CASE NO.:
Appeal (civil) 6878-6880 of 1999

PETITIONER:
KANHAIYALAL AGRAWAL & ORS.

Vs.

RESPONDENT:
THE FACTORY MANAGER, GWALIOR SUGAR COMPANY LIMITED

DATE OF JUDGMENT: 13/09/2001

BENCH:
S. RAJENDRA BABU & S.N. VARIAVA

JUDGMENT:

WITH
CIVIL APPEAL NOS. 6881-6883 of 1999

J U D G M E N T

RAJENDRA BABU, J. :

These two sets of cases are cross-appeals filed by the Management of the Gwalior Sugar Company Limited and their workmen.

The workmen were charged that on 9.2.1979 when Kanhaiyalal Agrawal was on duty on trailer weigh bridge of the factory gate from 2 a.m. to 10 a.m. in collusion with Harihar Giri, Centre Incharge, Ramesh Chandra Savita, Harihar Sharma, Devi Ram Rajak, Dedaram, C.P. Madan, Hari Singh, Umeshchandra and Narendra Singh conspired to allow one trailer sugar cane requisition slip No. 5999 in the name of Chatura for bringing sugar cane by bullock cart at Sunwai Depot on false payment slip No. 14964 wrote gross weight 46.70 and did help him in making payment of Rs. 373.1 paise without the arrival of sugar cane in the company for their respective benefits and each of the workmen was dismissed after inquiry. Applications were filed by them before the Labour Court challenging their termination from service.

In the case of Kanhaiyala Agrawal, the labour court came to the conclusion as follows :-

"In the present case, the applicant is working on the post of weighment clerk and he has contravened the prescribed procedure and in collusion with other colleagues signed payment slip wrongly prepared for a wrong date while on the day of incident Chetu or Chatura did not bring sugarcane to the mill. The responsibility of applicant is that he should sign on payment slip with correct date and the amount of sugarcane of concerned farmer, while he should do its weigh. As a weighment clerk his work was of faith and full responsibility. On the basis of evidence produced in the case loss of trust of non-applicant in applicant appears to be proper. Therefore, it is not proper to award relief of reinstatement to applicant. According to accepted formula in the citation of 1990 Lab I.C. 995 (Dayaram & Ors. vs. The Gwalior Sugar Company Ltd. & Anr.), which is in respect of industry of

non-applicant, applicant is entitled to get half salary and full returning allowance from the date of dismissal till the date of this order."

On that basis, the labour court disposed of the matter.

In the case of Ramesh Kumar Savita, the labour court came to the conclusion as follows :-

"In the present case, applicant was doing the work of punch man on gate and this was his responsibility that he should allow the correct gadi on correct slip on correct date inside the gate and if any vehicle comes without it then he should not allow to make its payment non-applicant is successful in proving this thing that applicant has done contravention of prescribed procedure. Due to this reason his faith is correctly lost from applicant and on the basis of evidence, which has come in the case, basis of loss of faith of non-applicant from applicant is proved. Therefore, it is not proper to award relief of reinstatement in the citation of 1990 Lab. I.C. 995 (Dayaram & Ors. vs. The Gwalior Sugar Company Ltd. & Anr.), applicant is entitled to get half salary with full returning allowance from the date of dismissal from service till the date of this order."

And, in case of Chandra Prakash Madan the labour court held as follows :-

"In the present case, applicant was working on the post of checking clerk and he contravened the prescribed procedure and in collusion with other colleagues on wrong slip and from the slip of original date prepared weighment slip and did his signature. His responsibility was this that he should prepare his weighment slip on correct slip and on the basis on it. As a checking clerk his work (duty) was of full faith. On the basis of security and on the basis of evidence came in the case loss of faith of non-applicant from applicant appears to be proper. Therefore, it is not proper to award relief of reinstatement to applicant. According to accepted formula in citation of industry of non-applicant, applicant is entitled to get half salary with full returning allowance from the date of dismissal from service till the date of this order."

Against these orders appeals were preferred before the Industrial Court. The Industrial Court held that the employees had not committed any mis-appropriation of money but were negligent in performing their duties and the finding recorded by the labour court is in order. The Industrial Court, therefore, directed reinstatement of the workmen in the office in each of the cases, however, without back wages and the discussion on this aspect is as under :

"In the case, whatever evidence (proof) is produced, from its perusal, this thing appears definitely that employee had done negligence in his work definitely procedure of purchase of sugarcane, its weighment and its payment of price at employer's mill is shown. From the perusal of procedure only this conclusion is not drawn that actually and knowingly employee has committed any such act with the object of causing damage to employer, witnesses of employer has told that weighment slip is prepared at mill gate. But according to the witnesses of employer actually sugarcane is not weigh at the gate of mill. Therefore, some other instances of this type also on the basis of which it will not be proper to draw inference of dishonesty towards employees.

Learned Presiding Officer of Labour Court has not held the

employee guilty of misappropriation of money. I agree with this conclusion. In the opinion of Labour Court employee had done the act of causing damage to employer knowingly employee has done any wrong proceeding with the object of causing damage to employer and fulfilment of his self interest. I agree with this argument of Shri Bansal that doubt may be forceful to any extent, but it cannot be given the place of proved evidence. In such circumstance in my opinion it is not proper to deprive the employee from the relief of reinstatement.

I also considered those arguments of Shri Gupta according to which employer has lost faith on employee. In my opinion on the basis of proof, which is produced, this argument of Shri Gupta is not acceptable. This is definite that procedure, which was shown by the witnesses is of employer was not followed word by word by the employee. This is also not misconduct in itself but it is definitely serious negligence. In my opinion for the acts like negligence it is not proper to deprive the employee from the relief of reinstatement. After the termination of services of employee, about more than 10 years time has lapsed. If employee is deprived from the back salary or returning allowance of this period even then in view of the circumstances of the case it will be sufficient punishment."

Against the said decision both the workmen and the Management filed writ petitions. The learned Single Judge of the High Court did not interfere with the order made by the Industrial Court in any one of the matters after noticing that the conclusion reached by the Industrial Court on examination of the case on the question of loss of confidence that it was not such a case and for the negligence committed by the workmen in question, held the punishment of denial of back wages would meet the ends of justice and, therefore, upheld the order made by the Industrial Court. Against that order of the learned Single Judge writ appeals were preferred by both the Management and the Workmen. The writ appeals were, however, dismissed on the basis that they were not maintainable inasmuch as the same arose out of proceedings under Article 227 of the Constitution which is revisional in nature. In the appeals before us the order made by the Division Bench of the High Court is in challenge.

So far as the law on the matter is concerned as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the lacour court, this Court in its decision in Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad, 1999 (6) SCC 275, stated that "if a Single Judge exercises jurisdiction under Article 226, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable". But with an explanation that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this in Umaji Keshao Meshram vs. Radhikabai, 1986 Supp. SCC 401; Ratnagiri District Central Co-operative Bank Ltd. vs. Dinkar Kashinath Watve & Ors., 1993 Supp (1) SCC 9, and Sushilabai Laxminarayan Mudliyar & Ors. vs. Nihalchand Waghajibhai Shaha & Ors., 1993 Supp (1) SCC 11.

Hence, we are of the view that it is wholly unnecessary for us to examine this aspect of the matter in view of the declaration of law made by this Court in Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad (supra) after adverting to all the decisions on the point.

We have looked into the orders made by the labour court, the Industrial Court and the learned Single Judge of the High Court and we are of the view that the conclusions drawn by the Industrial Court in appeal which stood affirmed in the writ petitions are based upon the facts arising in the case.

Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the labour court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

Tested on these principles on the charges against the workmen concerned on the proved facts whether there was any loss of confidence so far as the workmen were concerned, the inferences have been appropriately drawn.

It cannot be stated that the conclusions emanating from the orders of the Industrial Court are one of non-application of mind to the facts or ignoring any of the relevant facts or taking into consideration any of the facts not available on record, much less can the conclusions be characterised as perverse. We think, the writ jurisdiction has been appropriately exercised by the learned Single Judge. Hence, we decline to interfere with the order by the learned Single Judge.

The appellants in these appeals also claim payment of back wages. On that aspect also both the Industrial Court and the learned Single Judge have given cogent reasons and, therefore, we do not think, there is any justification for us to interfere with that aspect of the matter either.

In the light of this order, it is unnecessary to make any order on I.A. Nos. 4, 5 and 6 and are rejected. It is open to the parties to work out their respective rights in appropriate proceedings.

In the result, these appeals stand dismissed. However, in the circumstances, there shall be no order as to costs.

.....J.

[S. RAJENDRA BABU]

.....J.

[S.N. VARIAVA]

SEPTEMBER 13, 2001.

JUDIS