

PUNJAB DAIRY DEVELOPMENT CORPORATION
LIMITED AND ANR. ETC.

A

v.

KALA SINGH ETC.

MAY 7, 1997

B

[K. RAMASWAMY, S. SAGHIR AHMAD AND
G.B. PATTANAİK, JJ.]

Labour Law :

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Workman—Dismissal—Labour Court holding domestic inquiry defective, gave the management opportunity to justify dismissal—Further evidence adduced by Management as also by delinquent Labour Court found charges proved—Punishment found not disproportionate to magnitude of misconduct of workman—Held, order of dismissal would relate back to the date of the original dismissal and not from the date of judgment of the Labour Court.

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Desh Raj Gupta v. Industrial Tribunal-IV, U.P. & Anr., [1991] 1 SCC 249, overruled.

R. Thiruvirkolam v. Presiding Officer & Anr., [1997] 1 SCC 9, relied on.

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P.H. Kalyani v. Air France, [1964] 2 SCR 104, Followed.

Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, [1980] 2 SCC 593, does not lay down correct law.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6339 of 1994 Etc.

From the Judgment and Order dated 20.12.93 of the Punjab & Haryana High Court in C.W.P. No. 13641 of 1992.

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Dhruv Mehta, Fazlin Anam, S.K. Mehta and Jaideep Vedi for the appellants in C.A. No. 6339/94 and Respondents in C.A. No. 228/95.

Meera Aggarwal and R.C. Mishra for the Respondent in C.A. No. 6339/94 and appellant in C.A. No. 228/95.

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A The following Order of the Court was delivered :

In CA No. 6339/94

B This matter has come up by way of reference made by a Bench of three Judges to consider the correctness of the decision of this Court in *Desh Raj Gupta v. Industrial Tribunal, IV, U.P. & Anr.*, [1991] 1 SCC 249. With a view to appreciate the contention of the parties, it is necessary to record few relevant facts. While the respondent was working as a Dairy Helper-cum- Cleaner for collecting the milk from various centres, he was charged for the misconduct that on April 28, 1990 and on other dates, he

C inflated the quantum of the milk supplies in milk centres to the appellant-Corporation and also inflated the quality of the fat contents, while there were less fat contents. After conducting the domestic enquiry, the disciplinary authority dismissed him from service. On reference, the Labour Court found that the domestic enquiry conducted by the appellant was defective.

D Consequently, opportunity was given to the Management to adduce evidence afresh to justify the order of dismissal. Accordingly, evidence was adduced by the appellant as well as the delinquent-respondent. On consideration of the evidence, the Labour Court by its award dated November 14, 1990 held that the charge had been proved against the respondent. On

E the quantum of punishment, it was held that the punishment was not disproportionate to the magnitude of the misconduct of the respondent. However, on filing of the writ petition, the High Court set aside the award of the reference Court to the extent of the confirmation of the dismissal from service with effect the date of the judgment of the Labour Court and not from any date earlier thereto. This Court while granting leave referred

F the matter to three Judge Bench to consider the correctness of the judgment in *Desh Raj Gupta's* case (supra) in the light of the judgment of the Constitution Bench. Subsequent to the reference, another Bench of two Judges has elaborately considered the entire case law in *R. Thiruvirkolam v. Presiding Officer & Anr.*, [1997] 1 SCC 9. In the decision of the Constitution Bench in *P.H. Kalyani v. Air France*, [1964] 2 SCR 104, this Court had

G held that once the Labour Court found the domestic enquiry to be defective and gave opportunity to the parties to adduce the evidence found that the order of termination of the service or dismissal from service is valid. It would relate back to the original order of the dismissal. But a discarded was expressed by three Judges Bench in *Gujarat Steel Tubes Ltd. v. Mazdoor Sabha*, [1980] 2 SCC 593 which was considered by this Court in

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Thinwirikolam case (supra) and it was held that in view of the judgment of the Constitution Bench, three-Judge Bench judgment was not correct. *Desh Raj Gupta's* case was also considered and it was held that it has not been correctly decided. Thus, we are relieved of reviewing the entire case law in that behalf. A

In view of the aforesaid decisions and in view of the findings recorded by the Labour Court, we are of the considered opinion that the view expressed in *Desh Raj Gupta's* case is not correct. It is accordingly over-ruled. Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the Management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court. B C

The appeal is accordingly allowed. The order of the High Court stands set aside. No costs. D

In CA No. 228/95

This is a cross appeal filed by the workman. It is contended by the learned counsel for the workman that the charges were not correct; the Labour Court has not properly considered the evidence and the view that the order relates back to the date of the dismissal was not correct. We find no force in the contention. It is seen that the Labour Court after adduction of evidence came to the conclusion that the dismissal is justifiable. On the basis of the evidence adduced before it, no doubt, the Labour Court has not elaborately considered the entire evidence, but agreed to the decision that the misconduct has been proved. In view of the proof of misconduct, the necessary consequence would be that the Management has lost the confidence that the appellants would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A to grant relief of reinstatement with minor penalty. E F G

The appeal is accordingly dismissed. No costs.

R.P.

C.A. No. 6339/94 allowed.

C.A No. 228/95 dismissed.