2023 LiveLaw (SC) 209

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
V. RAMASUBRAMANIAN; J., PANKAJ MITHAL; J.
CIVIL APPEAL NO. 10604 OF 2010; MARCH 15, 2023
THE EASTERN COALFIELDS LIMITED AND OTHERS *versus* **AJIT MONDAL AND OTHERS**

Labour Law - Court can always test the extreme penalty of dismissal from service on the test of proportionality - Poor Line Mazdoor dismissed from service reinstated by Supreme Court invoking Article 142 of the Constitution.

For Appellant(s) Mr. Diggaj Pathak, AOR Ms. Shweta Sharma, Adv. Ms. Shubhi Pandey, Adv.

For Respondent(s) Mr. Ranjan Mukherjee, AOR Ms. Aayushi, Adv. Mr. Om Prakash, Adv.

O R D E R

This appeal by the employer arises out of an order of remand passed by the Division Bench of the High Court of Calcutta, setting aside not only the order of the learned Single Judge, but also the order of penalty of dismissal from service and directing the employer to substitute the said penalty with a lesser penalty.

We have heard learned counsel for the parties.

Admittedly, respondent no.1 was employed as a line mazdoor in the appellant Coalfield from the year 1975. There is no complaint that his service record from 1975 to 1999 was writ with any blemish.

It appears that respondent no.1 absented himself for quite a number of days in the years 1999, 2000 and 2001. When he absented himself for 106 days in the year 2002, the employer initiated disciplinary action for unauthorized absence.

Admittedly, the charge framed against the respondent no.1 was confined only to the unauthorized absence of 106 days in the year 2002. An inquiry followed, which culminated in an order of penalty of dismissal from service passed on 17.10.2002.

The respondent no.1 filed a statutory appeal after a delay of four years. Since the appeal was not disposed of, the respondent no.1 filed a writ petition before the High Court. Learned Single Judge dismissed the writ petition, but the Division Bench in an intra-Court appeal, reversed the same on the ground of proportionality of penalty. The High Court did not, however, substitute its own judgment on the quantum of penalty, but remanded the matter back to the disciplinary authority for substituting the penalty of dismissal with a lessor penalty.

Challenging the said order of the Division Bench, the employer came up with the above appeal. On 09.07.2010, this Court not only issued notice in the present appeal, but also granted an interim stay of operation of the impugned order. Now a period of nearly 13 years have passed and the respondent no.1 has also reached superannuation, perhaps even before the year 2010.

It is too well settled to cite any authority for the proposition that the Court can always test the extreme penalty of dismissal from service on the test of proportionality. In this case, the respondent was admittedly appointed in the year 1975 and he continued in service without any blemish till the year 1999. Though the respondent was absent for a large number of days in the years 1999, 2000 and 2001, the absence of respondent no.1 during these three years was not termed by the employer as

unauthorized absence. Charge was confined only to the unauthorized absence from duty in the year 2002.

It is true, as contended by the learned counsel for the appellants, that while imposing the penalty, the employer is entitled to take note of the antecedents of the employee. But the antecedents cannot relate to the very same misconduct, which did not lead to any action. After issuing chargesheet for unauthorized absence for 106 days during the year 2002, the employer cannot later on take into account the absence during the previous years as antecedents.

Though the learned counsel for the appellants tried to distinguish the two decisions relied upon by the Division Bench in the impugned order, namely, (1) ***Union of India and Others vs. Giriraj Sharma*** **[1994 Supp (3) SCC 755]**, and (2) ***Syed Zaheer Hussain vs. Union of India and Others*** **[(1999) 9 SCC 86]**, on the ground that in these cases, the period of absence was very very less, we do not think that the principle can be tested on the strength of the number of days of absence.

The test of proportionality has to be seen in a larger context. The larger context in the present case is that admittedly from 1975 the respondent no.1 had an unblemished record of service. Therefore, we are of the view that the Division Bench of the High Court was correct in its approach in applying the test of proportionality. Hence, in normal circumstances, we must dismiss the appeal and confirm the impugned order. But then the same may give rise to one more round of litigation with the disciplinary authority passing a fresh order and the same coming under challenge in another round of litigation.

The respondent was a poor line mazdoor and superannuated more than a decade ago. Therefore, we would like to exercise our power conferred under Article 142 of the Constitution and substitute the penalty of dismissal of service by a lesser penalty.

In view of the above, the appeal is disposed of and the impugned order is modified to the extent that the penalty of dismissal from service dated 17.10.2002, is directed to be substituted with a penalty of compulsory retirement from service. As a consequence, whatever benefits are applicable to a compulsory retired employee, shall be calculated and paid to the respondent no.1 within a period of eight weeks.

The appeal stands disposed of in the above terms.

Pending application(s), if any, shall stand disposed of.