

HIGH COURT FOR THE STATE OF TELANGANA

W.P.Nos.25064 and 28129 of 2011

Between:

The Management of M/s. MRF Limited,
rep. by its Plant Head and another.

.....Petitioners

And

The Presiding Officer, Labour Court and others

.....Respondents

JUDGMENTS PRONOUNCED ON : 14.03.2024

HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment ?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals ?
3. Whether Their Ladyship/ Lordship wish to : Yes/No
see the fair copy of the judgment ?

JUVVADI SRIDEVI, J

HON'BLE SMT. JUSTICE JUVVADI SRIDEVIW.P.Nos.25064 and 28129 of 2011DATE: 14.03.2024Between :

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.....Petitioners

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.....Respondents

For petitioner : Mr. M.Radha Krishna Murthy, counsel
for petitioner in W.P.No.25064/2011

Mr. V.Narasimha Goud, counsel for
petitioner in W.P.No.28129/2011

For Respondents : GP for Labour for R-1 in
W.P.No.25064/2011

Mr. V.Narasimha Goud, counsel for R-2
in W.P.No.25064/2011

Mr. K.Pinakapani, counsel for respondents
in W.P.No.28129/2011

< Gist:

> Head Note:

? CITATIONS:

2003 LLR 141
2005 LLR 373
2005 LLR 420
2007 LLR 109
1963 OnLine SC 6
(1999) 2 Supreme Court Cases 10
2005 (2) L.L.N.616
(1995) 6 Supreme Court Cases 237

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**WRIT PETITION Nos.25064 and 28129 of 2011****COMMON ORDER :**

In view of the common subject matter, both these writ petitions are heard together and disposed of by this common order.

2. The Employer/MRF Ltd., has filed W.P.No.25064 of 2011 questioning the Award, dated 18.07.2011 passed by the Labour Court in I.D.No.74 of 2008 insofar as directing for reinstatement of respondent No.2/Workman. The Workman, on the other hand, has filed W.P.No.28129 of 2011 questioning the same Award insofar as directing him to be reinstated as a fresh Workman and also treating the out of service period as "not on duty" and also in not granting the back wages.

3. For the purpose of convenience, the ranks of the parties as narrated in W.P.No.28129 of 2011 are maintained.

4. The petitioner/Workman was appointed in the respondents-Factory on 01.05.1995 and his services were confirmed on 01.11.1997. On the ground that on 07.02.2008, when the petitioner was on duty on Machine No.4 as Operator, at about 11.00 a.m., his Supervisor Mr. V.Ramana instructed him to load 1010 I cut roll and he loaded the same. Thereafter,

at about 12.05 p.m., he was advised to load 1056 cut roll and accordingly, he loaded. It is stated that when the Supervisor was searching for the breaker cut roll at breaker stand storage, suddenly a small breaker cut roll accidentally slipped from the stand and fell on the floor touching the petitioner's feet. Immediately, he reacted due to pain and raised his hands and in the process, one of his hands touched the Supervisor who was by his side. Case of the petitioner is that it happened unintentionally due to sudden fall of the breaker cut roll and inspite of the same, a show cause notice was issued to him on the same day calling upon to submit his explanation. Petitioner has submitted his explanation on 14.02.2008 explaining the actual incident. In spite of such explanation, an Inquiry Officer was appointed and the inquiry was concluded without considering the explanation of petitioner and ultimately orders of termination were passed against him on 23.08.2009. Questioning the same, the petitioner has approached the Labour Court and the Labour Court, by impugned Award, has directed for reinstatement of petitioner as a fresh workman without any back wages and also directed to treat the out of service period as "not on duty".

5. The respondents filed counter-affidavit admitting about the appointment and nature of duties of the petitioner. It is their case that on the date of incident, the Supervisor concerned had directed the petitioner

to load specific cut roll, however, without following the instructions of the Supervisor, the petitioner had loaded different cut roll, which resulted in inferior output. Therefore, an altercation took place between the Supervisor and the petitioner. It is also stated that when the Supervisor and the petitioner were side by side, a cut roll accidentally slipped from the stand and fell on the floor touching the feet of the petitioner, upon which, he slapped the Supervisor on the pretext of controlling the pain. Thus, the production was stalled due to this commotion, and hence, inquiry was conducted into the matter. Since the allegation of assaulting the Supervisor was established in the inquiry, the petitioner was terminated from service. It is contended that though the petitioner was terminated for his proven misconduct, the Labour Court has erroneously directed for his reinstatement, and hence, they prayed to set aside the impugned Award of the Labour Court insofar as directing to reinstate the petitioner.

6. In these writ petitions, the admitted case of both the parties is that the petitioner was working as Operator on Machine No.4 on 07.02.2008. The accidental fall of a breaker cut roll on the feet of the petitioner is also admitted by both the parties. The petitioner contends that his hand had accidentally touched the Supervisor who was beside him, whereas, the respondents contend that the petitioner had intentionally slapped the

Supervisor keeping in view the earlier altercation that took place between them with regard to loading of cut roll in the machine. The incident as narrated by both the parties reveal falling of one small breaker cut roll on the floor touching the feet of the petitioner. It is common knowledge that when such incident happens suddenly, it is natural for a person to raise hands out of pain. The touching of hand of the petitioner to the Supervisor cannot be taken as an intentional assault, in the circumstances in which the incident had happened.

7. A perusal of the impugned Award discloses that none have supported the version of the Supervisor. No co-workers who were available in the factory at the time of incident and who would be the natural witnesses to the incident were examined in support of the version of MW1. If the assault made by the petitioner was intentional as alleged, it is not known as to why the Management has failed to examine any of the workers working at the place in order to establish the intention of the petitioner. Without doing so, the respondents have proceeded with the inquiry by examining the complainant and the Prosecuting Officer as MW-2, who would naturally depose against the petitioner.

8. Learned counsel for petitioner in W.P.No.25064 of 2011 i.e., the employer has relied on the following judgments of the Hon'ble Supreme Court.

In the case of *Hombe Gowda EDN Trust & Another v. State of Karnataka & Others*¹, wherein, it is held that assaulting a superior at a work place amounts to an act of gross indiscipline even if superior was guilty of provocation.

In the case of *Employers, Management, Colliery, M/s. Bharat Coking Coal Ltd. Etc. v. Bihar Colliery Kamgar Union through Workmen*², wherein, it is held that the principle of proportionality between gravity of offence and stringency of punishment is to be kept in mind and that the fact that victim did not die was not a mitigating circumstance to reduce the sentence of dismissal.

In the case of *Madhya Pradesh Electricity Board v. Jagdish Chandra Sharma*³, wherein, it is held that the obedience to authority in a work place is not slavery and not violative of one's natural rights but is essential for the prosperity of the organization as well as the employees. Therefore, a punishment of termination for assaulting a superior with no extenuating circumstances cannot be said to be unjustified, harsh or disproportionate.

¹ 2003 LLR 141

² 2005 LLR 373

³ 2005 LLR 420

In the case of *M/s. Tata Engineering & Locomotive Company Ltd. V. N.K.Singh*⁴, wherein, it is held that where workman was found guilty of serious misconduct of assault, Labour Court would not be justified to hold punishment disproportionate.

9. There is no dispute with regard to the law laid down by the Hon'ble Supreme Court in the aforesaid judgments. Misconduct by an employee with his superior at the work place is definitely punishable, but at the same time, we have to look into the attending circumstances also. In the aforesaid judgments, the intention on the part of employee for misconduct has been established, but in the present case, the crucial aspect of 'intention' is not established. The whole incident has happened due to the sudden fall of a cut roll touching the feet of the petitioner/employee. Therefore, no intention of assault can be attributed to the petitioner. Thus, the aforesaid judgments relied on by the employer are not of any help to his case.

10. On the other hand, the learned counsel for petitioner in W.P.No.28129 of 2011 i.e. the workman has relied on the following judgments:

⁴ 2007 LLR 109

In the case of ***State of Andhra Pradesh and others v. S.Sree Rama Rao***⁵, wherein, it is held by the Hon'ble Supreme Court as under:

The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds.

In the case of ***Kuldeep Singh v. Commissioner of Police and Others***⁶, wherein, it is held as under:

The findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

In the judgment of erstwhile High Court of Andhra Pradesh in ***Union of India (represented by Chief Personnel Officer, South Central***

⁵ 1963 OnLine SC 6

⁶ (1999) 2 Supreme Court Cases 10

*Railway, Secunderabad), and others v. G.Krishna*⁷, wherein, it is held as under:

A broad distinction has to be maintained between the decision which is perverse and those, which are not. If a decision is arrived at on no evidence or it is thoroughly unreliable or no reasonable person can act on it, the order would be perverse.

In the case of *Palghat BPL & PSP Thozhilali Union v. BPL India Ltd. and another*⁸, it is held by the Hon'ble Supreme Court as under:

A reading of clause 39(h) indicates that drunkenness, riotous or disorderly behavior during working hours within the premises of the Company is misconduct. The second part thereof indicates that any act subversive of discipline committed either within or outside the premises of the Company is also misconduct. Though the learned counsel seeks to contend that it is not a misconduct, it is difficult to accept the contention. Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when a misconduct vis-à-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-à-vis its management. What

⁷ 2005 (2) L.L.N.616

⁸ (1995) 6 Supreme Court Cases 237

amounts to misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading thereto.

11. All the aforesaid judgments are squarely applicable to the present case of the workman. As discussed above, the surrounding circumstances are to be taken into consideration while deciding whether a particular act of an employee amounts to misconduct or not. In the case on hand, it is the admitted case of the parties that while the petitioner and his Supervisor were side by side at the work place, an unexpected incident had happened as a cut roll incidentally slipped from the stand and fell on the floor touching the feet of the petitioner, and due to severe pain, the petitioner had raised his hands, and in the said process, one of his hands touched the Supervisor. This sudden unexpected incident has been erroneously treated by the Management as misconduct, by naming it as an assault by the petitioner on his Supervisor. In view of the circumstances in which the incident had happened, this Court is of the considered view that no intention can be attributed to the petitioner, to assault the Supervisor. Therefore, the petitioner is entitled for the reliefs sought for.

12. Accordingly, W.P.No.28129 of 2011 is allowed quashing the impugned Award insofar as treating the petitioner as a fresh workman and also treating the out of service period as “not on duty” is concerned. The

petitioner is entitled for continuity of service and the out of service period shall be treated as “on duty”, however, without any monetary benefits. Consequently, W.P.No.25064 of 2011 filed by the Management is dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

JUVVADI SRIDEVI, J

Date: 14.03.2024

N.B:

L.R. Copy be marked.

(b/o)

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