

Anil Kumar Chakraborty and Another

Vs

M/S Saraswatipur Tea Company Limited and Others

Civil Appeal No. 519(NL) of 1978

(V. D. Tulzapurkar, Baharul Islam, A. Varadarajan JJ)

16.03.1982

JUDGMENT

TULZAPURKAR, J. -

1. Since we are inclined to dispose of this appeal on a very short point we need be very brief in the narrations of facts.
2. On September 15, 1965 the appellant Anil Kumar, a Compounder with the 1st respondent-Company was dismissed by the Management after holding an enquiry and finding him guilty of (i) having incited labourers and workers to disrupt the administration and working of the tea gardens and (ii) having indulged in trafficking in drugs and medicines entrusted to him by the Company for supply and distribution to the workers free of cost. The Industrial Tribunal, before whom the validity of dismissal was challenged, held that the enquiry, if at all one was held, was unfair and that the charges had not been proved by the Management and, therefore, the dismissal was set aside and the appellant was directed to be reinstated with full back wages. A learned Single Judge of the High Court confirmed the Tribunal's award, but in appeal the Division Bench reversed the decision of the Tribunal as well as of the learned Single Judge holding that the domestic enquiry held by the Management was quite fair and proper and that Tribunal had in fact dealt with the case as if it were a Court of Appeal and not only the evidence had been meticulously assessed afresh but the adequacy of the evidence had also been gone into and in doing so the Tribunal had exceeded its jurisdiction and substituted its own evaluation of the evidence for the evaluation done by the Domestic Court of Enquiry. The Division Bench allowed the appeal and set aside the award. This decision is challenged in appeal.
3. Rival submissions on the question whether or not the Division Bench itself had acted as a Court of Appeal under its writ jurisdiction and had exceeded its powers in interfering with the finding of fact recorded by the Tribunal were made at great length before us by counsel on either side and it was strenuously urged by counsel for the appellants that the Division Bench ought not to have interfered with findings of fact recorded by the Tribunal particularly on the point that the enquiry that was held was unfair and improper and ought not to have interfered with the award. 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 enquiry had been held against the appellant, this, in our view, is not a case where any order for reinstatement of the appellant could properly be made. Counsel for the 1st 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. It cannot be disputed that the appellant Anil Kumar held the position of trust and confidence as a Compounder, that in that capacity he was entrusted with drugs

and medicines for being supplied and distributed to the needy and ailing workers of the tea gardens free of cost but by abusing his position of trust he indulged in trafficking in those drugs and medicines to the detriment of the health and well being the workers having a bearing on their efficiency and work in the Company. Counsel pointed out that apart from the instances of trafficking which were the subject-matter of the charge, the material on record shows that the appellant had admittedly indulged in similar activities on previous occasions for which he had been pardoned by the Chairman-Director of the Company. It may be stated that in his explanation submitted to the charges served on him the appellant had clearly averred that on previous occasion workers had made complaints against him for trafficking in medicines and the Chairman-Director had forgiven him for all those offences. The clear implication is about the truth of the complaints and he had sought pardon for it. In these circumstances it would be highly improper and inexpedient to direct reinstatement.

4. In Assam Oil Company case (Assam Oil Ltd. v. Workmen, (1960) 1 LLJ 587 : AIR 1960 SC 1264 : (1960) 3 SCR 457 : (1960-61) 18 FJR 380) this Court has taken the view that though the normal rule in cases of wrongful dismissal of an employee is to direct reinstatement there could be cases where it would not be expedient to follow this normal rule and a case of loss of confidence in the employee on the part of the Management would be one such exceptional case where reasonable compensation would be the appropriate relief. Following this decision in Ruby General Insurance Co. Ltd. v. P.P. Chopra ((1970) 1 LLJ 3 : (1969) 3 SCC 653) this Court denied the relief of reinstatement having regard to the fact that the employee, a Stenographer, was holding a position of trust and confidence and was found to have retained copies of some confidential letters dictated to him without the consent of the Company and instead directed the compensation be paid to him for wrongful and punitive termination.

5. We, therefore, confirm the setting aside of the Tribunal's award to the extent it had directed the appellant's reinstatement. The appellant as a Compounder was drawing a monthly salary of Rs 174.60 at the time of his dismissal from service on September 15, 1965. His counsel has informed us that the total amount due to him calculated up to March 31, 1973 comes to Rs 36,486. The present grade payable to a Compounder with the Company is Rs 550 p.m. Having regard to these facts and lapse of time involved till now we direct the respondent-Company to make lump-sum payment of Rs 50,000 to the appellant Anil Kumar as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. Payment to be made within four weeks from today. Appeal disposed of accordingly with no order to costs.

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