall be no order as to costs.