

State of Punjab and another v. Surat Singh and another
(M. M. Punchhi, J.)

they have actively participated in the proceedings and had invited a decision by the President of the Tribunal which in material parts run in their favour as well.

(22) With the rendering of aforesaid decision on the two material legal issues, which had necessitated their consideration by the Division Bench, we would accede to the common prayer of the learned counsel for the parties that these cases be now sent to a learned Single Judge for a decision on the merits of each case. It is ordered accordingly. There will be no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

STATE OF PUNJAB AND ANOTHER,—*Petitioners.*

versus

SURAT SINGH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 122 of 1984.

April 23, 1984.

Industrial Disputes Act (XIV of 1947)—Sections 10(1)(c) and 11-A—Conductor accused of having defrauded the employer of some money—Employer Holding a fair and proper enquiry and terminating his services—Labour Court finding the punishment too harsh and directing reinstatement with fifty percent back wages—Labour Court—Whether justified in putting the workman back to the same employment involving handling of money.

Held, that under section 11-A of the Industrial Disputes Act, 1947, the Labour Court has the power to alter the punishment but only in those cases where the punishment is so harsh so as to suggest victimization. Where the Labour Court found the workman to have indulged in fraud, his reinstatement in the same post where he could reindulge in the same weakness could not be ordered. If the punishment had to be mitigated, it being harsh so as to suggest victimization, it could be brought down to other milder forms but this did not mean that necessarily the workman had to be put to the same job or, for that matter, a job in all

events and the following of such course would depend on the facts and circumstances of each case.

(Para 4).

Writ Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

- (a) *issue a writ of certiorari quashing the impugned award 'P—1'.*
- (b) *issue any other writ, order or direction as this Hon'ble Court deems fit in the circumstances of the case.*

It is further prayed that:—

- (i) *issuance of advance notices to the respondents may be dispensed with.*
- (ii) *filing of certified copy of the impugned award may also be dispensed with.*
- (iii) *operation of the impugned order 'P—1' may kindly be stayed during the pendency of this writ petition.*

R. P. Bhatia, Advocate, for A. G. Punjab.

J. M. Sethi, Advocate, for the Respondent.

JUDGMENT

Madan Mohan Panchhi, J. (Oral)

(1) This petition has been directed against the award (Annexure P.1), dated 19th May, 1983, of the Labour Court, Patiala, whereby termination of services of the respondent-workman was held not justified and in order and, as a consequence thereof, he was held entitled to reinstatement with continuity of service and fifty per cent of back wages.

(2) The facts, as found by the Labour Court, are undisputed. The respondent was working as a Conductor with the petitioner Punjab Roadways, Muktsar. He was drawing a salary of Rs. 375 per mensem. He had about 8 years' service to his credit at the relevant time. The respondent was accused of having defrauded

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the Management to the tune of Rs. 7.45 as it was found that, on a particular day while on duty on a bus, he had charged the said sum by way of fare from the passengers and had not issued tickets to them. This finding was arrived at after a proper enquiry conducted by one Ram Saran Dass, Works Manager, Enquiry Officer. On the basis of that enquiry, the services of the respondent-workman were terminated.

(3) The respondent-workman raised an industrial dispute and the matter was referred for adjudication under section 10(1)(c) of the Industrial Disputes Act, 1947, to the Labour Court, Patiala to determine :

“Whether termination of services of Shri Surat Singh workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?”

The parties put their respective pleas ; the workman challenging his termination and claiming reinstatement with continuity of service and full back wages and the Management asserting that the termination was valid, having been done after holding a proper and fair enquiry. On these pleas, the following two issues were struck by the Labour Court:—

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?

Under issue No. 1, the finding was returned in favour of the Management. Rather it was conceded on behalf of the workman that there was a fair and proper enquiry against him. Under issue No. 2, it was held that, as a result of enquiry, the workman was held guilty of defrauding the Management to the tune of Rs. 7.45, by the Enquiry Officer. In the matter of punishment, the Labour Court agreed with the representative of the workman, suggesting that the order of dismissal was harsh justifying invocation of the provisions of section 11-A of the Industrial Disputes Act to award lesser punishment. And yet, losing conspectus of the whole thing, the Labour Court, instead of awarding lesser punishment, returned the finding on issue No. 2 in favour of the workman

and against the Management, in sequel of which reinstatement of the workman was ordered with continuity of service and fifty per cent of back wages. So, the punishment, if at all, deducibly summed up to withholding of fifty per cent of back wages. It is this view of the Labour Court which is under challenge.

(4) The proposition is well settled that under section 11-A of the Industrial Disputes Act, the Labour Court has the power to alter the punishment but only in those cases where the punishment is so harsh so as to suggest victimization. See, in this connection, *The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. v. The Management and others*, (1) and a decision of this Court in *The General Manager, Chandigarh Transport Undertaking, Chandigarh v. Ranjit Singh and another*, (2). In the impugned award, the Labour Court has gone to the view that the punishment awarded to the workman was harsh. But there is no finding that it was suggestive of victimization. The award is singularly silent not only on this aspect but also on the broader aspect as to whether it would be prudent to put the workman-respondent back to the same employment involving day-to-day handling of money. In a decision of the Gujarat High Court in *Gujarat State Road Transport Corporation, Ahmedabad v. Jamnadas Bacharbhai*, (3) M. P. Thakkar, the then Chief Justice (who now adorns the Supreme Court), speaking for the Bench, in some what similar circumstances, observed as follows:—

“Under the circumstances, the Labour Court was not justified in reinstating a conductor who had Collected fare, pocketed the same, and robbed the national Exchequer, in the same post where he could reindulge in the same weakness at public cost. The Labour Court can, depending upon facts and circumstances of the case and of the offender, direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. That must be left to the Labour Court. And the Labour Court would have to decide the issue having regard to facts and circumstances of each case and the demands of the situation in the context of each matter.”

(1) A.I.R. 1973 S.C. 1227.

(2) 1982 Lab. I.C. 604.

(3) 1983 Lab. I.C. 1349.

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(S. S. Sodhi, J.)

I am in respectful agreement with the aforesaid view of the Gujarat High Court. The Labour Court having found the respondent-workman to have indulged in fraud, his reinstatement justifiably could not be ordered to the post of a Conductor. If the punishment had to be mitigated, it being harsh so as to suggest victimization, it could be brought down to other milder forms. But this did not mean that necessarily the respondent-workman had to be put to the same job or, for that matter, a job in all events. As said by the Gujarat High Court, and in my view rightly, following of such course would depend on the facts and circumstances of each case. And whether the present is a case of that kind would have to be redetermined by the Labour Court afresh in the right perspective of things.

(5) For the view above taken, there is no escape but to allow the writ-petition, quash the impugned award so far as it relates to the finding on issue No. 2 and the relief granted thereunder. The matter is accordingly remitted back to the Labour Court, Patiala, to redecide the question in accordance with law, keeping in view the observations aforesaid. In the circumstances, there shall be no order as to costs.

N. K. S.

Before S. S. Sodhi, J.

MANINDERJIT SINGH AND OTHERS,—Appellants
versus

SARDAR SINGH AND OTHERS,—Respondents.

First Appeal from Order No. 218 of 1978.

April 25, 1984.

Motor Vehicles Act (IV of 1939)—Sections 110-B & 110-D—Motor accident resulting in the death of a person—Compensation payable to dependants of the deceased—Principles governing the assessment—Widow of the deceased remarrying soon after the accident—Whether entitled to any compensation—Factum of remarriage—Whether of any consequence in assessing her entitlement to compensation.

Held, that the compensation to be assessed is the pecuniary loss caused to the dependants by the death of the deceased and for the purpose of calculating the just compensation, annual dependency