

Punjab Dairy Development Corporation Limited & Anr.etc.

Vs

Kala Singh etc.

(K.Ramaswamy, S. Saghir Ahmad, G. B. Pattanaik JJ)

07.05.1997

O R D E R

1. This matter has come up by way of reference made by a Bench of three Judges to consider the correctness of the decision of this Court in *Desh Raj Gupta vs. Industrial Tribunal, IV, U.P. & Anr.* [(1991) 1 SCC 249]. With a view to appreciate the contention of the parties, it is necessary to record few relevant facts. While the respondent was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres, he was charged for the misconduct that on April 28, 1990 and on other dates, he inflated the quantum of the milk supplies in milk centres to the appellant-Corporation and also inflated the quality of the fat contents, while their were less fat contents. After conducting the domestic enquiry, the disciplinary authority dismissed him from service. On reference, the Labour Court found that the domestic enquiry conducted by the appellant was defective. Consequently, opportunity was given to the Management to adduce evidence afresh to justify the order of dismissal. Accordingly, evidence was adduced by the appellant as well as the delinquent-respondent. On consideration of the evidence, the Labour Court by its award dated November 14, 1990 held that the charge had been proved against the respondent. On the quantum of punishment, it was held that the punishment was not disproportionate to the magnitude of the misconduct of the respondent. However, on filing of the writ petition, the High Court set aside the award of the reference Court to the extent of the confirmation of the dismissal from service with effect the date of the judgment of the Labour Court and not from any date earlier thereto. This Court while granting leave referred the matter to three Judge Bench to consider the correctness of the judgment in *Desh Raj Gupta's case (supra)* in the light of the judgment of the Constitution Bench. Subsequent to the reference, another Bench of two Judges has elaborately considered the entire case law in *R. Thiruvirkolam Vs. Presiding Officer & Anr.* [(1997) 1 SCC 9]. In the decision of the Constitution Bench in *P.H. Kalyani Vs. Air France* [(1964) 1 SCR 104], this Court had held that once the Labour Court found the domestic enquiry to be defective and gave opportunity to the parties to adduce the evidence found that the order of termination of the service or dismissal from service is valid, it would relate back to the original order of the dismissal. But a discarded note was expressed by three Judges Bench in *Gujarat Steel Tubes Ltd. Vs. Mazdoor Sabha* [(1980) 2 SCC 593] which was considered by this Court in *Thiruvirkolam case (supra)* and it was held that in view of the judgment of the Constitution Bench, three-Judges Bench judgment was not correct. *Desh Raj Gupta's case* was also considered and it was held that it has not been correctly decided. Thus, we are relieved of reviewing the entire case law in that behalf.

2. In view of the aforesaid decisions and in view of the findings recorded by the Labour Court, we are of the considered opinion that the view expressed in *Desh Raj Gupta's case* is not correct. It is accordingly over-ruled. Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the Management and the workman and recording of the finding that the

dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court.

3. The appeal is accordingly allowed. The order of the High Court stands set aside. No costs. In CA No.228/95

4. This is a cross appeal filed by the workman. It is contended by the learned counsel for the workman that the charges were not correct; the Labour Court has not properly considered the evidence and the view that the order relates back to the date of the dismissal was not correct. We find no force in the contention. It is seen that the Labour Court after adduction of evidence came to the conclusion that the dismissal is justifiable. On the basis of the evidence adduced before it, no doubt, the Labour Court has not elaborately considered the entire evidence, but agreed to the decision that the misconduct has been proved. In view of the proof of misconduct, the necessary consequence would be that the Management has lost the confidence that the appellant would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A to grant relief of reinstatement with minor penalty.

5. The appeal is accordingly dismissed. No costs.