Rama Kant Misra

Vs

The State of Uttar Pradesh and Others

Civil Appeal No. 1531 of 1980

(D. A. Desai, V. B. Eradi JJ)

21.10.1982

ORDER

1. Appellant Rama Kant Misra joined service in the Kanpur Electric Supply Administration ('Administration', for short) which was then a Department of the Government of Uttar Pradesh. On the constitution of U.P. Electricity Board ('Board' for short), under the provisions of Electricity (Supply) Act, 1948 ('Act', for short), with effect from April 1, 1958, the Kanpur Electric Supply Administration stood transferred to the Board and the employees working in the Administration were deemed to be on deputation to the Board though they would continue to be government servants as provided in a Circular dated March 13, 1959. As per Notification No. 3721E/74-23P(3)-155E/74 dated August 3, 1974 the posts held formerly in the Administration by the employees working in the Administration were abolished and the deputationist were absorbed in the service of the Board. However, before the appellant charge-sheet on November 19, 1971, alleging that he was guilty of disorderly behaviour punishable under the relevant Standing Orders. Simultaneously the appellant was suspended from service pending a departmental enquiry. The Enquiry Officer who was appointed to hold the inquiry after holding the inquiry recorded his finding that the charge was proved. It would be advantageous to reproduce the charge. It is extracted from the report of the Enquiry Officer :

> Shri Rama Kant was charged for misconduct under Clause 20(9), (18) and (28) of the Standing Orders for disorderly behaviour or conduct likely to cause a breach of peace threatening an employee within the premises and conduct prejudiced to good order and discipline.

2. The specific allegation is that on November 18, 1971, around 2.50 p.m. appellant was complaining about the deduction that was being made from his wages for his absence from the place of work and late attendance with Shri Mahendra Singh. When Shri Mahendra Singh replied that he had no separate rules for him, the appellant is alleged to have lost his balance. The threatening language alleged to have been used by the appellant when freely translated reads :

> Are other persons your father. I will make you forget your high handedness either here of somewhere else. An officer of yesterday's making disclosed power consciousness.

The Enquiry Officer held that the words attributed to the appellant were used by him in reference to Shri Mahendra Singh and that use of such language would constitute misconduct within the relevant clauses of the Standing Orders hereinbefore mentioned. The Enquiry Officer recommended dismissal from service. As the matter was being dealt with on the footing that the appellant was a

government servant entitled to protection of Article 311 of the Constitution, a second show-cause notice according to the provisions then contained in Article 311 was required to be served before penalty was finally imposed upon him. But even before the notice was served the appellant was dismissed from service on April 6, 1972.

3. A dispute having been raised questioning the validity of termination of service of the appellant, the 1st respondent made a reference to the Labour Court, U.P. for adjudication of the dispute. The labour Court by its award dated March 21, 1978, held that the termination of service of the appellant was legal and proper. A petition under Article 227 of the Constitution to the High Court failed. Hence this appeal by special leave.

4. Mr Markendeya, learned counsel who appeared for the respondent urged that any person for the respondent urged that any person who claims to be a Government employee cannot seek relief both under Article 311 on the footing that he is holding a civil post or is a member of the civil post or is a member of the civil service of the State on the one hand and a workman falling under the purview of the Industrial Disputes Act, 1947 on the other, and that this aspect is being examined by a larger Bench. In this case it is not necessary to resolve the controversy because we requested Mr Markendeya to state specifically whether according to him the appellant on the date of his dismissal was a government servant governed by Article 311 or a workman within the meaning of Industrial Disputes Act, 1947. Mr Markendeya specifically stated that it was also held by the Labour Court though wrongly but which aspect at present is not relevant that the appellant is not a government servant holding a civil post or a member of the civil service of the State but he is a workman entitled to the protection of the Industrial Disputes Act. We are proceeding on that assumption in this case.

5. The charge of which appellant is found guilty is already extracted hereinbefore. It amounts to a riotous or disorderly behaviour during working hours at the establishment. At least this could not be said to be an act subversive of discipline. The misconduct attributed to the appellant is that he used some language unbecoming of a disciplined workman and may have thereby exposed a threatening posture which is alleged to be subversive of discipline. Shorn of all embellishments, enraged by deduction from his wages appellant, a Joint Secretary of Union of Workmen used some language which can be said to be indiscreet. In order not to minimise the gravity of the charge we have extracted the charge by its free translation and it must be confessed that both the learned counsel who appeared on either side were fully conversant with the Hindi language and, therefore, clearly understood the import of the language used by the appellant. In the ultimate analysis the misconduct is use of language indiscreet or may be said to be indecent or may be disclosing a threatening posture. We will proceed on the assumption that use of such language is punishable under the relevant Standing Orders. So what.

6. The punishment must be for misconduct. To some extent misconduct is a civil crime which is visited with civil and pecuniary consequences. In this case it has resulted in dismissal from service. In order to avoid the charge of vindictiveness, justice, equity and fairplay demand that punishment must always be commensurate with the gravity of the offence charged. In the development of industrial relation norms we have moved far from the days when quantum of punishment was considered a managerial function with the courts having no power to substitute their own decision in place of that of the management. More often the courts found that while the misconduct is proved the punishment was disproportionately heavy. As the situation then stood, courts remained powerless and had to be passive sufferers incapable of curing the injustice. Parliament stepped in and enacted Section 11-A of the Industrial Disputes Act which reads as under :

> 11-A. Where an industrial dispute relating to the discharge or dismissal of the workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of dismissal, and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award on any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.
>
> # * * *##

7. It is now crystal clear that the labour court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. And this Court is at present exercising jurisdiction under Article 136 over the decision of the labour court. Therefore, this Court can examine whether the labour court has properly approached the matter for exercising or refusing to exercise its power under Section 11-A. Before we can exercise the discretion cornered by Section 11-A, the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier, it is a well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must commensurate with the gravity of the offence charged.

8. What has happened here. The appellant was employed since 1957. The alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 18, 1971, meaning thereby that he had put in 14 years of service. Appellant was Secretary of the Workmen's Union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture but merely the use of such language on the occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere. Unfortunately, the labour court has completely misdirected itself by looking at the dates contrary to record and has landed itself in an unsustainable order. Therefore, we are required to interfere.

9. What ought to be the proper punishment in this case ? In our opinion, in such a situation withholding of two increments with future effect will be more than adequate punishment for such a low-paid employee.

10. Accordingly, this appeal allowed and the award of the labour court is set aside as also the

penalty imposed by the management is quashed and set aside. The appellant is reinstated with all the benefits, including the back wages, but his two increments falling due from the date of his termination of service be withheld with future effect.

</html