

*Before Augustine George Masih, J*

**PEPSU ROAD TRANSPORT CORPORATION, PATIALA  
THROUGH ITS MANAGING DIRECTOR,—Petitioner**

*versus*

**THE PRESIDING OFFICER, LABOUR COURT,  
PATIALA AND ANOTHER,—Respondents**

C.W.P. No. 18976 of 1996

14th May, 2009

*Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 11-A and 17-B—Charges of embezzlement against a Conductor—Enquiry Officer finding workman guilty of charges after considering reply and granting an opportunity of personal hearing—Termination—Appellate authority rejecting appeal of workman—Demand notice—Conciliation proceedings failed—Dispute referred to Labour Court—Embezzlement of Rs. 30 only—Labour Court finding severity of punishment not proportionate to lapses committed by workman—Labour Court while exercising its powers u/s 11-A substituting punishment to stoppage of two increments with cumulative effect and ordering reinstatement with continuity of service—Power of Labour Court u/s 11-A—Exercise of—Only in exceptional circumstances which should not be based merely on misplaced sympathy and compassion—Award of Labour Court not sustainable in law and set aside—Workman performing his duties satisfactorily till his superannuation after taking back by Management—No complaint against workman—Workman ordered to be treated as fresh appointee from date he joined duty in pursuance of order passed by Corporation.*

*Held*, that whenever the Labour Court invokes its power under Section 11-A of the Industrial Disputes Act, due care and caution is required to be taken as the said power is discretionary, requiring the Court its exercise judiciously. The Labour Court cannot exercise this extraordinary discretion at its whims and fancies. Whenever discretionary power is to be given effect to, added burden is cast upon the Court to exercise the same. In doing so, the nature of allegations, the procedure invoked in the departmental

proceedings, the proof of charges and the effect of such proved charges on the Management and the organization has to be kept in view. Industrial Disputes Act was enacted with the purpose to maintain peace and harmony in the industrial establishments, which invariably means close cooperation between the Management and the Workers leading to conductive and friendly working environment leading to higher production which is beneficial to the society as a whole. Where serious allegations have been levelled against the employee, which stand proved in the departmental enquiry, result whereof is the loss of confidence, faith, trust on its employee, the Labour Court should not, by exercising its power under Section 11-A of the Industrial Disputes Act, force an employee on the Management, who is unwelcome in the establishment or organization. This would neither be in the interest of the employee or the Management nor will it be healthy for the industrial environment. Thus, power under Section 11-A of the Industrial Disputes Act needs to be exercised only in exceptional circumstances, which should not be based merely on misplaced sympathy and compassion.

(Para 13)

R. S. Ahluwalia, Advocate *for the petitioner.*

Vikas Singh, Advocate *for respondent No. 2.*

**AUGUSTINE GEORGE MASIH, J.**

(1) Pepsu Road Transport Corporation, Patiala (petitioner herein) terminated the services of respondent No. 2—Joginder Kumar, who was a Conductor with the petitioner-Corporation and joined his services on 9th August, 1971 and continued as such till the date of his termination i.e. 20th March, 1990. Before termination of the services, a charge-sheet dated 21st January, 1988 was issued to him where the following charges were levelled against him :—

- “(1) That respondent No. 2 defrauded the Corporation to the extent of Rs. 30 including tax while on duty with Bus No. 7381 on 10th January, 1988.
- (2) That respondent No. 2 had intention to re-issue the tickets of Rs. 10 with connivance of the Conductor while conducting advance booking of Bus No. 7403, dated 4th December, 1987.
- (3) Respondent No. 2 committed acts subversive of office discipline.”

(2) The workman filed a reply to the said charge-sheet, finding the same not satisfactory, a regular enquiry was ordered. The Enquiry Officer held the workman guilty and submitted his enquiry report concluding therein that charges No. 1 and 3 levelled against the workman stood fully established. A show cause notice was issued to him and an opportunity of personal hearing was also granted to him. After considering the reply to the show cause notice and hearing the workman personally, keeping in view the findings as recorded by the Enquiry Officer and the gravity of the charges, which were proved against the workman, his services were terminated,—*vide* order, dated 20th March, 1990. The workman preferred an appeal as per the rules of the Corporation. The Appellate Authority granted him a personal hearing. The said appeal was not accepted and the same was rejected,—*vide* order, dated 16th October, 1992. The workman preferred a demand notice and the conciliation proceedings having failed, a dispute was referred by the appropriate Government to the Labour Court, Patiala for adjudication,—*vide* reference, dated 3rd January, 1994.

(3) The Labour Court, on the basis of the pleadings of the parties, framed the following issues :—

- “(1) Whether there has been a fair and proper enquiry ?
- (2) Whether the order of termination of services of the workman is justified and in order ?
- (3) Relief.”

(4) Issue No. 1 was answered in favour of the Management. The Labour Court came to a conclusion that a fair and proper enquiry was held by the Enquiry Officer and that the charge of defrauding the Corporation to the tune of Rs. 30 has been duly proved against the workman during the enquiry proceedings. This conclusion was drawn by the Labour Court on the basis of the admission made by the workman in his cross-examination, wherein he had admitted that he had duly charge-sheeted to which he has submitted a reply and thereafter a regular enquiry was held, in which he participated and cross-examined the witnesses. The workman further admitted that a show cause notice for the proposed punishment was served on him and he was afforded opportunity of personal hearing by the punishing authority and the Appellate Authority rejected his appeal, which he preferred

against the order of punishment. The workman also admitted in his cross-examination that the Enquiry Officer did not have any enmity with the workman. On the basis of these admissions, the Labour Court had come to a conclusion that the enquiry, as held by the Management, was fair and proper.

(5) On issue No. 2, the Labour Court proceeded to exercise its powers under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). While exercising the said powers, the Labour Court observed that it had the jurisdiction and power to substitute the measure of punishment in place of the managerial wisdom as it was satisfied that the order of dismissal was not justified in the facts and circumstances of the case. The Labour Court concluded that the severity of the punishment was not proportionate to the lapses committed by the workman and further took into consideration 19 years of service to the credit of the workman, whereas the embezzlement reported by the checking staff was only of Rs. 30 which related to the fare collected from the passengers. Although the Labour Court accepted that the mis-conduct proved against the workman is grave in nature but still exercising its powers under Section 11-A of the Act substituted the punishment to stoppage of two increments with cumulative effect with effect from the date of termination i.e. 20th March, 1990. It further directed reinstatement of the workman with continuity of service but without back wages. This award came to be passed by the Labour Court, Patiala on 17th April, 1996, copy whereof has been appended as Annexure P-1.

(6) The Management preferred the present writ petition, wherein the challenge is to the award passed by the Labour Court, wherein the workman has been ordered to be reinstated with continuity of service with a substituted punishment of stoppage of two increments with cumulative effect from the date of termination. The basic challenge of the present award by the petitioner-Corporation is that once the Labour Court has come to a conclusion that the workman had defrauded the Corporation to the tune of Rs. 30 which has been duly proved against the workman during a fair and proper enquiry conducted by the Enquiry Officer, the Labour Court could not have substituted the punishment, which has been granted to the workman by the Management exercising its own wisdom to the facts and circumstances of the case. Defrauding the Corporation and the charge

having been proved against the workman in the enquiry proceedings, which has also been upheld by the Labour Court, the confidence and faith of the Corporation on the workman stood extinguished. Therefore, to reinstate a person, on which the Management does not have confidence, would not be in the interest of the Corporation as the nature of work of the Conductor is to deal with money and a workman, who had been proved to have defrauded the Corporation, cannot be trusted in future. On this basis, it has been contended that the impugned award cannot be sustained and deserves to be set aside.

(7) Counsel for the petitioner has made his submissions primarily on these lines and to buttress his submissions, reliance has been placed by the counsel for the petitioner on **Karnataka State Road Transport Corporation versus B. S. Hullikatti, (1)**, **U. P. State Road Transport Corporation versus Mohan Lal Gupta and others, (2)**, **Regional Manager, RSRTC versus Ghanshyam Sharma, (3)** and **Bharat Heavy Electricals Ltd. versus M. Chandrasekhar Reddy and others, (4)**. He seeking support from the above judgments, submits that the power exercised under Section 11-A of the Act by the Labour Court was beyond jurisdiction and unjustified. The award impugned, therefore, deserves to be set aside.

(8) On the other hand, counsel for respondent No. 2 supports the award passed in favour of the workman on the ground that the amount, which is attributed to have been defrauded by the workman, is merely Rs. 30. The Labour Court has rightly, while exercising its powers under Section 11-A of the Act, come to the conclusion that the order of termination is unwarranted in the present case as the mis-conduct proved against the workman is not that grave, which would call for termination from service. He submits that discretionary power provided under the Statute has been duly exercised by the Labour Court while taking into consideration the length of service, which was 19 years at the time of his termination and further the hardship, which he would face at that stage, has been taken note of by the Labour Court while passing the substituted punishment. He submits that in the given facts and circumstances of the case, the exercise of powers under Section 11-A of the Act by the Labour Court is fully justified and does not call for interference by this Court. He has relied upon the judgment

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(1) 2001 (2) S.C.C. 574

(2) 2000 (9) S.C.C. 521

(3) (2002) 10 S.C.C. 330

(4) 2005 (1) Judicial Reports (S.C.) 168

of this Court in this case of **The Pepsu Road Transport Corporation, Patiala through its General Manager versus The Presiding Officer, Labour Court, Patiala and another, (5) and State of Punjab versus Dhanna Singh and another, (6)** wherein this Court had taken a lenient view in the matter and has refrained to interfere in the award passed by the Labour Court.

(9) Counsel for respondent No. 2 further contends that the Corporation challenged the impugned award and the operation of the said award was stayed by this Court *vide* order dated 13th December, 1994. An application was moved under Section 17-B of the Act and the said application was allowed and the workman was held entitled to the benefit of Section 17-B of the Act *vide* order dated 23rd February, 1998. During the pendency of the writ petition and consequent upon the order passed by the Court, Joginder Kumar—workman was allowed the arrears of wages at the rate of wages last drawn by him at the time of his termination. He was also ordered to be put back on duty immediately *vide* order dated 27th May, 1998 passed by the General Manager, Pepsu Road Transport Corporation, Patiala Depot-II (Annexure A-1). He submits that in pursuance to this order, the workman continued in service till the date of his superannuation on 31st October, 2002. He further submits that the workman had been paid the current wages for the work, he had performed with the Management from the date of his reinstatement till the date of his superannuation. He, on this basis, contends that the Court should not interfere with the impugned award at this stage.

(10) I have heard the counsel for the parties and have gone through the records of the case as well as the impugned award.

(11) The Labour Court has, after going through the pleadings and the evidence led by the parties, come to a conclusion that a fair and proper enquiry was held, wherein the workman was given full opportunity to participate and he did participate in the enquiry proceedings. The statements of witnesses were recorded in his presence and he cross-examined them. Show cause notice for the proposed punishment was duly served on the workman, to which he responded and on consideration of the response as well as by giving a personal hearing, the punishing authority passed the order

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(5) 2000 (3) R.S.J. 554

(6) 2001 (3) S.L.R. 433

of termination. Appeal preferred by the workman was rejected after giving him personal hearing by the Appellate Authority. Thus, the Labour Court has put its seal of approval with regard to the departmental proceedings, which culminated in his termination, wherein the workman was found guilty of the charge of defrauding the Corporation to the tune of Rs. 30.

(12) The charge having been fully proved against the workman a question, which arises for consideration in the present case, is whether an employer whose employee deals with public and cash, if is held guilty of defrauding its employer, would he be entitled to reinstatement in service specially when the faith and confidence on the employee has been lost by the employer ? The answer to this question can only be 'NO'. Mutual confidence and faith is the hall-mark of a relationship of employer and employee, which when breached, cannot be rebuilt specially when money is involved. A dishonest employee, who fraudulently misappropriates the funds of the employer, cannot be retained in service and the Labour Court, in exercise of its powers under Section 11-A of the Act, cannot force such an employee on the employer while exercising its powers under this Section. The Labour Court has jurisdiction and power to interfere with the quantum of punishment. This may be termed as a discretionary power but the same has to be exercised and used judiciously. Merely because the amount which is defrauded by the employee, is a small amount does not mitigate the misconduct proved against the employee. An employee, who is dishonest with a small amount cannot be trusted with large amounts. In cases of dishonesty, fraud or mis-appropriation of funds, exercise of powers under Section 11-A of the Act by the Labour Court in substituting the punishment and reinstating an employee would not be justified. The Labour Court cannot force upon an employer a dishonest employee, on which the employer has lost faith and confidence. The Hon'ble Supreme Court in the cases of **Karnataka State Road Transport Corporation** (*supra*), **U. P. State Road Transport Corporation** (*supra*) and **Regional Manager, RSRTC** (*supra*), while dealing with the cases of Conductors, had clearly held that the Labour Court should not interfere with the order of punishment on misplaced sympathy or compassion specially in those cases, where the employer loses its confidence *viz-a-viz* the employee.

(13) Whenever the Labour Court invokes its power under Section 11-A of the Industrial Disputes Act, due care and caution is required to be taken as the said power is discretionary, requiring the Court its exercise judiciously. The Labour Court cannot exercise this extraordinary discretion at its whims and fancies. Whenever discretionary power is to be given effect to added burden is cast upon the Court to exercise the same. In doing so, the nature of allegations, the procedure invoked in the department proceedings, the proof of charges and the effect of such proved charges on the Management and the organization has to be kept in view. Industrial Disputes Act was enacted with the purpose to maintain peace and harmony in the industrial establishments, which invariably means close cooperation between the Management and the Workers leading to conducive and friendly working environment leading to higher production which is beneficial to the society as a whole. Where serious allegations have been levelled against the employee, which stand proved in the departmental enquiry, result whereof is the loss of confidence, faith, trust on its employee, the Labour Court should not, by exercising its power under Section 11-A of the Industrial Disputes Act, force an employee on the Management, who is unwelcome in the establishment or organization. This would neither be in the interest of the employee of the Management nor will it be healthy for the industrial environment. Thus, power under Section 11-A of the Industrial Disputes Act needs to be exercised only in exceptional circumstances, which should not be based merely on misplaced sympathy and compassion.

(14) In view of the above, the impugned award, dated 17th April, 1996 (Annexure P-1) passed by the Labour Court, Patiala, cannot be sustained and is, hereby, set aside.

(15) In the present case, after the passing of the order by this Court granting the workman the benefit of Section 17-B of the Act, the Management has taken back the workman in service *vide* order, dated 27th May, 1998 passed by the General Manager, Pepsu Road Transport Corporation, Patiala-II (Annexure A-1). The factual position has not been disputed by the counsel for the petitioner and he has not stated that thereafter any complaint has been found against the workman. The fact that the workman after he was taken back in service continued in service till the date of his superannuation i.e. 31st October, 2002 and he has been paid the current wages for the work performed by him, has also not been disputed by the counsel for the petitioner. In the peculiar facts and circumstances of the case and in the light of the fact, the workman has worked with the Management



on thier own asking and there is no complaint after his joining the service, it would not be justified for the Management to ask for refund of wages from the workman from the date he joined in service in pursuance to the order, dated 27th May, 1998 passed by the General Manager (Annexure A-1) till the date of his superannuation i.e. 31st October, 2002 as he has performed his duties satisfactorily with the Management. It would be just and equitable in the peculiar facts and circumstances of the present case that the workman be treated as fresh appointee from the date he joined duty in pursuance to the order, dated 27th May, 1988 passed by the General Manager, Pepsu Road Transport Corporation, Patiala-II (Anneuxre A-1).

(16) The writ petition is allowed in the above terms.

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*R.N.R*

*Before Augustine George Masih, J*

**SHRI CHANDRIKA YADAV,—Petitioner**

*versus*

**M/S AMAN SCALES (P) LTD. FARIDABAD**

**AND ANOTHER,—Respondents**

C.W.P. No. 13274 of 1997

3rd July, 2009

**Constitution of India, 1950—Art.226—Industrial Disputes Act, 1947—Ss.10(1) and 12(5)—Closure of factory—Termination of Services—Workmen receiving their dues after settlement—Petitioners not accepting their dues—Restart of factory—Workmen serving demand notices seeking their reinstatement—Conciliation proceedings—No objection with regard to non-serving of demand notices upon Management—No settlement arrived at between parties—Labour-cum-Conciliation Officer forwarding failure report u/s 12(4) of 1947 Act to Government—Management also taking no objection with regard to non-serving of demand notices in conciliation proceedings held by Deputy Labour Commissioner—Management having rejected said demand during conciliation proceedings and rather contesting same giving ample material to appropriate**