

Escorts Limited v. Presiding Officer, Labour Court and others  
(D. V. Sehgal, J.)

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(7) The impugned order of dismissal thus suffers from no infirmity and in this view of the matter, the judgment and decree of the lower appellate court is hereby set aside and the suit of the plaintiff—Surinder Kumar is hereby dismissed. There will, however, be no order as to costs.

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R.N.R.

Before D. V. Sehgal, J.

ESCORTS LIMITED.—Petitioner

versus

PRESIDING OFFICER, LABOUR COURT AND OTHERS,—  
Respondents

Civil Writ Petition No. 2145 of 1985

August 20, 1986.

*Industrial Disputes Act (XIV of 1947)—Section 11A—Senior Assistant in Stores Department charged for theft of Company property—Order of dismissal passed after holding a domestic enquiry—Industrial dispute raised and the domestic enquiry upheld by the Labour Court as being fair and proper—Labour Court while holding order of dismissal as justified directing reinstatement in exercise of its powers under Section 11A—Such finding of the Labour Court—Whether divests the Labour Court of the jurisdiction to water down the quantum of punishment—Award of the Labour Court—Whether liable to be quashed.*

Held, that a reading of Section 11 A of the Industrial Disputes Act, 1947 would show that the Labour Court may hold that although the misconduct is proved yet the order of discharge or dismissal for the said misconduct is not justified. In other words the Labour Court may hold that the proved misconduct does not merit punishment by way of discharge or dismissal and it can in such circumstances award to the workman lesser punishment instead. If, however, the Labour Court reaches at the conclusion that the order of dismissal was justified and in order it divests itself of the jurisdiction to exercise its discretion under Section 11A of the Act so as to water-down the quantum of punishment and as such the award of the Labour Court is liable to be quashed.

(Paras 10 and 14)

*Civil writ petition under articles 226/227 of the Constitution of India praying that:—*

- (i) a writ of Certiorari quashing the award of the Labour Court dated 4th February, 1985, annexure p-1, be issued;
- (ii) Any other Writ, Order or Direction, which this Hon'ble Court may deem proper in the circumstances of the case, be issued;
- (iii) records of the case may kindly be called for;
- (iv) costs of the petition may kindly be awarded in favour of the petitioner;
- (v) it is further prayed that during the pendency of the writ petition, the operation of the impugned award and the reinstatement of respondent No. 2 be stayed;
- (vi) condition regarding filing of certified copy of annexure P-1 be dispensed with;
- (vii) condition regarding service of advance notice of the writ petition be dispensed with.

Kuldip Singh, Senior Advocate, with S. S. Nijjar, Advocate, for the Petitioner.

A. P. Bhandari, Advocate, for Respondent No. 2:

#### JUDGMENT

*D. V. Sehgal, J.—*

(1) This judgment will dispose of C.W.Ps. Nos. 2145 and 3767 of 1985 as they are directed against the same award dated 4th August, 1985, made by the Presiding Officer, Labour Court, Faridabad—while the former petition has been filed by the management, the latter one has been filed by the workman.

(2) For facility of reference, I shall take the facts from C.W.P. No. 2145 of 1985. Mr. Mahipal Sharma, workman, was employed as Senior Assistant in the Stores Department in the Tractor Division of M/s. Escorts Ltd., Faridabad, on 25th July, 1978. He was on probation for a period of three months. His probation was extended for another period of three months and finally he was confirmed with effect from 1st February, 1979. It is the case of the petitioner that in

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his capacity as Senior Stores Assistant, the workman, had direct access to various stores items. On 5th May, 1983, the dickey of his scooter was checked by the security staff at the time he was leaving the factory after his duty was over. Four pieces of 'overload relays' belonging to the Company were found from the dickey. These store items were wrapped in a brown envelope and the workman had unauthorisedly removed the same from the stores with the intention of taking them out of the factory. The workman gave his statement on the spot in writing confirming recovery of the said items of stores from the dickey of his scooter. Another employee, Mr. R. K. Kuckreja, who is also an office-bearer of the workers' union, happened to be present at the time of the search. He also gave his statement in writing confirming the said recovery during the course of checking by the security staff. Theft of the employer's property being an act of gross misconduct, the workman was served with a chargesheet on 6th May, 1983. He was placed under suspension and enquiry proceedings were taken up against him. The workman submitted his explanation dated 7th May, 1983 denying the allegations. The domestic enquiry was conducted according to the principles of natural justice. The workman was given full opportunity to cross examine the witnesses produced in support of the charges against him. He was also afforded an opportunity to produce his defence. After conclusion of the enquiry, the Enquiry Officer submitted his report holding the workman guilty of charges levelled against him. The employer accepted the said report and since the charges established were very serious, particularly in respect of the workman who was responsible for proper custody of the stores items and who had been found guilty of an attempt to pilfer stores items, the employer dismissed him from service,—vide letter dated 12th April, 1984.

The workman submitted a demand notice. His demand for reinstatement was not accepted by the employer. The proceedings before the Labour-cum-Reconciliation Officer for settlement also failed. On an application made by the worker, reference of the dispute was made to the Presiding Officer, Labour Court, Faridabad, respondent No. 1, who after receiving the pleadings of the parties and recording evidence adduced before him, made his award dated 4th February 1985 Annexure P. 1. In the award respondent No. 1 held that the domestic enquiry against the workman was fair and proper. On the question whether the termination of the services of

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the workman was justified and in order, respondent No. 1 observed as under:—

“The claimant was dismissed as four pieces of overload relays were found from the dickey of his scooter. This is a serious misconduct. The management has lost confidence in him. Hence the workman who was found to have committed theft, is liable to suffer extreme penalty. Hence the order of dismissal is justified and in order.”

(4) However, the above conclusion arrived at by respondent No. 1 in the award Annexure P. 1, is followed by his observations which are as under:—

“But taking into consideration the fact that no persons had seen him putting these articles in the dickey of the scooter, the scooter stand is also guarded by the watchman of the company, the workman is searched while entering the scooter stand, in these circumstances it cannot be said that the claimant had put these overload relays in the dickey of his scooter. It is also stated that the lock of the scooter was also defective. His past record was also not bad. In these circumstances, I give the benefit of section 11-A to the claimant and order his reinstatement with continuity of service but without any back wages.”

(5) The employer has challenged the award Annexure P. I. directing reinstatement of the workman on the twin-ground—

- (i) that once respondent No. 1 has arrived at the conclusion that the order of dismissal was justified and in order, it had no jurisdiction in purported exercise of power under section 11-A of the Industrial Disputes Act, 1947 (hereinafter called the Act) to order reinstatement of the workman; and
- (ii) that the workman being a Senior Assistant in the Stores Department was holding a position of trust and he having been found guilty of attempted pilferage of store articles had lost the confidence of the employer. As such there was no justifiable ground for ordering his reinstatement.

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The workman on the other hand, has assailed the award Annexure P. 1 primarily on the following grounds:—

- (1) that the conclusion of respondent No. 1 that the domestic enquiry against the workman was fair and proper is erroneous. He had in fact been denied reasonable opportunity and the enquiry was vitiated; and
- (2) that having ordered reinstatement of the workman, there was no reasonable ground for respondent No. 1 to deprive him of the backwages.

(6) I have heard the learned counsel for the parties at sufficient length. Before I embark upon the discussion on different aspects of the case, it must be noted that while exercising powers under Articles 226/227 of the Constitution this Court is not to sit as a Court of appeal, or review. It can only interfere with the award Annexure P. 1 if there is any error as to jurisdiction or there exists any error which is apparent on the face of the record or if respondent No. 1 has acted arbitrarily and in disregard of the provisions of law or in violation of the principles of natural justice. Within the confines of this jurisdiction, it has to be found whether the rival contentions of the parties have any merit.

(7) I shall first take up ground (i) on which the workman has assailed the award Annexure P. 1. It has been contended by his learned counsel that he was not allowed to engage and be represented by an advocate during the course of disciplinary proceedings. This aspect has in fact been dealt with by respondent No. 1 in detail in Annexure P. 1. It has been rightly pointed out therein that the workman was represented by Shri Sewa Ram, an office-bearer of the Workers' Union, who was also Legal Secretary of the Union. The management, on the other hand, was represented by Shri Y. C. Talwar, who is a Matriculate holding Diploma in Mechanical Engineering. It has been further pointed out that the workman himself is a Graduate and was competent to defend himself. Therefore, I am of the considered view that no prejudice was caused to the workman if he was not allowed to be represented by an advocate. It was then pointed out by the learned counsel that Shri Sewa Ram, who was representing the workman, was himself served with a chargesheet and this was with a view to pressurise him not to represent the workman properly. I find from the award Annexure P. 1

that this ground has again been completely met with therein. It has been brought out that Shri Sewa Ram had been representing the workman throughout the proceedings and on the dates on which Shri Sewa Ram did not appear no evidence was recorded by the Enquiry Officer. It has been rightly pointed out by respondent No. 1 that if for some misconduct Shri Sewa Ram was served with a charge-sheet by his employer that cannot be said to amount to bringing pressure on him. There is in fact no evidence on record to show that the motive behind serving a charge-sheet on Shri Sewa Ram was to dissuade him from representing the workman.

(8) The next contention raised by the learned counsel is that the punishment of dismissal could be awarded on him only by the Board of Directors of the employer and that the General Manager (Personnel), who passed the order of punishment, had no authority to do so. This ground has again been fully met with in the award Annexure P. 1. It has been brought out that the workman was appointed by the Deputy Manager and dismissed by an officer of a higher rank and status. It has not been shown that appointing and dismissing authority in the case of the workman was the Board of Directors of the employer. Thus, no error on the face of the record could be shown by the learned counsel which might persuade me to depart from the finding recorded by responded No. 1 that the domestic enquiry held against the workman was fair and proper.

(9) As has already been observed above, respondent No. 1 having held that the enquiry against the workman was fair and proper, further concluded that he had been dismissed as four pieces of overload relays were found from the dickey of his scooter and that this was a serious misconduct. He further concluded that the workman, who was found to have committed theft, was liable to suffer extreme penalty and hence the order of dismissal was justified and in order. It is in this perspective that I have to deal with ground (i) taken up by the employer while assailing the award Annexure P. 1. In *The Workmen of M/s. Firestore Tyre & Rubber Co. of India P. Ltd v. The Management and others* (1), while dealing with the scope of section 11-A of the Industrial Disputes Act (hereinafter called 'the Act'), it has been observed as under:—

"If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry, accepted by

(1) AIR 1973 S.C. 1227.

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it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is *not justified*, (emphasis supplied). In other words the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11-A."

(10) Following the above view, it has been held by this Court in *Haryana Agro-Industries Corporation Ltd. v. The Chief Commissioner, U.T., Chandigarh and others* (2), that the Industrial Tribunal could exercise the discretion under section 11-A of the Act if it had found that the termination of services of the workman was not legally justified. Since in that case, the Industrial Tribunal had held that the termination of his services was legally justified, it had no jurisdiction to exercise power under section 11-A of the Act. In the present case also having reached at the conclusion that the order of dismissal was justified and in order, respondent No. 1 had divested itself of the jurisdiction to exercise its discretion under section 11-A and to water down the quantum of punishment. The observations of respondent No. 1 in Annexure P. 1 to the effect that no person had seen the workman putting the articles in the dickey, the scooter stand is guarded by the watchman of the Company and the workman are searched while entering the scooter stand and thus speculating that the workman had not put the overload relays in the dickey of his scooter and further referring to the defence of the workman that the lock of the dickey of his scooter was also defective were not at all warranted and are in complete incongruity with the conclusion already arrived at by respondent No. 1.

(11) The learned counsel for the workman has invited my attention to *Rama Kant Misra v. The State of U. P. and others* (3), and *Jaswant Singh v. Pepsu Roadways Transport Corporation and others* (4). In both these cases, the extreme penalty of dismissal from service was considered by the Supreme Court to be not warranted and lesser punishment was awarded. However, in none of these two cases the misconduct proved against the workman was that of theft. In the former case, the workman was found responsible for disorderly conduct threatening an official of the employer. In the latter case, the workman was found to be under the influence of liquor while on duty. These judgments, therefore, are not a precedent to justify the award of respondent No. 1 in the present case reducing the punishment to deprivation of back wages and reinstating him into service. It has been contended by the learned counsel for the employer that the workman was employed as a Senior Assistant in the Stores Department. Theft of articles from stores by him was so serious that he had lost the confidence of the employer. His reinstatement in these circumstances, was not at all called for. No doubt, it has been pointed out on behalf of the workman that his duty was confined to maintaining some accounts and registers and not handling the stores, I find that it hardly makes any difference. He was admittedly holding a responsible position in the Stores Department. Pilferage of the stores by him would reasonably lead the employer to a conclusion that he can no longer depend on him and allow him to continue in the job. It has been held in *M/s. Francis Klein & Co., Private Ltd. v. The Workmen and another* (5):—

“In our view when an employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence there can be no justification for directing his reinstatement. The post of a Durwan in an industrial concern where valuable property both manufactured goods and assets require to be guarded, is such a post and when one of his colleagues calls on him to assist him in apprehending a thief the refusal to do so is certainly an act which justified the employer in losing confidence in him. Even the Tribunal in its order recognised that the employer has lost confidence in Nayan

(3) 1983 (1) S.L.R. 135.

(4) 1983 (3) S.L.R. 472.

(5) AIR 1971 S.C. 2414.



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Singh because while directing the Company to reinstate him, it says:—

If the management considers that Nayan Singh should not be given guard duty because of the Company's loss of confidence in him, as claimed by them, he may be allotted some other job of similar nature as found suitable.'

"Even this direction is not a valid direction because if once the Company has lost confidence in its employee it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person."

(12) Again in *M/s. Chembur Co-operative Industrial Estate Ltd. v. M. L. Chhatra and another* (6), though on facts it was found that the dismissal of the workman was illegal, he was not reinstated. The following observations therein are pertinent:—

"However, the facts relating to the removal by the 2nd respondent of a letter from the architects show that he had clearly forfeited the confidence of his employers. We do not therefore, think that we would be justified in ordering reinstatement of the 2nd respondent."

(13) In *Anil Kumar Chakraborty and another v. M/s. Saraswati-pur Tea Company Ltd. and other* (7), the workman was a Compounder whose duty was to administer medicines to the workers in the tea garden free of cost. Abusing his position of trust he indulged in trafficking in illicit and contraband drugs. In this context, it was observed:—

"It is unnecessary for us to go into these contentions for the reason that even proceeding on the basis that the order of dismissal is unsustainable on the ground that no proper and fair inquiry had been held against the appellant, this,

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(6) AIR 1975 S.C. 1725.

(7) AIR 1982 S.C. 1062.

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in our view, is not a case where any order for reinstatement of the appellant could properly be made. Counsel for the first respondent-company has rightly contended that it is a clear case of loss of confidence in the employee on the part of the Management and compensation would be adequate relief."

(14) In view of the above discussion, I am of the considered view that respondent No. 1 out-stepped his jurisdiction ordering reinstatement of the workman. His dismissal, in the circumstances, was fully justified. The plea for backwages on behalf of the respondent falls through as a necessary corollary to this conclusion.

(15) Consequently, I allow C.W.P. No. 2149 of 1985 filed on behalf of the employer and quash the award Annexure P. 1 of the Tribunal to the extent it directs reinstatement of the workman. At the same time, I dismiss C.W.P. No. 3767 of 1985 filed on behalf of the workman holding that his dismissal being justified his reinstatement as ordered by respondent No. 1 was without jurisdiction and he is not entitled to backwages. There shall be no order as to costs.

R.N.R.

Before G. C. Mital, J.

SIRI CHAND,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 1429 of 1979

August 20, 1986.

*Punjab Tenancy Act (XVI of 1887)—Sections 77(3)—Punjab Security of Land Tenures Act (X of 1953)—Sections 9 and 14A(ii)—Landowners' suit for eviction for arrears of rent—Order for ejection passed against tenant under Section 77(3) of the Tenancy Act—Procedure for ejection prescribed by Section 14A(ii) of the Land Tenures Act not followed—No notice issued to tenant in form 'N' to make deposit of arrears within one month—Order of eviction—Whether beyond the jurisdiction of the authorities under the Tenancy Act—Said order—Whether liable to be quashed.*