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AN ANALYSIS ON DISCRETIONARY POWER OF ADJUDICATORY BODIES UNDER SECTION 11A OF INDUSTRIAL DISPUTES ACT, 1947

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ABSTRACT:

“Absolute Power, Corrupts Absolutely”. It is a well known principle that whenever a body is vested with a discretionary power, they have a tendency to use that discretionary power in the arbitrary manner. Discretion when exercised arbitrarily will be essentially considered as going against the concept of Rule of Law. So, it is necessary to not vest any bodies, especially bodies that exercise a quasi-judicial function with excessive discretionary power. But the provision of Sec.11A of Industrial Dispute Act, 1947 which was inserted via amendment of 1971, vests the adjudicatory bodies under the act with a discretion to reinstate a discharged or dismissed employee if they are satisfied that the order of termination is unjustified. In this paper, we are going discuss about the scope of discretion given to adjudicatory bodies, how the adjudicatory bodies use such discretion, what are the grounds on which they exercise such discretion and what are the controls available to prevent such unbridled discretion.

This paper is made on Doctrinal Research Methodology with the help of statutes, text books, articles and judicial pronouncements.

Keywords : Discretion, Arbitrariness, Labour Court, Review, Proportionality

I. INTRODUCTION

Industrial Dispute Act, 1947 was enacted with a view to solve the industrial disputes that arise between the employer and employee on various matters. Originally, the act didn't have any provisions for adjudication. It has provided mechanism for dispute resolution only via conciliation and works committee. But it was soon realized that the conciliation machinery are not very satisfactory to put an end to an industrial dispute and maintain the industrial peace. The need for a adjudicatory body to deal with the industrial dispute was felt and a three tier system of adjudicatory bodies was introduced via amendment of 1956.¹ The jurisdiction of all three adjudicatory bodies were clearly demarcated in that amendment. The amendment also provided for the insertion of schedules which deals with the subject matter of the adjudicatory bodies.

II. ADJUDICATORY BODIES UNDER THE ACT

There are three adjudicatory bodies under the act. They are:

- I. Labour Court
- II. Industrial Tribunal
- III. National Tribunal

Labour Court

Labour Court is vested with the power of adjudication the matters given under 2nd Schedule of the Act. Those matters include but not limited to, Legality of an order passed by an employer under the Standing Order, Application and Interpretation of Standing Order, Discharge or Dismissal of workmen etc.² Apart from this, the labour court also has power to decide any matter falling in the 3rd schedule if it affects less than 100 workmen.³

Industrial Tribunal

Industrial Tribunal is constituted by the appropriate government by a way of notification in the official gazette.⁴ Industrial Tribunal is vested with power to deal with

¹ O.P.Malhotra's , The Law of Industrial Dispute, 7th Edition, Volume 1

² Industrial Disputes Act,1947,Sec. 7(1), No.14 ,Acts of Parliament, 1947(India)

³.K.M.Pillai's, Labour & Industrial Law, Allahabad Law Agency,16th Edition

⁴ Industrial Disputes Act,1947,Sec. 7A(1), No.14 ,Acts of Parliament, 1947(India)

matters specified in 2nd schedule as well as 3rd Schedule. The matters enumerated in 3rd schedule include but not limited to Wages, Allowances, Leaves, Bonus, Profit Sharing etc.

National Tribunal

Sec.7B of the act deals with National Tribunal. Compared to other two adjudicatory bodies, National Tribunal has only limited Jurisdiction. National Tribunal shall have jurisdiction in cases where the central Government is of opinion that the dispute involves a question of national importance or the dispute is of such nature that the industrial establishment situated in more than one state are likely to be interested or affected by the dispute.

III. POWER OF ADJUDICATORY BODIES AS TO REINSTATEMENT

Position prior to the 1971 Amendment

It is very much necessary to understand the position prior to the amendment to fully realize the scope of discretion vested with the adjudicatory bodies post amendment. Prior, to the amendment, the situation was entirely different. The interference of the adjudicatory bodies on the decision of the management to discharge or dismiss the employee was kept at bare minimum. The Apex Court, in the case of *Indian Iron & Steel Co. Ltd v. Workmen*⁵, has provided the limits of interference by the adjudicatory bodies on the matter of managerial discretion. It was held in that case that the adjudicatory bodies cannot act as a court of appeal and they can only interfere on the following grounds:

- i. When there is a want of good faith
- ii. When there is a victimization or Unfair Labour Practice
- iii. When the Management has been guilty of error or violation of principles of natural justice
- iv. When the finding is completely baseless or perverse

So, unless and until the case falls on any one of the above mentioned grounds, the adjudicatory bodies will not have power to interfere with decision of the employer. This position was again reiterated in the case of *Ritz Theater Private Ltd. v. Their Workmen*⁶,

⁵ 1952 LAC 490

⁶ 1962 II LLJ 498

where it was held that, the adjudicatory body will derive the jurisdiction to deal with the dispute, only when the domestic enquiry which resulted in discharge or dismissal was not held properly or no enquiry was held.⁷

Position Post 1971 Amendment

By the start of 1970, the judicial pronouncements have started to show a pro-labour stance. The government on the other hand realized that the power of adjudicatory body is limited and there is a need to vest them with power to set aside the order of discharge or dismissal of the employee and order reinstatement whenever necessary. To meet this end, Sec.11A was inserted via an amendment and the above mentioned reason was provided as the statement of object to the amendment bill. The amendment vested the adjudicatory bodies with the power to set aside the order of discharge or dismissal and direct reinstatement of the workman, if it is satisfied that the order of discharge or dismissal is not justified. The adjudicatory body also has power to give such other relief as it deem fit.

Essential Ingredients for Sec.11A

So, to provide relief under Sec.11A , following conditions has to be satisfied. They are:

- i. There must be an industrial dispute relating to discharge or dismissal of the workman,
- ii. Such industrial dispute must have been referred to any of the adjudicatory bodies.
- iii. The adjudicatory body must have come to the conclusion that the order of dismissal or discharge is not justified.

It must also be noted that, while proceeding under this section, the adjudicatory body has to only rely upon the materials on record and they cannot take any additional evidence.⁸

⁷ Prof.Dr. V.G. Goswami's Labour and Industrial Laws, Central Law Agency, 10th Edition

⁸ Id.

IV. SCOPE OF DISCRETION UNDER SEC.11A

From the bare reading of the provision, we can clearly see that the adjudicatory bodies have been vested unfettered, unbridled and unconditional discretionary power to reinstate the discharged or dismissed workman. To understand how this discretion is exercised, we have to analyze the grounds on which the adjudicatory bodies interfere with the order of dismissal and order reinstatement.

GROUND ON WHICH DISCRETION IS EXERCISED

1) Doctrine of Proportionality

Doctrine of Proportionality is a doctrine owes its origin to Administrative Law. According to the doctrine, the punishment imposed must be proportionate to the offence committed by the employee. So, on this ground, the adjudicatory bodies tend to interfere and order reinstatement of the dismissed workman. In the case of *P Orr & Sons v. LC*⁹, the workman was dismissed for theft of oil tin worth 30p. For this, order of termination was passed against the workman. This order of dismissal was set aside on the ground that it was disproportionate to the offence committed by the workman, especially considering the fact that the workman has put in 24 yrs of service with no priors. So, the workman was reinstated in this case.

Similarly, in the case of *P.Rajanna v. LC*¹⁰, a driver was terminated for being found in a drunken state in his rest seat, after the completion of his journey. The employer has passed the order of dismissal, which was reversed by the labour court on the ground that it was not proportionate to the misconduct committed by the workman.

2) Principle of Fairness and Improper Enquiry

As stated in *Indian Iron & Steel case*, when the order of dismissal is passed with no regard to the principles of natural justice, then that order of dismissal is liable to be set aside by the adjudicatory body. In the case of *Ramprasad Ambaram Verma v. Presiding Officer, Industrial Court*¹¹, the standing orders of the company provided that the employee, in case of any misconduct cannot be terminated without providing a warning, one severe warning and

⁹ 1974 I LLJ 517

¹⁰ 1992 II LLJ 488

¹¹ 1992 II LLJ 488

one suspension. But in the case in hand, the workman was dismissed directly from frequent absence. This was held to be violative of principle of fairness and the order was set aside and the tribunal ordered for reinstatement. Similarly, in the case of *Management of English Electric Company of India Ltd. v. Presiding Officer, Labour Court*, the conductor who was discharged was found not guilty on two out of three major charges. The third charge which is essentially a failure on his part to give explanation was taken as a ground to pass an order of termination. In this case, the labour court interfered and ordered reinstatement on the ground that failure of explanation did not itself constitute a misconduct meriting punishment.

3) Principle of Uniformity

When a workman is discharged or dismissed, he has a right to have a fair hearing and equal treatment to that of the other employees. If there is a lack of uniformity or discrimination by the employer in order of dismissal, then such order is liable to be set aside. This ground is mostly invoked in the cases of mass dismissal owing to a strike or a gherao. In the case of *Northern Doors Tea Co. v. Workmen*¹², the labour court has set aside the order of dismissal on the ground of discrimination. It ordered for reinstatement, holding that “*Imposition of penalty on some workmen out of many is irrational and Unreasonable discrimination, if no special reason is given as to why some alone were picked for punishment and particularly when evidence did not specifically bring home the charge of incitement and no clear distinction could be made between the workmen dealt with and the very large number of workmen who had been taken back into service although they participated in illegal strike*”

SITUATIONS IN WHICH DISCRETION CANNOT BE EXERCISED

Even though the adjudicatory bodies are conferred with absolute discretion under the Act, they don't tend to use that discretion to their whims and fancy. On certain situations, they restrain themselves from interfering with the order of dismissal passed by the employer. Even if they exercise their discretion and order for reinstatement, there are certain instances where the courts have interfered and set aside the order of reinstatement. Some of those instances are:

¹² 1964 I LLJ 436

1)No Reinstatement on Sympathetic Grounds

When an employee has been terminated from the service and the dismissal is proper and justified, the adjudicatory bodies cannot provide reinstatement on the sympathetic grounds. In the case of *Ashok Leyland v. Presiding Officer, Labour Court*,¹³ the workman was dismissed for assaulting his departmental head. The labour court in this matter has ordered for reinstatement on the sympathetic grounds. Interfering in the order of reinstatement, the High Court held that, the award of labour court, ordering reinstatement on sympathetic ground is perverse and cannot be sustained. Similarly, in the case of *Janathan Bazar v. Secretary*¹⁴, it was held that when the misappropriation of money is proved, whatever the amount may be, the workman cannot be reinstated on the sympathetic ground.

2)No reinstatement for offence involving Moral Turpitude

The Judicial trend shows that, when a workman is terminated for an offence involving moral turpitude, the adjudicatory bodies have always shown a degree of caution and restraint while ordering reinstatement. In the case *APSRTC v. Raghuda Siva Shankara Prasad*¹⁵, an employee of the Corporation was found guilty of involving in committing theft of property of the Corporation. The employee also admitted his guilt. The act of theft, being a serious misconduct and an offence involving moral turpitude, there was nothing wrong in the Corporation losing confidence in such an employee and the awarding punishment of removal from service. The labour court too held the same view, and held that the removal from service was proper after taking into consideration of entire facts and circumstances of case.

Similarly, in the case of *PGIMER v. Labour Court*¹⁶, the chowkidar of ladies hostel was terminated for causing nuisance under the influence of alcohol by undressing himself at the canteen beyond the duty hours. He was terminated by the employer and such order of dismissal was upheld by the labour court on the ground that the offence committed by the workman is of serious moral turpitude and he is liable to be terminated.

3)No Reinstatement when the punishment is proportionate

When the punishment imposed on the workman is proportionate to the offence committed, then the adjudicatory bodies tends to refrain from ordering reinstatement. But

¹³ 1999 I LLN 240

¹⁴ 2000 LLN 571 SC

¹⁵ AIR 2007 SC 152

¹⁶ 1990 I LLJ 70

again, it must be noted that, deciding whether the punishment is proportionate or not is solely on the prerogative of the adjudicatory bodies. For instance, In the case of *Bangalore Hospital v. Workmen*¹⁷, seven workmen were dismissed for going on an illegal strike causing serious hardships to patients. The labour court, having recorded a finding that the workmen resorted to an illegal strike, nevertheless ordered reinstatement on the ground that no untoward incident happened due to the strike. Quashing the order of the labour court, the Karnataka High Court held that merely because no untoward incident happened, the dismissal could not be held to be disproportionate.

Similarly, in the case of *IMH Press v. Additional IT*,¹⁸ it was held that, when a workman assaults the superior officer, it will constitute a misconduct of riotous or disorderly character. In such cases, the order of dismissal is warranted and cannot be said to be disproportionate to the offence.

V. OTHER APPROPRIATE RELIEF

The adjudicatory bodies are not only vested with the power to order reinstatement. But they are also vested with power to provide such other relief, including the award of lesser punishment in lieu of discharge or dismissal. Most of the times, when the reinstatement of the workman is not possible because of loss of confidence or other similar circumstances, the adjudicatory bodies, tend to order for compensation in lieu of punishment. In some cases, they also tend to order for withholding of increment in lieu of punishment.

For instance, In the case of *Rolston John v. C. G. I. T. cum Labour Court*,¹⁹ also, the Supreme Court did not consider it appropriate, in the facts and circumstances of the case, to give the relief of reinstatement and directed the employer to pay a sum of Rs. 50,000/- to the workman in full and final settlement of all his claims and in lieu of reinstatement and consequent benefits.

Further in the case of *U.P.S.R.T.C. v. Subhash Chandra Sharma*,²⁰ a driver was dismissed from service on the charge of entering the cash room in a drunken state, demanding money from the Cashier and, on his refusal, abusing and threatening to assault

¹⁷ 2009 I LLJ 661

¹⁸ 1961 I LLJ 499

¹⁹ AIR 1994 SC 131

²⁰ 2000 I LLJ 1117

him. The Labour Court set aside the order of dismissal, substituted the same by the punishment of stoppage of one wage increment and awarded 50% of back wages.²¹

VI . FINDINGS AND SUGGESSTION

Findings:

Following are the findings arrived after thorough study on the topic.

- i. The scope of discretion provided to the adjudicatory bodies is not exercised arbitrarily. There seems to a clear demarcation as to when the discretion must be used and when it shouldn't be used.
- ii. Reinstatement is not ordered in case of termination on the grounds of offences of serious nature
- iii. When the punishment is proportionate to the offence, reinstatement is not granted.
- iv. Reinstatement is not provided on sympathetic grounds when the charge is proved beyond reasonable doubt.
- v. Reinstatement is not provided in the cases where the employer has complete loss of confidence in the employee.
- vi. The discretion provided to the adjudicatory bodies has greatly helped the employees in case of termination for trivial matters.
- vii. In the cases which doesn't call for reinstatement, the adjudicatory bodies have provided other appropriate relief like compensation in lieu of punishment.

Suggestions:

Following are the suggestions given on the topic taken for this study.

- i. The provision must be amended in such a way that the adjudicatory bodies shall not have the power of reinstatement or providing any other relief if the termination is for serious offences like theft, assault etc.
- ii. Even though we can see that the adjudicatory bodies has exercised their discretion carefully, it is not advisable to provide them with absolute and unfettered discretion. There is a need to provide restrictions explicitly on the scope of discretion enjoyed by adjudicatory bodies.

²¹ Vithalbai B Patel's , Law on Industrial Disputes with Central and States Rules, Volume-I, Lexis Nexis Nagpur, 2010 revised Edition

- iii. The provision must be amended in a way to make the adjudicatory bodies to provide a reasoned decision. i.e they must not pass on order of reinstatement to their whims and fancy. They must state the grounds on which they have arrived at a particular conclusion.
- iv. The power to provide other appropriate relief in lieu of reinstatement must be used more frequently

VII. CONCLUSION

Thus, after going through the provision of Section 11A under the Industrial Disputes Act, 1947 as well as the judicial pronouncement while discussing the scope of Section 11A for the Tribunal or the Court of law to interfere with punishment, it is therefore settled that the power of review is very limited and it can interfere only if there is unreasonableness in the finding or in case of violation of the principle of natural justice. Moreover, it must also be noted that the judicial trend which was prevalent at the time of 1971 amendment is not in existence now. Since the new economic policy formulated in 90s the judiciary has started to take the side of employer more frequently. This can be ascertained by carefully analyzing the shift of trend over the years.

The provision of S.11A is a double edged sword. The interest of both the employer and employee must be considered by the adjudicatory bodies while proceeding under S.11A of the act. Because, on one hand there is an employee whose livelihood is being affected because of termination and on the other hand, an employer who has a right to run his enterprise in a way he deem fit with the men he deem fit. The arduous duty of striking the balance between these two is placed on the adjudicatory bodies under this section.

It is evident from the analysis of judicial pronouncements with reference to S.11A, the adjudicatory bodies has set themselves a proverbial glass ceiling which prevents them from performing the functions of an employer, i.e running an enterprise. They have shown to cautiously exercise their powers of discretion whenever necessary. They are also shown to protect the working class from any unjustified or unfair dismissal. But, it cannot be stressed enough that the discretionary power under this section has a huge scope to be misused.