A H.S. CHANDRA SHEKARA CHARI

v.

THE DIVISIONAL CONTROLLER, KSRTC AND ANR.

MARCH 31, 1999

B [S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Labour Law—Industrial Disputes Act, 1947—Section 11A—Award by the Labour Court setting aside the dismissal order against the appellant and directing re-instatement with full back wages—High Court disallowing C *full back wages on the reasoning that the appellant was not totally innocent and the charges against him could have been established by better or further evidence—Justifiability of—Held, the High Court had no jurisdiction, not even under Section 11A, to enter into the question whether the charges could have been established by better or further evidence—* D *Such speculation not the function of the court or any quasi-judicial authority—Necessary consequences have to follow and appropriate orders are to be passed if it is found as a fact that the charges are not established—Case remitted to Single Judge of High Court for rehearing.*

The appellant was dismissed from service by the respondent by order E **dated 30-7-1988 after holding an enquiry. The dismissal order was challenged before the Labour Court, which after coming to the finding that the charges against the appellant were not proved, by its award dated 1.8.1994 directed the reinstatement of the appellant with full back wages from the date of dismissal till the date of passing the award. The respondents challenged the findings and the award of the labour court by way of a writ petition in the** F **High Court. The Single Judge of the High Court while upholding the reinstatement of the appellant came to the conclusion that with better proof the charges could have been established and held that the appellant could not be awarded full back wages and that a portion of the back wages must be disallowed by way of punishment. The writ appeal filed by the appellant** G **against the order of the Single Judge was dismissed by the Division Bench of the High Court. Hence this appeal.**

Disposing of the appeal, this Court

HELD : 1. The judgments passed by the Single Judge as also by the H **Division Bench of the High Court, which summarily dismissed the writ**

appeal, cannot be sustained. Once the Tribunal had found that the Charges against the appellant were not established, it was not open to the Single Judge, who had rightly refused to re-appraise the evidence to say that with better proof the charges could have been established. The Single Judge had no jurisdiction, not even under Section 11A of the Industrial Disputes Act, 1947, to enter into the question whether the charges could have been established by better or further evidence. That is not the function of the court or any quasi- judicial authority. If it is found as a fact that the charges are not established, then the necessary consequences have to follow and, as a corollary thereto, appropriate orders are to be passed. There may be circumstances justifying non-payment of full back wages, but they cannot be denied for the reason that the charges could have been established with better proof. If "better proof" was available with the management and it was not furnished or produced before the court, a presumption would arise that such proof, if furnished, would have gone against the management. It is surprising that the view propounded by the Single Judge, which falls in the realm of speculation, has been upheld by the Division Bench. [288-C, E-H]

2. The whole case is remanded back to the Single Judge to re-hear it on merits, subject to the condition that in compliance of the award passed by the Labour Court the appellant shall be put back to duty with all the arrears of salary. [289-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2457 of 1999.

From the Judgment and Order dated 9.3.98 of the Karnataka High Court in W.A. No. 453 of 1997.

Ms. Hetu Arora for S.R. Bhat for the Appellant.

K.R. Nagaraja for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted.

We have heard the learned counsel for the parties.

A The appellant was dismissed from service by the respondent by order dated 30th July, 1988 which was challenged before the Labour Court and the Labour Court by its Award dated 1st August, 1994, directed as under :

> "Claim statement filed by the 1st party workman under Section 10 (4-A) of the Industrial Disputes Act, 1947 (Karnataka Amendment Act, 1987) for his re-instatement into service with continuity and for back wages is allowed and is accepted. Second party Management is not justified in dismissing the Ist party workman from service on 30.7.1988. The order of dismissal of Ist party workman from service, dated 30.7.1988 passed by the IInd party Management is set aside. IInd party Management is directed to re-instate the Ist party workman into service to his original post and there shall be continuity of service of the Ist party workman under IInd party Management. Ist party workman is also entitled for the back wages from the date of dismissal, i.e. 30.7.1988, till the date of passing his award. Parties are directed to bear their own costs."

This order was passed by the Labour Court as it was found that the charges against the appellant were not proved. The relevant finding of the Labour Court is as under :

> "From the available materials it is seen that the findings of the Enquiry Officer are perverse and the Management is guilty of victimising the 1st party workman, and as such, interference by this court is necessary. 1st party workman has succeeded in showing and proving that the order of dismissal passed against him, is unjust and improper."

While recording its finding on issue No. 3, the Labour Court further observed as under :

> "From the available materials it is seen that IInd party Management has failed to prove the charges levelled against the 1st party workman and has failed to establish the misconduct alleged to have been committed by the 1st party workman. When IInd party Management has failed to prove the charges levelled against the 1st party workman, then it is to be held that the punishment inflicted on the 1st party workman by the IInd party Management, namely, the dismissal of 1st party workman from service, amounts to harsh punishment and it suggests victimisation of the 1st party workman."

A perusal of the Award further shows that issue No.1 which was to the following effect :

> "Where the IInd party proves that it had conducted a proper and valid enquiry for the misconduct of the 1st party?"

Was decided in the affirmative on 4.12.1993. The finding on this issue is not available to us as it has not been made part of the Award nor has any counsel filed a copy of that finding either with the Special Leave Petition or with the Counter Affidavit. We therefore, proceed on the basis that it was found as a fact by the Labour Court that the respondents had conducted a proper and valid enquiry. Whether in that enquiry the charges were established or proved has been answered by the Labour Court while dealing with other issues. We have already reproduced above the relevant portion of the finding of Labour Court.

The respondents challenged the findings and the award of the Labour Court in a writ petition in the High Court and the learned Single Judge disposed of the writ petition by judgment dated 24th July, 1996 observing as under :

> "As the Labour Court has re-appreciated the evidence and came to the conclusion regarding the charge, I find that a re-appraisal of the evidence is not called at this stage.

The only question that now survives is regarding the quantum of punishment to be imposed. The award of the Labour Court states that the worker be ordered to be re-instated. Thus part of the award need not be disturbed. Besides, the Labour Court has awarded full back wages to the worker from the date of dismissal. This perhaps is not correct. It is not as if that the worker totally innocent and he was illegally terminated. *The facts in this case clearly show that with better proof the charges could have been established.* If so, the worker cannot be rewarded with full back wages. Besides, he has a record of 40 previous similar conducts.

Hence the order of dismissal of the workman from service is set aside and the managment is directed to reinstate the workman into service to his original post with continuity of service. A portion of the back wages must be disallowed to him by way of punishment."

A The writ appeal filed by the appellant against the above order was dismissed by the Division Bench on the ground of limitation. The Division Bench, however, observed as under :

> "We have examined the appeal on merits also. There is no merit in the
> B appeal and the same is also dismissed."

The judgments passed by the learned Single Judge as also by the Division Bench, which summarily dismissed the writ appeal, cannot be sustained for the simple reason that while the Labour Court, after holding that the charges against the appellant were not established, proceeded to direct reinstatement
C with back wages, the Single Judge, while refusing to go into the appreciation of evidence, considered only one question, namely, the question relating to the quantum of punishment to be imposed on the appellant. The learned Single Judge observed :

> D "It is not as if that the worker was totally innocent and that he was illegally terminated. The facts of this case clearly show that with better proof the charges could have been established."

It was for this reason that full back wages were not awarded to the
E appellant. Once the Tribunal had found that the charges against the appellant were not established, it was not open to the learned Single Judge, who had rightly refused to re-appraise the evidence, to say that with better proof the charges could have been established. The learned Single Judge had no jurisdiction, not even under Section 11A of the Industrial Disputes Act,
F 1947, to enter into the question whether the charges could have been established by better or further evidence. That is not the function of the court or any quasi-judicial authority. If it is found as a fact that charges are not established, then the necessary consequences have to follow and, as a corollary thereto, appropriate orders are to be passed. There may be circumstances justifying non-payment of full back wages, but they cannot be
G denied for the reason that the charges could have been established with better proof. If "better proof" was available with the management and it was not furnished or produced before the court, a presumption would arise that such proof, if furnished, would have gone against the management. We are surprised that the view propounded by the learned Single Judge, which falls
H in the realm of speculation, has been upheld by the Division Bench.

In this situation, therefore, we remand the whole case back to the learned Single Judge to re-hear it on merits, subject to the condition that in compliance of the award passed by the Labour Court, the appellant shall be put back to duty and all the arrears of salary and allowances shall be paid to him within three months and during the pendency of the writ petition the monthly salary shall continue to be paid to the appellant as and when it falls due.

The appeal is disposed of accordingly.

M.P. Appeal disposed of.