

I/208360/2022

Government of West Bengal
Labour Department, I. R. Branch

N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata - 700001
No. Labr/ 711. / (LC-IR)/22015(15)/4/2022 Date : 20.07.2022

ORDER

WHEREAS under reference of Labour Department's Order No. 211-IR/IR/10L-11/05(Pt) dated 17.02.2011 the Industrial Dispute between M/s Super Forging Steel Ltd., 62/D/2, J.N. Mukherjee Road, Ghusuri, Howrah and their workman Shri Sesh Nath Yadav, 9/10, Joybibi Road, Ghusuri, Howrah regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the First Industrial Tribunal, Kolkata.

AND WHEREAS the said First Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.06.2022 on the said Industrial Dispute vide Memo No. 1078 - L.T. dated 13.07.2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Joint Secretary

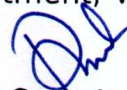
to the Government of West Bengal

No. Labr/ 711. /1(5)/(LC-IR)

Date : 20.07.2022

Copy, with a copy of the Award, forwarded for information and necessary action to :

1. M/s Super Forging Steel Ltd., 62/D/2, J.N. Mukherjee Road, Ghusuri, Howrah.
2. Shri Sesh Nath Yadav, 9/10, Joybibi Road, Ghusuri, Howrah. - 711107
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

No. Labr/ 711. /2(3)/(LC-IR)

Date : 20.07.2022

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal, Kolkata with reference to his Memo No. 1078 - L.T. dated 13.07.2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.



Joint Secretary

In the matter of an Industrial Disputes exists between M/s Super Forging Steel Ltd. 62/D/2, J. N. Mukherjee Road, Ghusuri, Howrah and their Workman Shri Sesh Nath Yadav, residing at 9/10 Joybibi Road, Ghusuri, Howrah – 711 107.

Case No. VIII – 13/2011 of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 30.06.2022

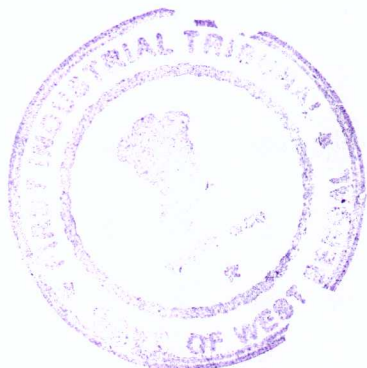
Case No.: VIII – 13/2011

The instant case has been initiated on receipt of copy of Government Order of reference No. 211-I.R./IR/IOL-11/2005(P.T.), dated 17.02.2011 on 08.01.2003 from the Labour Department, Government of West Bengal referring an industrial dispute between M/s Super Forging Steel Ltd. 62/D/2, J. N. Mukherjee Road, Ghusuri, Howrah and their Workman Shri Sesh Nath Yadav, residing at 9/10 Joybibi Road, Ghusuri, Howrah – 711 107 for adjudication of the matter and submitting its award to the State Government.

The case of the Workman in a nutshell is that the Workman was working under the management of the OP/Company since (not mentioned) as a (not mentioned). Thereafter all of a sudden a show-cause notice was issued against him on 15.03.2002 labeling a charge of “illegal gratification money baksish” from the representative of supplier of Band Saw Blades along with his Co-Worker Rajdheri Chowdhury and asked the Workman to submit his explanation within 48 hours.

The Workman submitted his explanation, which was found not satisfactory by the management and, thereafter, the management intimated the Workman in his black and white by a letter stating that the domestic enquiry would be initiated against him along with the information of first date of enquiry being scheduled to be held and accordingly the departmental enquiry was held by the Company and the enquiry proceeding were conducted by Enquiry Officer on exparte by violation of natural justice as claimed by the Workman.

Finally the management by their letter dated 10.12.2003 dismissed the Workman from service considering the report of the Enquiry Officer was valid and proper and thereafter the said issue of dismissal was referred to the Labour Department, Government of West Bengal by the Workman and accordingly the dispute has been referred to this Tribunal for adjudication from Labour Department, Govt. of West Bengal.



It is relevant to mention though the charge-sheeted Workman was suspended from the service but he was never been paid subsistence allowance during the pendency of the departmental enquiry and after dismissal from service the Workman remain unemployed.

Workman demands for an award to the effect that the charge-sheet is fake, motivated, invalid and gross violation of principles of natural justice and the enquiry proceeding is prejudicial to the interest of the Workman as the Workman was not given the reasonable opportunity of being heard and the decision was held behind him and without his knowledge.

The Workman also prays for holding that the domestic enquiry is invalid, consequence of which dismissal is illegal, unjustified and therefore, necessary direction be given to the Company to reinstate him in service with full back wages and consequential benefits and / or passing any other Order as the Tribunal may deem fit and proper.

On the other hand the Company contesting the case by filing Written Statement denying all material allegations being brought against them by stating inter-alia into 3 (three) parts regarding their contentions.

In Part-1 deals with the point of maintainability of the case, that is to say that the Company demands the reference is not maintainable, since the appropriate Government have no material to refer the present dispute, no dispute has properly been raised and the instant case suffers from the infirmity and suppression and / or distortion of material facts.

Part-2 deals with the point of validity of enquiry that is to say that Company demands that dismissal in the present case was executed after issuing charge-sheet followed by an enquiry conducted upon the principles of natural justice and consequently, the Company has prayed to take up the point of validity of enquiry as preliminary issue.

Part-3 deals with the merit of the case, wherein the Company demands that the act of dishonesty i.e. "illegal gratification money baksish" demands suspension from work and the plea has taken by the Workman is that notice was not served by the Enquiry Officer or by the company, is a calculative motive to avoid himself from the acid test of enquiry proceeding regarding the charge as labeled against him and since the dismissal was effected after holding an enquiry wherein the charge was proved against the charged Workman, it surely proves the gravity of misconduct committed by the charged Workman and the validity of dismissal

Company further demands that charge-sheet itself was clear, specific and there could not have been any difficulty in reply to the same and it is a false pretext that the charged Workman has not reasonable opportunity of



being heard since notice of enquiry was duly served upon him but the charged Workman deliberately was not present to avoid the proceeding, and, therefore, the allegation of infirmity or irregularity about the conduct of enquiry is baseless.

The Company denied the allegation of violation of golden rules of the principles of natural justice.

It is also demanded that the terminal benefit was not received by the concerned employee is totally baseless and finally the Company denied and disputed that the dismissal from service of the charged Workman was illegal or unjust and therefore, the charged Workman is not entitled to get any order / award for reinstatement with full back wages or consequential benefits as demanded rather since the whole action on the part of the management was legal, valid and bonafide and the quantum of punishment is commensurate with the gravity of the misconduct committed, the same should be held to legal and valid.

ISSUES UNDER REFERENCE

1. Whether the termination of service of Sri Sesh Nath Yadav by way of dismissal by the Management of M/s Super Forging & Steel Ltd., 62/D/2, J. N. Mukherjee Road, Ghusuri, Howrah w.e.f. 10.12.2003 is justified?
2. What relief, if any, is he entitled to?

DECISION WITH REASONS

It is revealed from the record on perusal of the same that

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|---------------|---|
| On 02.07.2012 | document are exchanged by the parties. |
| On 06.07.2012 | Representative of the Workman submitted that as domestic enquiry has been held, so hearing may be held on validity of Domestic Enquiry first. |
| On 31.10.2012 | Additional W/S was filed by the Workman. |
| On 20.11.2012 | Additional W/S was also filed by the Company. |

Thereafter, full fledged evidence was taken by this Tribunal from both parties. Contesting argument was heard on the points of Validity of Domestic Enquiry and thereafter the preliminary issue as to the validity of Domestic Enquiry has been decided in favour of the Company and it was ordered that "the parties are required to be heard on the Quantum of Punishment and to ascertain whether the punishment imposed on the Workman by the Company is proportionate to the nature of misconduct or not under Section 11A of the Act.



At the time of argument Ld. Representative for the Workman argues that the Industrial Dispute Act 1947 specially 11A of the Industrial Dispute Act in the instant case is a beneficial feature and therefore, judicial mind is to be applied. He admits that the departmental enquiry has been ordered as valid. So, now quantum of punishment is to be judged as the Workman in the instant case has been dismissed followed by the departmental enquiry.

According to the Ld. Representative for the Workman, the charged Workman along with another demanded 'Baksish' not gratification with a threat that the charged Workman would complain before his authority to the effect that the supplier was delivering intentionally defective goods and their order of supply might be cancelled. In this respect Ld. Representative argues that Company should lodge an FIR against the delinquent Workman but in our case it has not been done. He further argues that according to charge-sheet 2(two) Workmen were complained against, but the present Workman namely Sesh Nath Yadav has only been victimised, and, therefore, according to the Ld. Representative for the Workman, the order of dismissal is badly warranted against his client namely Sesh Nath Yadav and that should be reversed by reinstating the Workman with full back wages along with other consequential reliefs and benefit if any.

In support of his case Ld. Representative for the Workman has cited the following citations:

- 1) 1950 Volume – II, LLJ, Page – 921 in between the Bharat Bank Ltd. Delhi vs Employees.

This is a case where the employees of the Bank made certain demands and has and has learnt unfavourable response from the Bank. It appears that they struck work on 09th March 1949. The Bank in its turn served notice on them to resume work and proceeded to discharge a number of them between 19th to 24th March, as they failed to do so. This is a case of retrenchment and victimization.

In our case if the domestic enquiry has proved valid and proper wherein it is held that the act of the charged Workman is a dishonest attempt and if it is allowed, then it will surely harm the business of the Company both in monetary and in its reputation and this could also encourage other worker to do so in the long run, and, therefore, they decided to dismiss the charged Workman from the service.

So in my humble opinion this citation is not applicable to the instant case.

- 2) 2014 LLR-9, Page – 9
- 3) 2022 _____ Page – 63.

On the other hand Ld. Counsel for the Company submits after drawing my attention with several citations and concluded by saying that it is the settled principle of law if the dishonesty is proved, punishment of dismissal should not be interfered with under Section 11A of the Industrial Disputes Act and Tribunal cannot substitute their subjective opinion because of the fact under Section 11A. The Tribunal shall act not as an Appellate Court, but as a Revisional Court and therefore, the case of the charged Workman should be held with the quantum of punishment as given by the Company to the charged Workman is appropriate and proper. The followings are the citations as filed by the Ld. Counsel for the Company:

Enquiry Valid – No interference with the order of punishment in the absence of allegations of unfair labour practice and victimization.

- 1) 2006(6) Scale 44 Para-16=LAWS(SC)2006 5 99 Para 16

Enquiry Valid - Labour Court should not interfere with the order of dismissal.

- 1) 2006(11) Scale 559 Para-8=LAWS(SC)2006 11 180 Para 8
- 2) 2014 LLR Page 9 Para 8 =LAWS(DLH)2013 10 393 Para 7 and 8.
- 3) 2022(1) Scale 63 Para 11 = LAWS(SC) 2022 1 5 Para 11 and 14.

Order of punishment - Under Sec. 11A of the I.D. Act – Tribunal cannot substitute their subjective opinion.

- 1) 2006(11) Scale 316 Para 22 = LAWS(SC) 2006 11 71 – Para 11.

Section 11A – Power conferred to be exercised judicially and where the punishment is highly disproportionate.

- 1) 1998(1)LLN Para 14 = LAWS(SC) 1987 10 51 Para-14.

Section 11A – Power conferred to be exercised judicially and where the punishment is grossly Disproportionate – punishment of dismissal may Cause hardship of the Organization is required to be maintained.

- 1) 2006(1) SCC 430 Para 17, 18, 19, 20, 30 = LAWS(SC) 2005 12 53 Para 13, 14, 15, 16.

Tribunal should be very slow in coming to a conclusion different from the Management.

- 1) 2008(2) Scale 158 Para 20 = LAWS(SC) 2008 2 93 Para-20.



Section 11A – Power of the Tribunal to reappraise evidence in the domestic enquiry under Sec. 11A – not as an Appellate Court but as a Revisional Court.

- 1) 2002(4) CHN 708 Para 6 = LAWS(CAL) 2001 6 33 Para-6.

Section 11A – Exercise of discretion – Reason for exercising proper care by the Tribunal.

- 1) 2013(12) Scale 157 Para 8 = LAWS(SC) 2013 9 105 Para 8, 9.

Dishonesty – punishment of dismissal should not be interfered with.

- 1) 2007(5) Scale 637 Para 7 = LAWS(SC) 2007 4 74 Para-7
- 2) 2008 LLR 758 Para 6 = LAWS(KER) 2008 1 75 Para-10.

I have gone through all the citations filed by the Ld. Counsel for the Company. Out of the citations Annexure K & L are very pertinent to be discussed necessarily.

Annexure – K is a case reported in LAWS(SC)2007, Page – 474 in between Depot Manager, APSRTC vs B. Swami. In the instant case it is revealed that on 23.05.2000 the respondent was a conductor performing his duty as conductor in the bus belong to APSRTC. When the vehicle was checked, it was detected that 16 illiterate lady passengers had been issued tickets of 0.50 paise denomination instead of Rs. 4.00. The respondent is alleged to have collected an extra amount from each of them which is pocketed. The checking staff had recorded the statement of the passengers where after a charge memo was issued to the respondent. After holding an inquiry, the management removed the respondent from service.

It is held that if he (respondent) in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimised by the fact that he was not earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment.

Therefore, the Hon'ble Supreme Court ordered to the effect that We are, therefore, satisfied that there was no justification for interfering with the order of the management which had been upheld by the Labour Court. We, therefore, allow this appeal, set aside the judgement and order of the Division Bench of the High Court impugned in this appeal and restore the order of the learned Single Judge dismissing the Writ Petition.

Be it mentioned here that in the instant case Labour Court held that the misconduct was proved and the management was justified in removing the respondent from service.



Annexure – L is a case reported in LWS(KER)2008, Page-175 in between Federal Bank Employees Union vs Federal Bank Ltd.

In the instant case it is revealed that a clerk named Shri V. Kunjappan of the first respondent bank falsified the documents and he obtained transfer expense for his wife and son, without incurring the same. The above misconducts were proved in the enquiry and he was dismissed from service w.e.f. 2014, 1996. His appeal was also rejected by the appellate authority and thereafter the Union took up the case.

The Labour Court awarded to the effect that "though misconduct is proved, punishment of dismissal was totally disproportionate. For granting relief, Labour Court was of the opinion that denial of back wages for five years (which will be huge sum) is sufficient punishment considering the gravity of the misconduct. Hence, the Labour Court awarded as follows:

Having regard to the facts and circumstances of this case, I am of the view that the extreme penalty of dismissal on the workman by the management is too harsh and excessive and so requires modification.

I therefore modify the punishment by directing the management to reinstate him in service with continuity of service but without back wages. An award has to be passed accordingly.

In the result, an award is passed modifying the punishment and directing the management to reinstate the workman with continuity of service but without back wages.

The Hon'ble Division Bench of High Court at Kerala observed that Labour Courts and Industrial Tribunals cannot act as a benevolent dictator and grant relief indiscriminately. Misplaced sympathy to wrong doers may do more harm to the industries. Industrial peace, harmony, power of the management to run the establishment etc. Cannot be forgotten by the Tribunals or Labour Courts. The workmen found guilty of misconduct shall not be unpunished. But, punishment shall be in proportion to the misconduct proved. Power under Section 11-A to interfere with punishment should be imposed sparingly in compelling circumstances as power to take disciplinary action is essentially a managerial function. If the Labour Court or Tribunal for cogent reason finds that the punishment is too harsh, certainly, it has now power to interfere with the punishment and grant appropriate relief. If the misconduct is proved in a proper domestic enquiry or before the Labour Court itself, the Labour Court has got power to interfere with the punishment only if the punishment is too harsh and grossly disproportionate to the misconduct proved and even in such cases where the Labour Court finds that the punishment is disproportionate, reinstatement with or without back wages need not be granted in all cases. Appropriate punishment has to be decided by the Labour Court considering the entire facts and circumstances of the



case, gravity of the misconduct, effect in the establishment of the relief to be granted etc. Moulding of relief is an onerous duty on the part of the Labour Court or Tribunal. Normally, the Labour Court cannot grant reinstatement in cases of proved misconducts involving dishonesty, theft, misappropriation, riotous behaviour inside the establishment or disorderly behaviour towards superiors as reinstatement of such employees will affect the internal discipline of the establishment.

AND

Lastly the Hon'ble Division Bench of High Court at Kerala granted the only relief that can be granted is conversion of dismissal from service to discharge from service on the date of dismissal so that he (now legal representatives) will be entitled to get all retirement benefits as if he was discharged from service instead of dismissed from service..

In our case in my humble opinion the case under reference is akin to the case as per citation of Annexure – K, wherein it is observed by the Labour Court held that the misconduct was proved and the management was justified in removing the Respondent / charged Workman from the service.

Thus in my opinion the service under reference held to the effect that the termination of service of Shri Sesh Nath Yadav by way of dismissal by the management of the M/s Supper Forging & Steel Ltd. 62/D/2, J. N. Mukherjee Road, Ghosuri, Howrah w.e.f. 10.12.2003 is justified and the charged Workman is not entitled to get any relief whatsoever as prayed for.

Hence it is

ORDERED

That the instant case being No. VIII – 13/2011 under reference be and the same is dismissed on contest but without cost. It is held the termination of service of Shri Sesh Nath Yadav by way of dismissal by the management of the Company w.e.f. 10.12.2003 is justified and the charged Workman is not entitled to get any relief whatsoever as prayed for.

This is my Award.

The Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL