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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2353/2011

BEHALI TEA ESTATE
P.O. AND T.O. BEDETI, DIST SONITPUR, ASSAM, REP. BY ITS MANAGER.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE COMMISSIONER AND SECY. , LABOUR AND EMPLOYMENT
DEPTT,

2:THE WORKMEN
REP.BY THE GENERAL SECY.
ASSAM SANGRAMI CHAH SRAMIK SANGHA
P.O.BORGANG
DIST SONITPUR
ASSA

Advocate for the Petitioner : Mr. K. Goswami, Sr. Adv.
Mr. A. Sandilya, Adv.

Advocate for the Respondents : Mr. S. Das,
Mr. H. Gogoi, Advocates.

Date of Hearing & Judgment : **20/07/2023**

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**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

The instant writ petition has been filed challenging the Award dated 06.07.2010 passed in Reference Case No. 5/2008 whereby the learned Labour Court directed that the workmen who were dismissed from service by the Management of the Petitioner Tea Estate be reinstated and paid 50% of the back wages.

2. The facts involved in the instant proceedings are that on 04.09.2004 at 7.45 AM to 9 PM there were certain obstructions being caused by the delinquent workmen for which the other workmen could not attend their duties within time. It is under such circumstances, on 08.11.2004, the Manager of the Petitioner Tea Estate issued two separate chargesheets against the two delinquent workmen namely Smti Sibani Lagun and Smti Marium Lagun.

3. It appears that pursuant to the said chargesheets being issued, an Enquiry Officer was appointed to enquire into the charges levelled against those two delinquent workmen. At this stage, it is relevant to take note of that both the delinquent workmen were charged with the following charges :-

(1) The delinquent workmen tried to forcibly prevent the workers from their normal routine work.

(2) The delinquent workers tried to incite the workers, seriously damaging the peace and order in the Division.

and

(3) It was reported by the line chowkidars that the delinquent workmen were entertaining outsiders in the company quarter without any prior permission of the management.

4. During the said domestic enquiry as many as 9 witnesses adduced evidence on behalf of the Management and on behalf of the delinquent workmen, 4 witnesses adduced evidence. Two separate Domestic Enquiry Reports were submitted by the Enquiry Officer, the contents of which are parimateria. From a perusal of the said Domestic Enquiry Reports both dated 18th of February, 2005, it is seen that Charge No. 1 was held to be proved whereas the Charge Nos. 2 and 3 were held not to be proved. As regards Charge No. 1, the learned Enquiry Officer held that from the evidence of the management witnesses, it was found that the delinquent workmen restrained other workers of the Tea Estate from going to their duties on the morning of 04.09.2004 near the Gate of Line No. 8 of Behali Division. On the basis of that, the learned Enquiry Officer came to a finding that the conduct of the delinquent workmen amounted to riotous conduct which is an offence of gross misconduct. Pursuant to the said Enquiry Reports so submitted, both the delinquent workmen were dismissed from service vide similar orders of dismissal dated 27.05.2005.

5. Pursuant thereto, the Government of Assam vide Notification No. GLR. 117/2007/15-A dated 18.02.2008 made a Reference in terms with Section 10 of the Industrial Disputes Act, 1947. The Terms of the Reference so made are enumerated herein under :-

1. Whether the management of Behali Tea Estate is justified by dismissing the services of Smt. Sibani Lagun and Smt. Marium Lagun of Behali Tea Estate or

not ?

2. *If not, whether they are to be re-instated with their full back wages ?*

3. *Any other remedy as deem fit and proper ?*

6. It appears on record that the Petitioner filed their written statement as well an additional written statement. On behalf of both the delinquent workmen, the Respondent No. 2 herein submitted the written statement. It further appears that the Petitioner adduced evidence and on behalf of the Respondent No. 2 the delinquent workmen had also adduced evidence.

7. It is relevant to take note of that during the midst of the proceedings before the learned Labour Court, the Respondent No. 2 did not participate in the said proceedings as could be seen from a perusal of the Impugned Award itself. The learned Labour Court vide an ex-parte order dated 06.07.2010 answered the reference by holding that the dismissal of the two delinquent workmen by the Petitioner was illegal and that the two delinquent workmen be reinstated by making payment of 50% of the back wages.

8. It further appears that the said Award dated 06.07.2010 was published on 19.01.2011. It is under such circumstances, the Petitioner being aggrieved had approached this Court by way of the instant writ petition.

9. This Court vide an order dated 04.05.2011 had issued notice and in the interim, stayed the operation of the Award dated 06.07.2010 passed in Reference Case No. 5/2008. It further appears on record that during the pendency of the instant writ petition, a Miscellaneous Application being MC No. 3239/2012 was filed by the delinquent workmen under Section 17B of the Industrial Dispute Act, 1947. This Court vide order dated 08.01.2013 disposed off the said application thereby directing that the delinquent workmen be paid

the last drawn wages.

10. In the backdrop of the above, let this Court therefore take into consideration the respective contentions raised by the learned counsel for the parties.

11. Mr. K. Goswami, the learned Senior Counsel had assailed the impugned Award dated 06.07.2010 by submitting that the learned Labour Court completely erred in law after holding that the decision of the Enquiry Officer to be perverse, not to discuss the evidence so adduced before the learned Labour Court while deciding the Reference. The learned Senior Counsel has drawn the attention of this Court to the judgment of the Supreme Court in the case of **The Management of Ritz Theatre (Private) Ltd., Delhi Vs. Workmen** reported in **AIR 1963 SC 295** and referred to paragraph Nos. 8, 9 and 10. On the basis of the said judgment, the learned Senior Counsel submitted that once the learned Labour Court had held that the Enquiry Officer's findings were perverse, the whole issue was at large before the learned Labour Court and as such the learned Labour Court ought to have decided the Reference on merits by taking into account the evidence so adduced. The learned Senior Counsel further submitted that the learned Labour Court also erred in law in opining that the findings of the learned Enquiry Officer in the domestic enquiry was perverse as regards Charge No. 1, wherein it was held that the delinquent workmen were guilty of riotous conduct. The learned Senior Counsel submitted that 'riotous conduct' is a grave misconduct in terms with the Standing Orders applicable to the Petitioner as can be seen from Clause 10(a) (7) of the Standing Orders. The learned Senior Counsel submitted that the term 'riotous conduct' was explained by the Division Bench of this Court to mean conduct which is lax in morals. The learned Senior Counsel therefore submitted that in view of the fact that the

delinquent employees were guilty of riotous conduct, which was a grave misconduct in terms with the Standing Orders, there was no infirmity on the part of the Management of the Petitioner Tea Estate to dismiss the delinquent workmen and as such the Reference ought to have been decided in favour of the Management. In that regard, the learned Senior Counsel has further drawn the attention of this Court to the judgment of the Division Bench of this Court in the case of ***K.M. Deb Vs. Presiding Officer, Industrial Tribunal, Dibrugarh & Ors.*** reported in ***1984 SCC Online Gau 93***.

12. Mr. S. Das, the learned counsel appearing on behalf of the Respondent No. 2 on the other hand submitted that the charge so proved before the domestic enquiry cannot under any stretch of imagination to be said to be a riotous conduct within the ambit of Clause 10 (a) (7) of the Standing Orders. The learned counsel further submitted that the perusal of the impugned Award would also show that the evidence on the part of the management which was tendered before the learned Labour Court was the same evidence, which was submitted before the domestic enquiry and the same was discussed in detail by the learned Labour Court and on the basis of that had come to an opinion that the misconduct alleged would not come within the ambit of riotous conduct thereby grave misconduct in terms with the Standing Orders. The learned counsel further submitted that even assuming the entire evidence on record as well as the domestic enquiry to be correct, it may at best be a case of causing disturbance pre-judicial to good order which is a minor punishment in terms with Clause 10 (b) (5) of the Standing Orders.

13. This Court have perused the materials on record and taken into account the respective contentions.

14. From a perusal of the impugned Award, it would be seen that the learned

Labour Court had categorically come to a finding that the domestic enquiry was carried out in a fair manner. The learned Labour Court had only held that the findings arrived at in respect to Charge No. 1 were perverse as on the attending facts which came into light on the basis of the evidence on record, the misconduct alleged did not constitute riotous conduct and as such came to a finding that the decision/the report so submitted by the Enquiry Officer in respect to Charge No. 1 was perverse.

15. At this stage, this Court finds it relevant to observe that the jurisdiction exercised by this Court is not an appellate jurisdiction over the Award passed by the learned Labour Court. The constricted jurisdiction under Article 226 of the Constitution is only to examine the decision making process as to whether the same is arbitrary, unreasonable, perverse or had occasioned manifest injustice.

16. In the backdrop of the above, the question therefore arises for consideration before this Court is as to whether the misconduct alleged against the delinquent workmen would come within the ambit of a riotous conduct which amounts to grave misconduct in terms with Clause 10 (a) (7) of the Standing Orders.

17. Before further proceeding, this Court further finds it relevant to take note of the first submission made by the learned Senior Counsel for the Petitioner, whereby it was submitted that the learned Labour Court after holding that the findings of the domestic enquiry to be perverse, ought to have decided the Reference on merits and there was no discussion on the basis of the evidence which was adduced by the Management/Petitioner before the learned Labour Court. This submission in the opinion of this Court though looks attractive at the first blush, but an intricate analysis of the Impugned Award would show that the evidence as regards the incident on 04.09.2004 which was tendered before the

learned Labour Court was the same evidence which was also tendered in the domestic enquiry and the learned Labour Court in paragraph No. 7 had in great detail discussed the entire evidence. This Court further finds it relevant to observe that it is on the basis of the discussion of the said evidence adduced by the Management/Petitioner, the learned Labour Court came to an opinion that the misconduct alleged would not come within the ambit of riotous conduct. Under such circumstances, it is the opinion of this Court that the submission is misconceived. In that view of the matter, the pivotal question therefore is as to whether the misconduct alleged amounts to riotous conduct.

18. The learned Senior Counsel for the Petitioner had placed reliance to the judgment of the Division Bench of this Court in the case of **K.M. Deb** (supra) for the purpose of deciding what connotes 'riotous conduct'. Reference was made to paragraph 18 of the said judgment. This Court finds it relevant to reproduce the said paragraph 18 as under :-

"18. It would be noticed that "riotous conduct" constitutes gross misconduct. The meaning of the word "riotous" as given in the Concise Oxford Dictionary. Sixth Edition is "marked by dissolute conduct". Dissolute" means "lax in morals. So "riotous conduct" means a conduct which is lax in morals. "Conduct" means personal behaviour, deportment, mode of action, any positive or negative act (See Black's Law Dictionary). "Riotous conduct". therefore means personal behaviour which is lax in morals. The phrase "riotous conduct" mentioned in cl. 10(7) of the Standing Orders would hence include lewd, indecent, obscene, wanton behaviour or act; positive or negative which is lax in morals. Such conduct is gross misconduct" under cl. 10 of the Standing Orders. Any worker who is guilty of such gross misconduct may be dismissed from service by the Management under cl. 9(c) of the Standing Orders: provided the workman is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The behaviour of the petitioner

with Budhni was lewd, indecent and lax in morals. It was indeed "riotous conduct" hence gross misconduct. The management could, therefore, terminate the services of the petitioner under cl. 9 of the Standing Orders. We therefore. reject the contention that the said order was not "in accordance with the Standing Order"."

19. From a perusal of the above quoted paragraph, it transpires that the Division Bench of this Court explained the term 'riotous conduct' to mean a conduct which is lax in morals or personal behavior which is lax in morals. It is relevant at this stage to mention that the Division Bench of this Court was dealing with a case wherein the misconduct alleged was that the workman attempted to molest one female worker in Section No. 1946 while she was going to her work. The Division Bench of this Court took into account the meaning of 'riotous' as defined in the Concise Oxford Dictionary, Sixth Edition and observed that the term 'riotous' means 'marked by dissolute conduct'. Though the term 'dissolute' has various meanings such as 'lax in morals', lacking restraint', overindulging in sensual pleasures' etc, the Division Bench of this Hon'ble Court taking into account the misconduct alleged that the workmen had attempted to molest the girl while she was on duty, was of the opinion that 'riotous conduct' means personal behavior which is lax in morals.

20. In the present case, it would be seen that the misconduct alleged is that the two delinquent workmen tried to obstruct the other workmen from going to duty and when the Management Witness No. 2 namely Shri Augustine Aind had intervened, the delinquent workmen left for their quarters and the other workmen reported to their duty. In the said circumstances, this Court is of the opinion that applying the meaning of the term 'riotous conduct' as explained in the judgment of the Division Bench of this Court in **K.M. Deb** (supra) would not

be appropriate. Under such circumstances, this Court finds it necessary to analyse as to whether in the present facts, it can be said that the delinquent workmen were guilty of grave misconduct.

21. The word 'riotous' have varied meanings such as anarchic, disorganised, rowdy, tumultuous, turbulent etc. In some circumstances, the word 'riotous' have been also assigned the meaning of 'abundant'. However, taking into account the facts involved, the word 'riotous' has to be assigned the meaning having a correlation with 'riot'. It is also relevant to observe that the word 'riotous' is an adjective of the word 'riot' or in other words in the nature of a riot. Taking into account the said, this Court finds it relevant to take into account the definition of the word 'riot' as described or defined in the various legal dictionaries.

22. In **Black's Law Dictionary, Eleventh Edition**, the word 'riot' has been defined as an assemblage of three or more persons in a public place taking concerted action in a turbulent and disorderly manner for a common purpose (regardless of the lawfulness of that purpose). It is further mentioned that an unlawful disturbance of peace by an assemblage of usually three or more persons acting with a common purpose in a violent or tumultuous manner that threatens or terrorizes the public or an institution.

23. In **Stroud's Judicial Dictionary of Words and Phrases, Eighth Edition**, reference was made to the judgment in **Field V. Receiver for Metropolitan Police District** reported in **(1907) 2 K.B. 853**, wherein it was held that to constitute 'riot' there is a requirement of five necessary elements --- (1) three persons at least, (2) common purpose, (3) execution or inception of common purpose, (4) an intent to help one another by force, if necessary against any person, who may oppose them in the execution of their common

purpose and (5) force or violence displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

24. In **Wharton's Law Lexicon, Sixteenth Edition**, the word 'riot' has also been defined as a tumultuous disturbance of the peace by three persons or more assembling of their own authority; with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful.

25. In **The Advanced Law Lexicon by P. Ramanatha Aiyar, Third Edition**, the word 'riot' has been extensively discussed. Referring to Edward Jenks, *The Book of English Law*, the word 'riot' was defined as an unlawful assembly (i.e. an assembly come together in pursuance of an unlawful purpose), consisting of at least three persons, which has begun to create a breach of the peace. In the said Law Lexicon, riotous and disorderly behavior have also been defined. It has been stated that the expression 'riotous and disorderly behavior' is very wide in its scope. It covers acts of committing nuisance on one hand and the acts of assault and riots on the other. Fighting, assaulting abusing, drunkenness, etc, on the premises of an establishment during duty hours are some of common instances of 'riotous and disorderly behavior'.

26. Therefore, taking into account the above definitions and more particularly when the word 'riotous' is an adjective of the word 'riot', and means in the nature of a 'riot' this Court is of the opinion that to constitute a riotous conduct, the five elements of riot as laid down in the case of **Field** (supra) have to be established meaning thereby that the acts of misconduct alleged had to have

the trappings of a riot i.e. there should be assembly of three or more persons with a common purpose and there has to be a force or violence displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

27. This Court further finds it relevant to take note of that the learned Labour Court had borrowed the meaning of the word 'riotous act' from the Oxford Advance Learners Dictionary, wherein it has been mentioned that the action done must be noisy and/or violent especially in public place. In the opinion of this Court the findings of the learned Labour Court is in consonance with the definitions above referred.

28. Now coming to the facts involved in the instant case and the evidence so discussed in paragraph No. 7 of the impugned Award, it would be seen that the delinquent employees who were two women workmen had tried to dissuade their fellow workmen from attending their duties. However, when Sri Augustine Aind, the Management Witness No. 2 came to learn about the said incident, he intervened and thereupon the other workmen reported to their duties and the delinquent workmen reported to their duties and the delinquent workmen returned to the quarters. Even a perusal of the Domestic Enquiry Report where the evidence of the witnesses including the Management witnesses were discussed, it was observed that the delinquent workmen had obstructed the other workmen of the Tea Estate from going to their duties on the morning of 04.09.2004 near the Gate of Line No. 8 of Behali Division. There is no material on record to show that any force or violence were displayed in such a manner as to alarm the other workmen by the delinquent workmen. Under such circumstances, this Court is therefore of the opinion that the learned Labour Court acted in conformity with law in holding that the findings so arrived at by

the Enquiry Officer in the domestic enquiry to the effect that the misconduct alleged against the delinquent workmen amounted to riotous conduct was perverse.

29. Another very vital aspect of the matter which also needs to be taken note of is that Clause 10 (b) (5) of the Standing Orders stipulates quarreling, fighting or causing disturbance prejudicial to good order as a misconduct. It is the opinion of this Court that on the basis of the allegations of misconduct proved against the delinquent workmen, the charges at best can be said to come within the ambit of Clause 10 (b) (5) of the Standing Orders which constitutes only misconduct and the punishment of dismissal from service was not at all proportionate to the charges proved.

30. Under such circumstances, this Court therefore is of the opinion that the learned Labour Court had therefore rightly interfered with the order of dismissal of the delinquent workmen. The direction for reinstatement with payment of 50% of the back wages in the opinion of this Court requires no interference. Accordingly, the instant writ petition therefore stands dismissed without interfering with the Award dated 06.07.2010 for the reasons above mentioned. The Petitioner shall forthwith take steps for compliance with the Award dated 06.07.2010 as mandated in the Industrial Disputes Act, 1947 and failure to do so shall entail consequences as mentioned therein.

JUDGE

Comparing Assistant