U.P. STATE ROAD TRANSPORT CORPORATION A

v.

NANHE LAL KUSHWAHA

(Civil Appeal No. 5114 of 2009)

AUGUST 04, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

U.P. Industrial Disputes Act – s. 11A – Power under – Interference with quantum of punishment – Conductor charged for carrying passengers without ticket on six occasions – Removal from service – Labour court reinstating with 75% back wages – High Court holding that employee not to be paid back wages but only retiral benefits – Sustainability of – Held: Not sustainable – It must be spelt out in clear and cogent manner whether punishment is disproportionate to the gravity of charge – High Court passed the order without discussing any materials on record and also principles of law – Employee charged for commission of misconduct on six occasions but found proved for two charges – Even though employee has already retired and has been found guilty of a minor offence involving a small amount, order can be interfered with – Thus, order of High Court set aside. C D E

Respondent-conductor was charged for carrying passengers without tickets on six occasions. Disciplinary proceedings were initiated against him and he was removed from service. Industrial dispute was raised. Labour court directed re-instatement from the date of removal of service with 75% back wages since misconduct was proved only on two occasion. Appellant-employer filed writ petition. Employee was re-instated and has now retired from service. High Court modified the award to the extent that no back wages would be payable to the workman but would be given continuity of service F G

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A for the purpose of retiral benefits. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The industrial tribunal or a labour court
B may interfere with a quantum of punishment awarded by the employer in exercise of its power under section 11 A of the U.P. Industrial Disputes Act but, ordinarily, the discretion exercised by the employer should not be interfered with. Labour Court did not assign any sufficient
C and cogent reason as to on what premise the punishment imposed upon the respondent by the employer can be said to be excessive, keeping in view the seriousness of the charges. The question as to whether an order of punishment is disproportionate to the gravity of charge
D on the basis whereof the workman has been found to be guilty, must be spelt out in a clear and cogent manner. The practice adopted by the High Court, in disposing of writ petition without assigning any reason has been deprecated by this court number of times. [Para 7] [336-
E B-E]

1.2. High Court despite noticing the submissions made on behalf of the appellant, did not choose to deal therewith. It passed the operative portion of the order without discussing any materials on record. Even the
F principles of law on the basis whereof the purported discretionary jurisdiction was sought to be exercised, was not stated. [Para 8] [336-F-G]

1.3. The submission that this Court in a situation
G where the employee has already retired and he has been found guilty for commission of a minor offence, should not interfere with the impugned judgment cannot be accepted. As the respondent was appointed as a conductor it is not the amount which would be very
H material for the purpose of determining the quantum of

punishment. He was charged for commission of similar misconducts on six occasions; at least misconduct has been found to be proved in respect of two charges even by the labour court. In that view of the matter, the impugned judgment cannot be sustained and set aside. [Paras 11, 12 and 13] [341-G-H; 342-A-B]

Regional Manager, U.P. SRTC, Etawah and Ors. v. Hoti Lal and Anr., **2003 (3) SCC 605;** *L.K. Verma v. HMT Ltd. And Anr.*, **2006 (2) SCC 269 and** *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh* **2006 (6) SCC 187, referred to.**

Case Law Reference:

2003 (3) SCC 605	**Referred to**	**Para 8**
2006 (2) SCC 269	**Referred to**	**Para 9**
2006 (6) SCC 187	**Referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5114 of 2009.

From the Judgment & Order dated 14.8.2008 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 30347 of 2000.

Daleep Kr. Dhyani, Pradeep Misra for the Appellants.

S.R. Singh, Nishant Yadav, Sunita Pandit, D.N. Dubey, Himanshu Tyagi, Ujjwal Pandey, Yash Pal Dhingra for the Respondents.

The Order of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant is constituted under the Road Transport Corporation Act. It employed the respondent herein as a conductor. Indisputably, he had been charged for carrying passengers without tickets on or about 06.04.1984, 10.7.1984,

A 14.7.1985, 6.3.1986, 23.2.1987 and 4.3.1987. A disciplinary proceeding was initiated against him on or about 6.9.1987. In the said departmental proceedings he was found guilty of the charges levelled against him. He was removed from service by the appointing authority by an order dated 18.12.1991.

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3. He raised an industrial dispute. The State of U.P. referred the dispute to Labour Court-II, Kanpur for its decision on the following question:

> "Whether termination of services by the employers of their
> C workman Nanhe Lal Kushwaha, S/o Heera Lal Kushwaha, Conductor vide order dated 18.12.1991 is legal and/or valid? If not, then to what relief/compensation the concerned workman is entitled to get? And with what other details?"

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4. By reason of its award dated 29.2.2000 the Labour Court directed reinstatement of the respondent with 75% back-wages, stating:

> "I have duly perused all the documents available on record
> E and considered the above discussions. The misconducts of carrying without ticket passengers on 06.03.1986 and 04.03.1987 which had been levelled against the petitioner workman, the same have been found proved on the basis of evidence of the witnesses produced by the
> F Respondents. But misconducts regarding the incidents of 10.04.1984, 14.07.1985, 06.04.1984 and 23.02.1987 for which Respondents have chargesheeted the workman the same are not found to be proved. Hence the workman concerned with the dispute is fully guilty for the misconduct
> G committed on 06.03.1986 and 04.03.1987 but he is not guilty for the misconducts committed on 10.04.1984, 14.07.1985, 06.4.1984 and 23.02.1987. Considering all the fact and circumstance in the present case I have reached to the conclusion that the punishment imposed by

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order dated 18.12.1991 by the employers on the workman concerned with the dispute, Nanhe Lal Kushwaha is excessive considering the seriousness of charges. Therefore, amending the order dated 18.12.1991 passed by Respondent, they are being directed to reinstate Shri Nanhe Lal Kushwaha, S/o Shri Heera Lal Kushwaha, Conductor from the date of removal from service i.e. 18.12.1991 with continuity of service. Since two charges have been found proved against the workman concerned with the dispute hence the Respondents are directed that they will pay 75% of wages and other wages and other benefits to the concerned workman during the period of unemployment."

5. Questioning the correctness of the said award, appellant filed a writ petition before the Allahabad High Court. By reason of the impugned judgment dated 14.08.2008, the High Court while noticing the submission on behalf of the appellant that the respondent was holding the post of trust wherefor honesty and integrity are inbuilt requirements of functioning, held:

"However, in view of the fact that the Respondent workman was reinstated in service under the interim order of this Court dated 17.7.2000 and has now retired from service, it is directed that the award of the Labour Court shall stand modified to the extent that no back-wages shall be payable to the workman concerned but he may be given continuity of service for the purposes of retiral benefits. The retiral benefits etc. of the workman concerned be paid in accordance with law within a period of 4 months from the date of production of a certified copy of this order. For the reasons stated above, the writ petition is partly allowed. No order as to costs."

6. The contention of the learned counsel for the appellant is that the Labour Court also found the respondent guilty of carrying the passengers without tickets on two occasions and

A that the respondent should have been dealt with iron hands and it was held:

> "Since charges have been found proved against the workman concerned with the dispute hence the
B Respondents are directed that they will pay 75% of wages and other wages and other benefits to the concerned workman during the period of unemployment."

7. This Court times without number has deprecated the practice adopted by the High Courts in disposing of the writ
C petitions without assigning any reason. It is well settled that industrial tribunal or a labour court may interfere with a quantum of punishment awarded by the employer in exercise of its power under Section 11A of the U.P. Industrial Disputes Act but, ordinarily, the discretion exercised by the employer should not
D be interfered with. The learned Labour Court did not assign any sufficient and cogent reason as to on what premise the punishment imposed upon the respondent by the employer by an order dated 18.12.1991, can be said to be excessive; keeping in view the seriousness of the charges. The question
E as to whether an order of punishment is disproportionate to the gravity of charge on the basis whereof the workman has been found to be guilty, must be spelt out in a clear and cogent manner.

8. The High Court also, as indicated hereinbefore, despite
F noticing the submissions made on behalf of the appellant, did not choose to deal therewith. It passed the operative portion of the order without discussing any materials on record. Even the principles of law on the basis whereof the purported discretionary jurisdiction was sought to be exercised, has not
G been stated. The High Court noticed the decision of this Court in *Regional Manager, U.P.SRTC, Etawah and Ors. v. Hoti Lal and Anr.*, 2003 (3) SCC 605, but failed and/or neglected to advert to the ratio laid down therein. In *Hoti Lal* (supra) this Court opined:

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"It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare." A

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The learned Judges held :

"It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See *Alexander Machinery (Dudley) Ltd. v. Crabtree,* 1974 LCR 120 (NITC)] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the mater leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity C D E F G H

A and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper."

9. The High Court, in our opinion, committed the same error B which had been pointed out in the aforesaid decision. Apart therefrom, this Court in L.*K. Verma v. HMT Ltd. and Anr.*, 2006 (2) SCC 269, opined:

"So far as the contention as regards quantum of punishment is concerned, suffice it to say that verbal abuse C has been held to be sufficient for inflicting a punishment of dismissal."

This Court further noticed :

"23. *Mahindra and Mahindra Ltd. v. N.N. Narawade etc.* D [JT 2005 (2) SC 583 : (2005) 3 SCC 134] is a case wherein the misconduct against the delinquent was 'verbal abuse'. This Court held :

'It is no doubt true that after introduction of Section 11-A E in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very F well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like G punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to H reduce the punishment. In the absence of any such factor

existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate.' A B

In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.' C D

24. In *Muriadih Colliery v. Bihar Colliery Kamgar Union* [(2005) 3 SCC 331], this Court, inter alia, following *Mahindra and Mahindra* (supra) held :

'It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is E F G H

A not a mitigating circumstance to reduce the sentence of dismissal.'

25. These questions recently came up for consideration in *Hombe Gowda Edn. Trust & Anr. v. State of Karnataka & Ors.* [2005 (10) SCALE 307], upon considering a large number of cases, this Court held:

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'Indiscipline in an educational institution should not be tolerated. Only because the Principal of the Institution had not been proceeded against, the same by itself cannot be a ground for not exercising the discretionary jurisdiction by us. It may or may not be that the Management was selectively vindictive but no Management can ignore a serious lapse on the part of a teacher whose conduct should be an example to the pupils. This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this

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Court nor refuse to follow the same.' A

[See also *State of Rajasthan & Anr. v. Mohammed Ayub Naz,* 2006 (1) SCALE 79). "

10. To the similar effect is the decision of this Court in *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh,* 2006 (6) B SCC 187, wherein it was held:

"In our view, even short remittance amounts to misconduct and, therefore, applying eh rulings of this Court, the impugned order ought not to have been passed by the C Division Bench ordering reinstatement. We, therefore, have no hesitation to set aside the order passed by the leaned Judges of the Division Bench and restore the order of dismissal of the respondent from service. It is stated that pursuant to the order of Labour Court the respondent was D reinstated in service. Since there was no stay granted by this Court the respondent had continued in service of the Corporation. In view of the law laid down by this Court and of the facts and circumstances of this case, the respondent, in our opinion, has no legal right to continue in service any E further. We, therefore, direct the appellant Corporation to immediately discharge the respondent from service. However, we make it clear that the salary paid to the respondent and other emoluments during this period shall not be recovered from the respondent. We also make it F further clear that in view of the order of dismissal the respondent shall not be entitled to any further emoluments."

11. Mr. S.R. Singh, learned senior appearing on behalf of the respondent, however, would contend that this Court in a situation of this nature where the employee has already retired G and he has been found guilty for commission of a minor offence, should not interfere with the impugned judgment.

12. We regret our inability to accede to the said request. As the respondent was appointed as a conductor and in that H

A capacity was holding the position of trust, it is not the amount which would be very material for the purpose of determining the quantum of punishment. He was charged for commission of similar misconducts on six occasions; at least misconduct has been found to be proved in respect of two charges even by the
B Labour Court.

13. In that view of the matter, we are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, there shall be no order as to costs.
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N.J. Appeal allowed.