REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10125 OF 2014
(Arising out of SLP (Civil) 37619/2012)

COLLECTOR SINGH ...Appellant

Versus

L.M.L. LTD., KANPUR ..Respondent

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. Whether the punishment of dismissal from service of the appellant is disproportionate to the act of misconduct proved against the appellant and whether the concurrent findings of the Courts below need to be interfered with are the points falling for consideration in this appeal.

3. Brief facts which led to the filing of this appeal are as follows:- The appellant was working as a semi-skilled

workman since 15.8.1986 in the respondent-company, namely, M/s. L.M.L. Limited (Scooter Unit), Kanpur. The appellant was served with a charge-sheet on 18.4.1992 stating that on that date, he threw jute/cotton waste balls hitting the face of Laxman Sharma, Foreman in the said company and on objecting to the same, the appellant is alleged to have further abused him with filthy language and also threatened him with dire consequences outside the premises of their factory. On 25.4.1992, the appellant submitted an apology letter stating that he had thrown piece of jute which fell on Foreman Laxman Sharma by mistake and seeking pardon for the same. A departmental inquiry was conducted on 25.5.1992 and the appellant was given adequate opportunity to cross-examine the witnesses as well as for putting forth his defence. The Enquiry Officer submitted his report finding that the appellant was guilty of misconduct and on the basis of the enquiry report, the appellant was dismissed from the services of the company by an order dated 24.6.1992.

4. Aggrieved by the order of dismissal, the appellant raised an industrial dispute which was registered as Adjudication No.178/1994 before the Labour Court, Kanpur.

The Labour Court relied upon the letter of apology dated 25.4.1992 and by its award dated 17.9.1996, held that the termination of services of the appellant was justified. Aggrieved by the said order, appellant filed a writ petition before the High Court and vide its order dated 24.9.2012, High Court dismissed the writ petition upholding the award passed by the Labour Court. Aggrieved by the said order, the appellant has filed this appeal by way of special leave. This Court has issued notice limited to the question of quantum of punishment.

5. Learned counsel for the appellant submitted that charges against the appellant are minor charges of alleged throwing of jute/cotton waste balls and even assuming that the charges had been proved, dismissal from service for such a minor act of misdemeanor is harsh and disproportionate and prayed for reinstatement with consequential benefits.

6. The first limb of contention advanced at the hands of the learned counsel for the respondent was that the discretionary power exercised by the Labour Court under Section 11A of the Industrial Disputes Act to set aside the punishment of discharge or dismissal has to be exercised

judiciously with care and caution and before exercising the said discretion, the finding that order of discharge or dismissal was not justified is necessary. In support of his contention, learned counsel placed reliance upon the judgment of this Court in *Davalsab Husainsab Mulla* vs. *North West Karnataka Road Transport Corporation*, (2013) 10 SCC 185. Learned counsel for the respondent then contended that the appellant is a habitual offender and on a previous occasion, on 18.7.1988 the appellant had misbehaved with a co-worker whereby a warning notice had been issued to the appellant and the appellant assured never to repeat such an act. It was submitted that inspite of such warning the appellant was again defiant and having regard to the gravity of charges, the Management imposed punishment of dismissal from service and Labour Court rightly held that such punishment was justified.

7. Yet another argument advanced on behalf of the respondent was that use of abusive language against the Foreman is a serious misconduct and punishment of dismissal from service cannot be said to be harsh or disproportionate. It was submitted that any leniency towards such misconduct

would have serious impact on the discipline amongst the workmen in the factory and keeping in view the gravity of the charges proved, the courts below have rightly declined to interfere with the quantum of punishment. To substantiate his contention, learned counsel placed reliance upon a number of judgments.

8. We have given our thoughtful consideration to the rival contentions of both parties and perused the impugned order and the materials on record.

9. Insofar as the first limb of contention as to the satisfaction of Labour Court in interfering with the discretion of the authority, considering the findings of the courts below in our considered view, the Labour Court and the High Court did not properly appreciate tenor of the apology letter. Courts below appear to have proceeded on the premise that in his apology letter, the appellant has admitted the said incident on 18.4.1992. Courts below held that the charges proved against the workman are not only throwing jute/cotton waste balls on his superior officer/the Foreman, but for alleged misbehaviour using filthy language and in such circumstance, punishment of dismissal imposed by the Management is

justified. By perusal of the contents of the said apology letter, it is discerned that the appellant has made admission only with respect to throwing of the jute/cotton waste balls by mistake and further stating that such a mistake would not be repeated in future and that he be pardoned for the same. The letter nowhere states that the appellant was involved in the incident of hurling abuses and using filthy language against his superior officer. In essence, even the incident of throwing of jute/cotton waste balls at the Foreman has been stated as a mistake. As we have already observed use of abusive language is not established by the apology letter. Therefore, mere act of throwing of jute/cotton waste balls weighing 5 to 10 gms may not by itself lead to imposing punishment of dismissal from service. In such a situation, we find it difficult to fathom a reason for placing such excessive reliance on the apology letter by the enquiry officer appointed for the departmental enquiry as well as the courts below for justifying the punishment of dismissal from service.

10. Jurisdiction under Article 136 of the Constitution is extraordinary and interference with the concurrent findings of fact recorded by the courts below is permissible only in

exceptional cases and not as a matter of course. Where the appreciation of evidence is found to be wholly unsatisfactory or the conclusion drawn from the same is perverse in nature, in exercise of the jurisdiction under Article 136 of the Constitution, this Court may interfere with the concurrent findings for doing complete justice in the case. In the facts and circumstances of the case, in our view, it is a fit case to exercise the jurisdiction under Article 136 of the Constitution to interfere with the conclusion of the Labour Court upholding the punishment of dismissal as affirmed by the High Court.

11. Insofar as the next limb of contention at the hands of the learned counsel for the respondent as to the quantum of punishment, it is not necessary for us to refer to the plethora of judgments relied upon by the respondent. In those decisions, the termination of services was held to be justified on the basis of abusive and filthy language in the light of the facts and circumstances of those cases. It is well settled that the court or the tribunal will not normally interfere with the discretion of the disciplinary authority in imposing of penalty and substitute its own conclusion or penalty. But the punishment should be commensurate with the proved

misconduct. However, if the penalty imposed is disproportionate with the misconduct committed and proved, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation, it may in exceptional cases even impose appropriate punishment with cogent reasons in support thereof. This principle was reiterated in various decisions of this Court in *Dev Singh* vs. *Punjab Tourism Development Corporation. Ltd. & Anr.*, (2003) 8 SCC 9, *Om Kumar & Ors.* vs. *Union of India*, (2001) 2 SCC 386, *Union of India & Anr.* vs. *G. Ganayutham*, (1997) 7 SCC 463 and *Ex-Naik Sardar Singh* vs. *Union of India* and Ors., (1991) 3 SCC 213.

12. Considering the scope of judicial review on the quantum of punishment and referring to various cases in *Jai Bhagwan* vs. *Commissioner of Police & Ors*. (2013) 11 SCC 187, in which one of us (Justice T.S. Thakur) was a member, this Court held as under:-

> "What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine

> whether the charges have .been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court....."

13. Coming to the case at hand, we are of the view that the punishment of dismissal from service for the misconduct proved against the appellant is disproportionate to the charges. In *Ram Kishan* vs. *Union of India & Ors.*, reported in (1995) 6 SCC 157, the delinquent employee was dismissed from service for using abusive language against superior officer. On the facts and circumstances of the case, this Court held that the punishment was harsh and disproportionate to the gravity of the charge imputed to the delinquent and modified the penalty to stoppage of two increments with cumulative effect. The Court held as under:-

> "It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive

> language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.
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> On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order……."

Reference may also be made to the decisions of this Court in *Rama Kant Misra* vs. *State of Uttar Pradesh & Ors.*, (1982) 3 SCC 346 and *Ved Prakash Gupta* vs. *Delton Cable India(P) Ltd.*; (1984) 2 SCC 569.

14. The High Court has relied on the judgment in *Mahindra and Mahindra Ltd.* vs. *N.B.Narawade,* (2005) 3 SCC 134, wherein it was held that the penalty of dismissal on the alleged use of filthy language is not disproportionate to the charge as it disturbs the discipline in the factory. We are of the view that in the facts and circumstances of the present case, the above decision may not be applicable. Considering the totality of the circumstances,

in our view, the punishment of dismissal from service is harsh and disproportionate and the same has to be set aside.

15. Having said that the punishment of dismissal from service is harsh and disproportionate, this Court in ordinary course would either order reinstatement modifying the punishment or remit the matter back to the disciplinary authority for passing fresh order of punishment. But we are deliberately avoiding the ordinary course. We are doing so because nearly two decades have passed since his termination and over these years the appellant must have been gainfully employed elsewhere. Further, the appellant was born in the year 1955 and has almost reached the age of superannuation. In such circumstances, there cannot be any order of reinstatement and award of lump sum compensation would meet the ends of justice. Considering the length of service of the appellant in the establishment and his deprivation of the job over the years and his gainful employment over the years elsewhere, in our view, lump sum amount of compensation of Rs.5,00,000/- would meet the ends of justice in lieu of reinstatement, back wages, gratuity and in full quit of any other amount payable to the appellant.

16. In the result, the impugned Order of the High Court dated 24.9.2012 passed in Civil Misc. Writ Petition No.12157/1997 confirming the award of the Labour Court is set aside and the appeal is allowed. The respondent-management is directed to pay the amount of compensation of Rs.5,00,000/- to the appellant within a period of six weeks from the date of receipt of copy of this order failing which, the said amount is payable with interest at the rate of 9% per annum thereon.

.....J.
(T.S. Thakur)

.....J.
(R. Banumathi)

New Delhi;
November 11, 2014