IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 4845 of 2008

....

The Management of Tata Engineering & Locomotive Company Ltd., Jamshedpur, Presently M/s Tata Motors Ltd., having its registered office at Bombay House, 24, Homi Modi Street, Mumbai through Diwakant Thakur, son of Late G.K. Thakur, G.M., Finance, Tata Motors Limited, Telco Town, Jamshedpur, P.O. and P.S. Telco, Jamshedpur, District East Singhbhum, Jamshedpur.

..... Petitioner (s)

Versus

1. Sumitra Devi w/o late C.K. Singh.
2. Manog Singh.
3. Preety Singh, R/o Sejb Colony, P.O. Rahagrora, town Jamshepdur, East Singbhum.
4. Poonam Singh, W/o Jitendra Kr. Singh, Vill & P.O. Khathariya, P.S. Narhari, District-Baliya.

..... Respondent(s)

....

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner(s) : Mrs. Rashmi Kumari, Advocate
For the Respondent(s) : Ms. Amrita Sinha, Advocate

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C.A.V. ON: 01/12/2025 **PRONOUNCED ON:16/02/2026**

1. Heard learned counsel for the parties.

2. The instant Writ Application has been preferred by the Petitioner praying therein for quashing of the Award dated 15.1.2008 passed in Reference Case No.14 of 1988 by the Learned Presiding Officer, Labour Court, Jamshedpur; whereby the Ld. Labour Court has quashed the order of discharge of the respondent workman from his service and has further directed the reinstatement of the respondent along with 40% back wages and other consequential benefits and has further ordered that the respondent shall be deemed to be in continuous service.

3. Briefly stated, the original respondent-workman namely C.K. Singh, who died during pendency of this case, was working since 14.07.1969 as unskilled MATE up to October, 1972 and thereafter, he was made permanent and was given designation of Motor Mechanic in the Auto Transport Department in Petitioner Company. On 08.02.1983, the workman had undergone a surgery at TELCO Hospital by one Dr. N.G. Das, Senior Surgeon, in his scrotum. Stitches were cut on 15.02.1983 but one stitch was left by the said Doctor i.e. Dr. N.G.Das and as a result of negligence on the part of the doctor, there was severe pain in the operated portion (scrotum), and it became septic. Accordingly, on 22.02.1983, the workman went to the said Hospital and met the said Dr. N.G.Das who operated on him and complained about the pain in his scrotum and both the legs and requested to get him admitted. On examination, it was found that one stitch was not removed. However, the said Doctor refused to admit him and simply asked him to get one injection and come another day. As the workman was in severe pain, he started yelling on the said Doctor for getting him admitted.

The further the case of the workman is that after few days he again approached the Doctor and stitches were removed.

4. After two days of the said incident, the aforesaid Doctor namely, N.G. Das, Senior Surgeon, made a formal complaint to the Management of the Petitioner Company and requested to take necessary action against the workman for using filthy languages and extending threat against him.

Based on the above complaint, the workman was charge sheeted on 16.03.1983 for his alleged misconduct under sub-clauses *24(xvi)............fighting or riotous or disorderly or indecent behavior or any act subversive of discipline or efficiency and (xxxii) threatening or intimidating any employee within the work premises.*

5. A departmental inquiry was instituted and on the basis of the evidence recorded by the Inquiry Officer, the workman was found guilty of the alleged misconduct and recommended for his discharge.

The Disciplinary Authority being satisfied with the Inquiry Officer's report discharged the workman from service w.e.f. 18.06.1984.

6. Consequently, an Industrial Dispute was raised by the Engineering Mazdoor Panchayat, Jamshedpur (to be referred as Sponsoring Union) and upon failure of conciliation, the appropriate government u/s 10(1)(c) of the

Industrial Dispute Act referred the matter for adjudication to the Labour Court, giving rise to reference case no. 14 of 1988.

The terms of reference reads as under:-

> *"Whether the termination of service of Shri C.K. Singh, ticket no. 9909/73123, workman of TELCO is proper and justified? If not, what relief he is entitled to."*

7. The said reference case was previously decided by the Labour Court; Jamshedpur vide its judgment/award dated 18.02.2002 holding therein that the reference is not maintainable and the workman was not entitled to any relief claimed for. The said award dated 18.02.2002 was challenged by the workman before this Court, invoking its writ jurisdiction being W.P.(L) No. 5655 of 2002, wherein this Court vide its order dated 31.07.2007 (Annexure-1) set aside the aforesaid award dated 18.02.2002 of the Labour Court, Jamshedpur and the workman's application u/s 2A of the Industrial Dispute Act was allowed and the workman was given liberty to pursue the aforesaid reference case as an Individual Dispute under Sec. 2A of the Industrial Dispute Act.

8. Accordingly, the reference case was pursued by the workman in his individual capacity. The Learned Labour

Court having perused the material on record came to the conclusion that the termination of the workman Chandra Kishore Singh having ticket no. 9909/73123 from the service of TELCO w.e.f. 17.03.1983 amounts to illegal termination and it was not justified and was disproportionate and was too harsh in the facts and circumstances, and that the workman is entitled to reinstatement in the service with 40% of the back wages and other consequential benefits and he shall be deemed to be in continuous service.

The Ld. Court further held that two increments of the workman with future effect shall be withheld since 17.03.1983 and it would meet to the ends of justice. Being aggrieved, the Management filed the present writ application. As stated hereinabove, during the pendency of the present Writ Petition, the respondent workman died and has been substituted through his legal heir, being the widow of the workman.

9. It has been argued by the Ld. Counsel for the Petitioner-Management that even though the workman was in pain, the fact is that the workman used filthy language and threatened the Doctor for dire consequences. It has also been submitted that the Labour Court cannot function as an appellate authority and substitute its own judgment for that of the management. The Ld. Counsel for the Petitioner in this context relied upon the Judgment of the Hon'ble Apex Court in the matter of ***Indian Iron & Steel Co. Ltd. and Anr. vs. Their Workmen***, reported in **1957 SCC Online SC 40**. The relevant para of the aforesaid judgment is quoted below:-

> *"18. This brings us to the case of Abharani Debi, where also the same principles apply. She was a nurse in the Burnpur Hospital and the charge against her was that she had incited and instigated one Karu, a sweeper working in the hospital, not to attend his duties on the morning of 5-9-1953. An enquiry was held and she was found guilty of the charge. The Tribunal found that the charge against her was completely baseless, and the enquiry report against her made a mountain of a mole-hill. She made some comments to Karu with regard to a pass which had been issued to Karu, and the comments innocuous in themselves were magnified into a charge of intimidation. It is significant that before the Labour Appellate Tribunal, the Company did not even argue the case of Abharani. Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises. Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse. In our view, Abharani's cose comes under clause (iv) above."*

10. Ld. Counsel further relied upon the judgment of this Court rendered in the case of ***M.Y. Khan vs. M/s Tata Engineering & Locomotive Co. Ltd.*** reported in **2009 SCC Online Jhar 660**, on the ground that sympathy alone cannot be a ground for exercise of power u/s 11-A of the Industrial Disputes Act.

Ld. Counsel further advanced her arguments on the point of back wages, wherein the Ld. Labour Court has reinstated the Petitioner in service with 40% of back wages without coming to specific finding that the workman was not gainfully employed anywhere else during the said period. In this context she relied upon the judgment of the Hon'ble Supreme Court passed in ***P. Karupaiah (Dead) through legal representatives vs. General Manager, THRUUVALLUVAR Transport Corp. Ltd.*** as reported in **(2018) 12 SCC 663**.

11. *Per contra*, Ld. Counsel for the Respondent strongly opposes the prayer of the Petitioner and contended that the Ld. Labour Court only after due appreciation of the evidences on record and after properly appreciating the facts and circumstances has rightly come to the conclusion that the termination of the workman is illegal and unjustified and order of discharge from service is disproportionate and too harsh in the facts and circumstances of the case.

12. She contended that admittedly, the workman was in severe pain due to the medical negligence on the part of the Doctor and that as the stitch was not removed it became septic and due to the pain, the workman even got unconscious.

She has also submitted that the said incident happened in the spur of the moment as the workman had severe pain in his scrotum and was not in the situation to understand the implication of his words and there was no intention on the part of the workman to abuse or use any filthy language against the Doctor or anyone.

She further referred to the deposition of the workman, and contended that, the workman does not remember what exactly he said during that incident as he was in great pain. Moreover, the other doctors present at the time of the incident, who were examined, although have supported the incident but did not support the version of Dr. N.G. Das and also did not support any such threat extended by the workman.

13. Having heard Ld. Counsel for the parties and after going through the records of the case and the impugned Award, it is pertinent to point out that the law is well settled, inasmuch as, even if the Industrial Tribunal or the Ld. Labour Court is of the view that the domestic inquiry was just and fair, yet this did not bar the Tribunal/Labour Court from considering as to whether the punishment was proportionate or not. The object and reason for inserting Section 11A was to incorporate the recommendations of the International Labour Organization (ILO) on the termination of employment. The ILO recommended that any aggrieved worker should be able to challenge termination before a neutral body such as an arbitrator, court, or tribunal. Before Section 11A was enacted, the role of Labour Courts and Tribunals was limited. The Supreme Court in ***Indian Iron and Steel Company Limited and Others vs. Their Workman (supra)*** held that such bodies could only interfere with dismissal or discharge if there was evidence of bad faith, victimization, or unfair labour practice, and not by substituting their own judgment for that of the Management.

This judgement which has been relied on by the Management vehemently, no longer holds the field, and was given by the Hon'ble Apex Court prior to incorporation of Section 11-A by the Industrial Disputes (Amendment) Act, 1971 (Act 45 of 1971).

14. The pivotal case following the insertion of Section 11A is ***Workman vs. Firestone Tyre and Rubber Company, 1973 (1) SCC 813.*** The Supreme Court held that after Section 11A, the Industrial Adjudicator is not restricted to interfering with punishment only in limited circumstances. The Tribunal has the discretion to examine the proportionality of the punishment, mould the relief, and even award lesser punishment, if warranted. The Labour Court or Tribunal has a duty to assess whether the punishment is disproportionate to the charges proved. The decision summarises the principles of law in paragraph no. 32 which is reproduced below:-

> ***32.*** *From those decisions, the following principles broadly emerge:*
> *"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.*
> *(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*
> *(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*
> *(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.*
> *(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.*
> *(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*
> *(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*
> *(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*
> *(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest*

victimisation.
(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmens [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal."

15. In this regard, reference may also be made to the judgments of the Hon'ble Apex Court in the case of ***Mavji C. Lakum vs. Central Bank of India*** *reported in* ***(2008) 12 SCC 762*** which has held as follows:-

> *"Para 23 - …………………The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. <u>If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment</u>. There can be no dispute that power under Section 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons."*
>
> *<u>Emphasis Supplied</u>*

16. On the question of quantum of punishment, reference is also made to the case of ***Rama Kant Misra vs. State of Uttar Pradesh & Ors.*** reported in **(1982) 3 SCC 346**, wherein the Hon'ble Apex Court has held as under:-

> *"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 fair play demand that punishment must always be commensurate with the gravity of the offence charged. <u>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.</u> As the situation then stood, courts remained*

powerless and had to be passive sufferers incapable to 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 a 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 discharge or 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 of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.*

7. <u>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</u>. 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 conferred 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 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 be commensurate with the gravity of the offence charged."

The Hon'ble Apex Court in the aforesaid case held that in such a situation withholding of two increments with future effect will be more than adequate punishment for a low pay employee and accordingly, directed for reinstatement with all the benefits including the back wages.

However, this Court also cannot be oblivious to the decision of the Apex Court in ***Mahindra & Mahindra vs. N.B. Narawade (2005) 3 SCC 134*** laying down triple test for exercise of discretion under Section 11A of the Industrial Disputes Act, 1947. These are:-

(i) Punishment must be shockingly disproportionate to the gravity of the charges;

(ii) Existence of mitigating circumstances which require reduced punishment;

(iii) Past record of the workman. *[Para 20].*

17. The instant case is a case that meets the mitigating circumstances test. In the peculiar facts, the workman did not use any abusive language with his employer or its officers in the course of performance of his duties.

He was treated in the hospital of his employer and suffered acute pain in his scrotum due to septic infection caused by unremoved stitch which constitutes medical negligence. The workman allegedly used foul words in a state of pain and when he was asked to leave and visit again the following day. Even otherwise, there is a finding of perversity in enquiry on page 14 of the award. Dr. N.G. Das (complainant) and Dr. D.N. Singh have given completely two different versions of the incident. The alleged words mentioned by Dr. Das are not corroborated by Dr. D.N. Singh who does not support allegation of use of expletives.

Furthermore, it would be normal for any patient to protest and express displeasure when he suffers pain caused by septic infection post-surgery due to an unremoved stitch. It is also undisputed that instead of treating him, the doctor turned him away and instructed him to visit again leaving him in pain and suffering.

These extenuating circumstances have been considered judiciously by the Labour Court, and the award is legal, valid and proper.

18. From record it appears that during the pendency of the present Writ Petition, an application u/s 17-B of the Industrial Disputes Act was filed, specifically stating therein that the respondent workman is unemployed and he was not employed anywhere after his discharge from the service having no source of individual income at all.

The aforesaid application u/s 17-B was considered by this Court and after hearing the Counsel for both the sides, this Court vide its order dated 13.05.2009 duly allowed the said application and directed the Petitioner Company to pay salary to respondent workman @ last paid drawn under the provisions of Sec. 17-B of the Industrial Dispute Act, till the pendency of this Writ Application.

It has been informed that the Petitioner-Company in compliance to the aforesaid direction duly disbursed the salary to respondent workman @ last paid drawn by him. Since the Management chose not to challenge the said order dated 13.05.2009, it can be presumed that admitting the fact that the respondent workman was not gainfully employed anywhere and continued to pay the same till the retirement of the workman.

19. The workman died and his legal heirs are pursuing this litigation. The Labour Court has also inflicted punishment of stoppage of two increments. The family of the deceased workman has suffered immensely. Had it been the case of a senior level employee, the doctors would have been punished and the patient would become entitled to receive compensation for medical negligence.

It is rather unfortunate that the workman not only suffered excruciating pain and discomfort due to medical negligence, he was also thrown out of service on the complaint of the erring doctor.

20. The judgment relied upon by the Petitioner in the case of *P. Karupaiah (Dead) through its legal representatives vs. General Manager, through Valuvar Transport Corp. Ltd (2018) 12 SCC 663* is of no help as in the said case, the Writ Court and the Appellate Court examined the question in its writ jurisdiction the fact that whether the workman was gainfully employed or not as per the proviso to Sec. 17-B of the Industrial Disputes Act and came to a specific finding that he was employed during the said period.

However, in the present case, the Petitioner could not bring any evidence in order to show that the workman was gainfully employed anywhere and was receiving remuneration during any such period or part thereof. On the other hand, this Court after examining the claim and the counter claim has directed payment of last drawn wages to the workman during the pendency of the present case as per Section 17-B of the Industrial Disputes Act, to which the Petitioner Company duly complied with.

21. Having regards to the aforesaid facts, the workman is, therefore, entitled to full wages with all consequential benefits and continuity of service including wage revisions, allowances etc. from the date of award till the date of his death or superannuation, whichever is earlier.

22. In the interest of justice, the Ld. Labour Court after setting aside the order of discharge has granted only 40% of the back wages and has also inflicted punishment of stoppage of two future increments. The Labour Court has not given any reasons while awarding 40% back wages.

On analysing the facts of the case, considering the finding of perversity in the enquiry, absence of evidence of gainful employment from the employer and, the high-handed approach in penalizing a worker who protests against glaring medical negligence of the Company's doctor, the award of 40% back wages is reasonable and justified. The workman is thus, entitled for forty percent of wages from the date of dismissal till the date of award. The computation of such back wages will factor in stopping two annual increments and thereafter, he would be entitled for all the consequential benefits and be treated in continuous service.

Needless to say, as the workman is already dead, the full monetary benefits including post death or post-retirement benefits should be paid to the substituted legal representatives.

Since the present petitioners are the legal heirs of the deceased workmen, accordingly, the consequential benefits be extended to them within a period of 10 weeks from the date of production of a copy of this order.

23. As a result, the instant writ petition is accordingly disposed of. Pending IAs if any, are closed.

(Deepak Roshan, J.)

Dated:16 / 02/ 2026
Amardeep/
A.F.R

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