M/S. AMRIT VANASPATI CO. LTD. A

v.

KHEM CHAND AND ANR.

JULY 12, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.] B

Constitution of India, 1950—Article 226—Judicial review—Scope of—Dismissal of workman for serious misconduct—Labour Court upheld dismissal—Writ petition—High Court interfered with the findings of Labour Court and ordered reinstatement with back-wages—Justification of—Held: High Court not justified in interfering with the factual findings of the Labour Court which were based on appreciation of facts adduced before it by leading evidence—Labour Laws. C

Labour Laws—Jurisdiction of Labour Court while adjudicating dispute relating to dismissal—Dismissal pursuant to inquiry—Labour Court found that the inquiry conducted was irregular—Permitted the Management to produce additional evidence before Court to prove the charges—Justification of—Held, Justified. D

There was strike in the factory of Appellant. Respondent No.1-workman allegedly threatened to kill senior officers of the factory like Chemist and other co-workmen willing to work, and thereby obstructed work in the factory. Based on the inquiry report, Disciplinary Authority dismissed Respondent No.1. Labour Court found the inquiry to be defective but permitted the management to adduce additional evidence and, on finding the charges against Respondent No.1 to be proved, upheld the order of dismissal. E F

High Court ordered re-instatement with backwages and other benefits by allowing the writ petition of Respondent No.1. Hence the present appeal.

Disposing of the appeal, the Court G

HELD: 1. Even if no inquiry has been held by the employer or the inquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce

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A evidence for the first time justifying his action, and it is open to the employee to adduce evidence *contra*. Hence, the submission of Respondent No.1, that the Labour Court having held that the domestic inquiry was irregular and illegal, ought not to have permitted the Management to produce additional evidence before the Court to prove the charges, has no merit. [488-D, E]

B *The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc.* v. *The Management & Ors. etc.*, [1973] 1 SCC 813, relied on.

2.1. The Labour Court in the concluding part of its award has held that the charges framed against the workman are charges of misconduct of serious nature and, therefore, it agreed with the argument of Management that it was C not in the interest of Management and industrial peace to retain such a person in service who was guilty of creating indiscipline in the factory which affects the production of the factory adversely. On the basis of the aforesaid discussion, the Labour Court came to the conclusion that the Management had succeeded in proving the charges against the workman before the Court. D Hence, the Labour Court held the dismissal of the workman from service by the Management as justified, proper and lawful and the concerned workman was held to be not entitled to receive any benefit or relief. However, the High Court interfered with the factual and categorical findings of the Labour Court and ordered reinstatement with back wages and other benefits. [488-F-H]

E 2.2. The High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the Management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court F which are based on appreciation of facts adduced before it by leading evidence. The High Court has gravely erred in holding that the evidence of respondent no.1 was not considered by the Labour Court and had returned finding that the evidence of respondent no.1 did not inspire any confidence. The High Court is not right in intefering with the well considered order passed by the Labour Court confirming the order of dismissal. [488-H; 489-A, B]

G 3. Respondent no.1 has now retired from service on superannuation on 30.9.1996. He was dismissed from service for the misconduct alleged and proved against him by the Management on 8.3.1976. He had been without any employment or without any income whatsoever. Taking a sympathetic and lenient view of the matter and peculiar facts and circumstances of this case, H even though the factory unit of the appellant is closed, the appellant-

Management is directed to pay a sum of Rs.1,25,000/- in full and final quit of all the claims of the appellant and the respondents. [489-C-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6677 of 2004.

From the Judgment and Order dated 9.10.2003 of the High Court of Judicature at Allahabad, in Civil Misc. W.P. No. 8594/1990. B

Raj Birbal, Rohina Nath, J. Muzarffar and Umesh Kumar Khaitan for the Appellant.

S. Borthakur (for Sunil Kumar Jain (N.P.), Pradeep Misra and Malvika Trivedi for the Respondents. C

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. This appeal is directed against the final judgment and order dated 9.10.2003 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition no.8594 of 1990, by which the High D Court allowed the writ petition filed by the respondent no.1 and directed the appellant Management to pay to the respondent no.1 herein back wages to the extent of 75% till the date of superannuation or till the date of closure of the unit along with closure compensation and other admissible benefits. The appellant is the employer of respondent no.1 herein. He was appointed as a fitter with the appellant in its factory on 1.6.1956. The following charge-sheet E dated 22.1.1976 was issued to the respondent no.1.

"Charge Sheet for misconducts.

The following charges are framed against you:- F

1 That on 22.1.76 you were on duty in the shift from 12 night to 8 a.m. At about 4.30 a.m you unauthorisedly left your place of work and leaving your department you came to the boiler.

2 That at that moment when you reached at the boiler you shouted loudly Ramphal you throw both the new coolie into boiler. We G would stop the work. As such, you threatened other workers and incited them to stop work.

3 That when you were uttering the aforesaid words loudly, Shri Devraj Batura, Shift Chemist also came there. Shift Chemist in a very humble manner told you that you should go to your H

A department and should not speak like that. Whereupon, you told him in anger - tomorrow I would also throw you in the boiler. After saying this, you returned to your department and while going, beckoned at Shri Ram Phal, Boiler Attendant.

Your aforesaid acts amount to gross misconduct under the standing
B orders and in all other respect.

You are directed to submit reply within 24 hours of receipt of this letter as to why disciplinary action should not be taken against you. If your reply is not received within prescribed time, it will be presumed that you accept the charges and appropriate action would be taken.

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Whereas charges framed against you are of serious nature, hence you are placed under suspension during the course of enquiry. During the period of suspension, you are required to come for attendance on all the working days at 11 a.m. so that the correspondence could be made. If you change your residence during suspension period, you
D immediately inform the same to us. Please note that in case of violation of orders regarding attendance and residence, no subsistence allowance would be payable to you.

For Amit Vanaspati Company Ltd.
Sd/- Illeg. Factory Manager."

E The respondent sent reply to the charges made against him. The explanation of the respondent was found unsatisfactory and an inquiry into the matter was ordered by the appellant. An Inquiry Officer was also appointed. The Inquiry Officer concluded the inquiry and submitted the Inquiry report. The Inquiry Officer found all the charges against the respondent proved and
F held him guilty of the act of misconduct. Based on the inquiry report, the services of the respondent no.1 herein were dismissed by the Disciplinary Authority. After the order of dismissal, respondent no.1 raised an industrial dispute as the conciliation proceedings between the parties failed. The respondent no.2 vide notification of date referred the dispute of termination of the services of the employment of respondent no. 1 to respondent no.3
G herein. To add the charge of strike against respondent no. 1, an application was also moved by the appellant Management, but the same was dismissed by the Labour Court. The Labour Court passed an order holding that the domestic inquiry against respondent no.1 was not free and fair. The Labour Court was of the view that the evidence of the witnesses was not examined
H in isolation and when the examination of one of the witnesses was being

conducted other witnesses were also present. It was, therefore, held that the domestic inquiry was held in violation of principles of natural justice.

By the same very order, the Labour Court allowed the prayer of the management and permitted it to lead additional evidence for proving charges against respondent no.1 under the provisions of Section 11A of the U.P. Industrial Disputes Act, 1947.

Against this order of the Labour Court, the respondent no.1 filed writ petition before the High Court, which was dismissed. The appellant-management, thereafter, produced certain other witnesses to prove its case against respondent no.1. It is seen from the record that the deposition of the witnesses duly corroborated the case of the appellant in all respects. All the appellant's witnesses were cross-examined by the respondent no.1. The respondent no.1 got himself examined in support of his case.

On 7.12.1989, the Labour Court passed the award holding that the charges against respondent no.1 were found proved in the proceedings before the Labour Court and the order dismissing him from the service was upheld. The respondent no.1 filed a writ petition before the High Court aggrieved by the award dated 7.12.1989. The Management filed its counter affidavit to the writ petition. The rejoinder affidavit was also filed by the Management. The High Court by its order dated 9.10.2003 allowed the writ petition filed by the respondent no.1 herein and directed the Management to pay to the respondent no.1 back wages to the extent of 75% till the date of superannuation or till the date of closure of the unit along with closure compensation and other admissible benefits. The Management was directed to deposit the amount as aforesaid within a period of three months from the said date. Aggrieved against the said order passed by the High Court, the appellant-Management has filed the instant special leave petition, in which leave was granted by this Court on 8.10.2004.

We heard Mr. Raj Birbal, learned Senior Counsel for the appellant and Mr. S. Borthakur, learned counsel for respondent no.1. The learned senior counsel invited our attention to the relevant portion of the pleadings and of the two orders passed by the Labour Court and the order passed by the High Court, which is impugned in this matter. The learned senior counsel submits that the High Court was wrong in holding that the charges levelled against the respondent no.1 were not so grave as to entail a punishment of dismissal from service of respondent no.1, and the High Court has failed to appreciate that serious charges of threatening to kill senior officers of the appellant unit

A like Chemist and other co-workman willing to work by throwing them in the boiler and obstructing the work in the factory were levelled against respondent no.1. These serious charges of riotous nature, when there was a strike in the factory, were found proved against respondent no.1 by the Labour Court and such serious and grave charges of misconduct found proved against respondent no.1, if left unpunished or punished with a lesser punishment would have led B to indiscipline in the factory and would have clearly been detrimental to the industrial peace of the appellant's unit. Under these circumstances, learned senior counsel submits, viewing the gravity of the charges levelled against respondent no.1, the High Court fell in error in holding that the charges against respondent no.1 were not of such a nature as to entail punishment C of dismissal from service.

Per contra, Mr. Borthakur, learned counsel for the respondent, submits that the Labour Court has by its first order held that the domestic inquiry is irregular and illegal and under such circumstances ought not have permitted the Management to produce additional evidence before the Court to prove D the charges. The learned counsel further submits that though the charges are of very serious nature, the punishment imposed is disproportionate to the charges levelled and proved against the workman.

We are unable to countenance the submission made by the learned counsel for the respondent. This Court in a judgment reported in [1973] 1 SCC E 813 (*The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc.* v. *The Management & Ors. etc.*) exhaustively referred to various decisions of this Court and gave a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge. Paragraph 32 of the said judgment is reproduced here:

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32. From those decisions, the following principles broadly emerge:

1. The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

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2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

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3. When a proper enquiry has been held by an employer, and the

finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or *mala fide*.

4. Even if no enquiry has been held by an employer, or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence *contra*.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

7. It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

8. An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence

A for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

9. Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for
B the first time, punishment imposed cannot be interferred with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation
C is, as held by this Court in *The Management of Panitole Tea Estate* v. *The Workmen,* [1971] 1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

This Court in the above judgment held that even if no inquiry has been held by the employer or the inquiry held is found to be defective, the Tribunal
D in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence *contra.* Hence, the submission made by the learned counsel for the respondent has no merit in view of the above verdict of this Court and referred to above.
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We have also perused the award dated 7.12.1989 passed by the Labour Court. The Labour Court in the concluding part of its award has held that the charges framed against the workman are charges of misconduct of serious nature and, therefore, it agreed with the argument of Management that it was
F not in the interest of Management and industrial peace to retain such a person in service who was guilty of creating indiscipline in the factory which affects the production of the factory adversely. On the basis of the aforesaid discussion, the Labour Court came to the conclusion that the Management had succeeded in proving the charges against the workman before the Court. Hence, the Labour Court held the dismissal of the workman from service from
G 8.3.76 by the Management as justified, proper and lawful and the concerned workman was held to be not entitled to receive any benefit or relief. However, the High Court, as stated earlier, interfered with the factual and categorical findings of the Labour Court and ordered reinstatement with back wages and other benefits. In our opinion, the High Court while exercising powers under
H writ jurisdiction cannot deal with aspects like whether the quantum of

punishment meted out by the Management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of respondent no.1 was not considered by the Labour Court and had returned finding that the evidence of respondent no.1 did not inspire any confidence. We are of the opinion that the High Court is not right in intefering with the well considered order passed by the Labour Court confirming the order of dismissal.

It is now stated that the respondent no.1 has retired from service on superannuation on 30.9.1996. He was dismissed from service for the misconduct alleged and proved against him by the Management on 8.3.1976. He had been without any employment or without any income whatsoever. Taking a sympathetic and lenient view of the matter and peculiar facts and circumstances of this case, even though the factory unit of the appellant is closed, we direct the appellant-Management to pay a sum of Rs.1,25,000/- in full and final quit of all the claims of the appellant and the respondents. A demand draft of Rs.1,25,000/- shall be drawn in the name of the respondent no.1 herein and handed over to the learned counsel for the respondent within two weeks from today. We make it clear that the parties will have no other claim against each other. We also make it further clear that the respondent no.1 is at liberty to withdraw the contributions made by him along with contributions made by the Management to the Provident Fund, with interest, and approach the appropriate authority for such withdrawal. If such an application is made, concerned authority is directed to make payment to respondent no.1 without raising any objection.

The appeal is accordingly disposed of with no orders as to costs.

B.B.B. Appeal disposed of.