

HETTIGODA INDUSTRIES
v
WIJESURENDRA

SUPREME COURT
S.N. SILVA, CJ.
YAPA, J. AND
JAYASINGHE, J.
S.C.51/2002
H.C.LT A NO.1599/98
28 JULY, 2003

Industrial Dispute – Order of the Labour Tribunal – Punishment of workman by employer out of proportion to the alleged misconduct – Lack of evidence to support the alleged offences at the domestic inquiry.

In the absence of the Manager, the respondent (“the workman”) issued a gate pass to one Subasinghe who was stopped at the gate by the security guard on the ground that the said pass did not indicate the reason for leaving the premises: whereupon the workman abused the security guard. This was the first offence alleged against the workman. The second charge against him was that he had allowed the removal of a spare wheel by a person who was issued with another gate pass instead of a tyre. After a domestic inquiry the appellant (“the employer”) terminated the services of the workman.

The Labour Tribunal held that the termination of services was unjustified and gave the workman Rs.90,000/- as compensation being nine months salary.

Held:

1. Even though there was an element of blame that can be apportioned to the workman in his attitude towards the security officer, there was no justification for termination of services of the workman as such punishment was totally out of proportion with the alleged misconduct.
2. There is no evidence led before the tribunal that the workman was instrumental in permitting the removal of a spare wheel or a tyre from the premises as charge 2 seems to suggest or acted fraudulently in that regard. In any event the conduct of the workman alleged in charge 2 did not constitute misconduct warranting dismissal.
3. In all the circumstances of the case it is not fit to interfere with the findings of the Labour Tribunal and the High Court that the termination of services was unjustified.

APPEAL from the judgment of the High Court.

Ikram Mohamed.P.C. with *S.Jayawardena* for appellant.

R.K.S. Suresh Chandra for respondent.

Cur.adv.vult.

September 24, 2003

JAYASINGHE, J.

The applicant-respondent-respondent hereinafter referred to as the respondent was charge sheeted by the respondent-appellant-petitioner hereinafter referred to as the appellant on two counts on 09.10.1996, to viz.

- a. Abusing/reprimanding a security officer who was on duty at the gate when carpenter Subasinghe sought to leave the premises on a motor bicycle bearing No.138-2380.

(The appellant alleged that the security guard had stopped the said Subasinghe since the gate pass issued by the respondent did not indicate the reasons for leaving the premises; that when an employee wishes to leave the premises he is enjoined to obtain a gate pass and since the manager of department was not available, Subasinghe had obtained only the gate pass from the respondent.)

- b. Authorising a spare wheel to be taken out of the premises without permission. (It was also alleged that though the gate pass had been issued in respect of the removal of a tyre, what had in fact been sought to be removed was a spare wheel.)

Since the respondent failed to refute the charges preferred against him the appellant determined the conduct of a domestic inquiry after which the respondent was found guilty of the charges set out above. The appellant says in view of the fact that the respondent could no longer be permitted to exert influence prejudicial and subversive of discipline within the establishment the appellant terminated the respondent's services by letter dated 18.10.1996.

Being aggrieved by the said termination the respondent filed an application in the Labour Tribunal on the basis that his services had been unjustly terminated and sought relief and redress in the form of reinstatement with back wages or compensation. The appellant filed answer denying that the termination was unjustified. After inquiry the learned President delivered order holding the termination of the respondent's services was unjustified and granted the respondent compensation in a sum of 90,000/- being nine months salary. 30

The appellant appealed to the High Court of the Western Province. At the hearing before the High Court appellant complained that the learned President failed to examine and/or consider the gravely prejudicial consequences which might emanate from having to maintain in service an employee who is an "inveterate wrongdoer" and who is an undesirable example to the rest of the work force; that he failed to take cognizance of the fact that the respondent had totally disregarded the stipulated instructions and procedures and had violated the same notwithstanding the fact that the respondent had been served with written instructions; erred in holding that the termination was unjustified in as much as the learned president had already conceded that the warning letter 'R7' and the attitude of the respondent towards the security officer demonstrated indiscipline on the part of the respondent; that in any event the compensation awarded was excessive in the circumstances. 40 50

The High Court however took the view that even though there was an element of blame that can be apportioned to the respondent, there was no justification for termination of services of the respondent as the punishment meted out on the respondent was totally out of proportion with the alleged misconduct. The learned High Court Judge also took the view that as regards the 2nd charge the appellant had failed to establish any fraudulent intent on the part of the respondent in attempting to remove the said tyre and that there had been no follow up action by the appellant regarding the alleged misconduct. 60

I have carefully considered the submissions of counsel. I am inclined to agree with the learned High Court Judge that termination of services of the respondent is out of proportion with the

alleged misconduct. I have also perused the documents relied upon by the appellant to substantiate the appellant's claim that the respondent was an "inveterate wrongdoer." However it appears that none of the documents relied upon by the appellant constitute an allegation of wrong doing involving moral turpitude. The allegation that the respondent is an "inveterate wrongdoer" is insufficient in the light of the documentation relied upon by the appellant.

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It is relevant to mention that there is no evidence led before the tribunal that the respondent was instrumental in seeking to remove a spare wheel or a tyre from the premises as charge, No.2 seems to suggest. As a matter of fact the identity of the person who removed the spare tyre has not even been established with any certainty except that the security guard De Mel in cross examination had stated that the spare tyre was sought to be taken out by a driver, named Christy. No serious attempt has been made by the appellant before the Labour Tribunal to establish charge No.2 against the respondent. The evidence of the security guard has not been led on the basis that the respondent has committed an act of misconduct.

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Further it can never be said that the misdescription of the tyre/wheel on 'R2' constitutes misconduct warranting dismissal in the absence of any follow up action by the appellant as observed by the learned President of the Labour Tribunal. In any event 'R2' was later amended after the security at the gate refused passage out of the premises. Misdescription of 'R2' therefore cannot constitute a breach of discipline.

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Respondent when he gave evidence was not cross-examined on 'P2'.

It is also relevant to mention that the appellant invoked the jurisdiction of the High Court on the basis that the petition and affidavit filed in that court related to the abuse by the respondent in respect of the 2nd charge when in fact the abuse complained of, on the evidence, was when Subasinghe sought to leave the premises. Due to this defect the appellant could not have succeeded in the High Court and the petition of appeal would have been dismissed if the respondent brought it to the notice of the Learned High Court Judge.

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Taking into consideration all the circumstances of the case I do not see it fit to interfere with the findings of the Labour Tribunal and the judgment of the learned High Court Judge. Appeal is accordingly dismissed with costs.

S.N. SILVA, CJ - I agree.

YAPA, J. - I agree.

Appeal dismissed.