

JANATHA BAZAR (SOUTH KANARA CENTRAL
CO-OPERATIVE WHOLE SALE STORES LTD.)

A

v.

SECRETARY, SAHAKARI NOUKARARA SANGHA

SEPTEMBER 21, 2000

B

[M.B. SHAH AND D.P. MOHAPATRA, JJ.]

Labour Laws:

Industrial Disputes Act, 1947: Section 11-A.

C

Breach of trust/loss of confidence—Minor penalty—Awarding of—Discretion under S.11-A—Exercise of—By Labour Court—Management dismissed workmen on charges of breach of trust and misappropriation—Labour court found the charges established—But in exercise of its discretion under S.11-A reinstated the workmen with 25% back wages in view of their past good record—High Court confirmed the award—Validity—Held, A proved act of misappropriation should not be taken lightly— Misappropriation cannot be rewarded by reinstatement with full or part of back wages—In case of proved misappropriation, there is no question of considering past record—Labour court cannot substitute penalty imposed by employer in such cases—Hence, High Court materially erred in confirming the award of the Labour Court—Service Law.

D

E

The appellant-Co-operative Society charged four of its employees with breach of trust and misappropriation of goods. After holding an enquiry the management dismissed all the four employees. Thereafter, the respondent-employees' Union raised an industrial dispute and the Government made a reference to the Labour Court under Section 10 of the Industrial Disputes Act, 1947.

F

The Labour Court held that the charges against the employees were proved. However, the Labour Court in exercise of its discretionary power under Section 11-A of the Act ordered their reinstatement with 25% back wages in view of their past good record. The High Court confirmed the award passed by the Labour Court. Hence this appeal.

G

The following question arose before this Court

H

A Whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent-workmen with 25% back wages in spite of a specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established?

B Allowing the appeals, this Court

C **HELD : 1.** It would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

[369-D]

D **2.** The Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. [370-D]

E *Municipal Committee, Bahadurgarh v. Krishnan Behari*, [1996]2 SCC 714; *U.P. State Road Transport Corporation v. Basudev Chaudhary*, [1997]11 SCC 370 and *Punjab Dairy Development Corporation Ltd. v. Kala Singh*, [1997]6 SCC 159, relied on.

F **3.1.** In a case of proven misappropriation, there is no question of considering past record. It is the discretion of the employer to consider the same in an appropriate case, but the Labour Court cannot substitute the penalty imposed by the employer in such cases. [371-G]

3.2. The High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondents-workmen with 25% back wages. [371-E]

G **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 5224-5225 of 2000

From the Judgment and Order dated 18.9.98 of the Karnataka High Court in W.A. No. 8795/96 and 1954 of 1997.

H S. Ganesh, Rajan Narain, Ms. Padmini Kumari, Ms. Keerthi Narashimhan

for the Appellants. A

K. Subba Rao, Girish Ananthamurthy and P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

SHAH, J. Leave granted. B

Heard learned counsel for the parties exhaustively.

The question involved in these appeals is-Whether High Court was justified in confirming the order passed by the Labour Court reinstating the respondents-workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages. C D

The matrix of the facts as culled out from the case are that-the appellant is a Co-operative Society registered under the Karnataka Co- operative Societies Act, 1959. The Management charged four of its employees, namely Smt. Seetha B., Sri D. Chandrashekhar, Sri Madhukar Shetty and Sri B. Damodhar Naik, with breach of trust and misappropriation of the value of goods amounting to Rs. 24,239.97 and Rs. 19,884.06 during the period 1.7.1977 to 30.6.1978. The said charges were based on shortage of goods noticed on stock verification for the above said period. After holding an enquiry, the management dismissed all the above employees. Thereafter, the employees' Union raised an industrial dispute and on 26.6.1981 a reference was made by the Government to the Labour Court, Mangalore, under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") in I.D. No. 45/1981. The Labour Court considered the documentary evidence produced by the Management; the audit report for the relevant period from 1.7.1977 to 30.6.1978; the admissions of the indicted workmen who deposed that the goods were sent to their counters for sale by means of supply slips and the fact that they have not accounted for the shortage of goods noticed, the value of which is given in the audit report, and recorded the finding that the charges of breach of trust and misappropriation of the goods entrusted to them of the value given E F G H

A in the charges have been clearly established. In the award passed by the Labour Court, there is a thorough discussion of the evidence adduced by the Management and the Workmen and sufficient reasons are given in support of the finding that the charges alleged against the workmen are proved. After recording evidence and hearing both the sides, the Labour Court vide its award dated 30.1.1995 held that the charges of breach of trust and misappropriation by the employees were proved. However, the Labour Court in exercise of its discretionary power under Section 11A of the Act ordered their reinstatement with 25% of back wages. The Labour Court further ordered for continuity of their service by imposing penalty of stoppage of 5 increments with cumulative effect and for fixing their pay on the basis of imposition of such penalty from the date of their dismissal till the date of reinstatement. Against the award of the Labour Court, both the parties filed writ petitions before the High Court of Karnataka. The Learned Single Judge confirming the award passed by the Labour Court dismissed both the writ petitions.

D Being aggrieved by the common order passed by the learned Single Judge, both the parties filed Writ Appeals No. 8795 of 1996 and 1954 of 1997 before the Division Bench of the High Court. The Division Bench found that the Labour Court had arrived at its conclusion after thoroughly considering the entire evidence and, therefore, it did not call for any interference. Further, with regard to the question whether the Labour Court was justified in interfering with the order of dismissal passed by the Disciplinary Authority in exercise of its powers under Section 11A of the Act, the High Court came to the conclusion that the Labour Court gave reasons for coming to its conclusion and those reasons could be considered as justifiable and sufficient grounds to interfere with the punishment imposed by the employer. By common judgment and order dated 18.9.1998, the writ appeals were dismissed. Hence, these appeals by special leave.

G As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and re- instating the employees in service. Law on this point is well settled. [*Re.: Municipal*

Committee, Bahadurgarh v. Krishnan Behari and Ors., [1996] 2 SCC 714. In *U.P. State Road Transport Corporation v. Basudeo Chaudhary and Anr.*, [1997] 11 SCC 370 this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in *Punjab Dairy Development Corporation Ltd. and Another v. Kala Singh and Others*, [1997] 6 SCC 159, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that “in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11A of the I.D. Act to grant relief with minor penalty”.

In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management.

In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

In the result, the appeals are allowed. The impugned order passed by the High Court confirming the award dated 30.1.1995 passed by the Labour Court is set aside. There shall be no order as to costs.