
(1994) 04 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 2211 of 1990

Ahmedmiya Ahmedji

APPELLANT

Vs

The Indian Hume Pipe Co. Ltd and others

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 33(2)

Citation : (1994) 04 BOM CK 0019

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned order dated 12th December 1989 passed by Shri S. G. Bhosale, Presiding Officer, 5th Labour Court, Bombay, in Reference (IDA) No. 94 of 1980.

2. By an order dated 13th March 1979, passed by the management of respondent No. 1 company, the petitioner was dismissed from service.

3. The Deputy Commissioner of Labour (Conciliation), Bombay, made a reference to the 5th Labour Court at Bombay being Reference (IDA) No. 94 of 1980 for adjudication of industrial disputes between the respondent No. 1 and the Union Bharatiya Kamgar Sena. By Award (Part-I) dated 8th April 1988, the respondent No. 2 held that the domestic enquiry held by the management against the petitioner herein was against the principles of natural justice and hence bad in law. The management was thereupon permitted to lead evidence on merits before the Labour Court in respect of the allegations appearing in the charge-sheet. After the evidence was recorded, the Labour Court reached the conclusion that the charges levelled against the petitioner were proved and the petitioner was guilty of misconduct. The Labour Court held by its impugned Award (Part-II) dated 12th December 1989 that the petitioner workman had committed serious misconduct and his dismissal was justified. The Labour Court held that the petitioner was not entitled to reinstatement or to back wages.

4. The learned counsel for the petitioner formulated several propositions of law in support of his submissions relating to this petition. In my opinion, for the reasons broadly indicated hereinafter, it is desirable and in the interest of justice that this petition be heard by a Bench of two or more Judges. In my opinion, the petition can be more advantageously heard by a Bench of two or more Judges in view of the conflicting decisions to which reference would be made in the later part of this order. In any event, the petitioner claims payment of back wages for the period upto date of the Award.

5. The learned counsel for the petitioner relied on the recent judgment of the Supreme Court in the case of *Desh Raj Gupta v. Industrial Tribunal IV, U. P. & Anr.* reported in 1990 (61) FLR 763 . The situation in this case was almost identical with the situation in this case. In this case also the Tribunal had held that the domestic enquiry held by the management was not in conformity with the principles of natural justice. In this case also, the Tribunal had thereafter asked the management to justify the order of punishment on merits. Parties led their evidence and the Tribunal recorded a finding that the charges levelled were established by the material on record and the workman was not entitled to any relief. The High Court of Allahabad dismissed the writ petition preferred by the workman. L. M. Sharma, J. as His Lordship then was (Later on The Hon'ble Chief Justice of India) speaking for the Bench held that the appellant workman was entitled to his salary from 16th August 1976 to 30th July 1980 in as much as the order of the Tribunal on merits did not relate back to the order of dismissal of the workman passed on 16th August, 1976. With respect, I am in agreement with the view taken by the Supreme Court in this case. The learned counsel for the management has relied upon earlier judgment of the Supreme Court in *P.H. Kalyani Vs. Air France Calcutta*, . This judgment was delivered by the Bench of five Judges of the Hon'ble Supreme Court. In this case, the proceedings before the Court were for approval of an order of dismissal as contemplated under proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947. In this case, the Labour Court granted the approval to the management in respect of dismissal of the workman in light of the evidence led by the management on merits. In this view of the matter, Wanchee, J. speaking for the Bench of five Judges of the Supreme Court held that the approval granted by the Labour Court related back to the date of dismissal of the workman and the workman was therefore not entitled to claim wages upto the date of the order of the approval. In this case also, the domestic enquiry was defective. With respect, there is a clear distinction between the cases where approval is sought from the Labour Court in respect of the order for dismissal passed under the proviso to Section 33(2)(b) of the Act and the reference decided by the Court. To the best of my knowledge, the order of approval always relates back to the date of the order passed by the management. The same principle is not necessarily applicable to a case where reference is made u/s 10(1)(c) of the Industrial Disputes Act and it is held that no enquiry is held by the management or that the impugned enquiry was held in violation of principles of natural justice. In such a case it must follow that the

order of dismissal passed by the management was nullity. It is a part of labour jurisprudence that even in such a case where no enquiry is held or the enquiry held was defective, the employer is given an opportunity to prove the alleged misconduct before the Labour Court itself by leading the necessary evidence. The learned counsel for the management has invited attention of the Court to judgment in the case of Basu Deba Das v. M. R. Bhope & Anr. reported in 1991 LIC 1677. In this case Brother Justice Agarwal held that the order of dismissal based on evidence referred to in Part II Award related back to the order of dismissal passed by the management. This judgment is directly contrary to the judgment of the Supreme Court in Desh Raj Gupta's case. The learned Counsel for the management has also invited attention of the Court to the Judgment of this Court in the case of Rambhau and Maharashtra State Road Transport Corporation, Nagpur, reported in 66 Indian Factories and Labour Reports page 1. In this case H. D. Patel, J. referred to Desh Raj Gupta's case as well as referred to Kalyani's case. The learned Judge came to the conclusion that the doctrine of relation back was applicable even where the domestic enquiry was defective and the dismissal was justified by the management before the Labour Court after proving the misconduct for the first time. In this case, H. D. Patel, J., emphasised that the above referred judgment of the Supreme Court in Kalyani's case was a judgment of Bench of five Judges whereas the judgment of the Supreme Court in Desh Raj Gupta's case delivered by L. M. Sharma and M. N. Venkatachaliah, JJ. as their Lordships then were, was a judgment of bench of two Judges. With respect, I am unable to persuade myself to agree with the view taken by Agarwal, J. or H. D. Patel, J. in the above referred cases.

6. The learned counsel Mr. Puri for the petitioner workman has also invited attention of the Court to the judgment of Daud, J. in Indian Cork Mills Private Ltd. v. P. Unnikrishnan & Ors. reported in 1989 (58) FLR H 139. In this case Daud, J. took a third view of the question with reference to the case. It was held by the learned Judge that the theory of relation back could not apply wholly in a case where the employer had violated the basic right of the workman. In the circumstances of the case, the workman was given 65% of the wages due and payable upto the date of the Award.

7. Both the learned counsel with their thorough preparations want to cite several other authorities. I must now refer to Rule 28 of the Bombay High Court rules on the Original Side. The said rule reads as under :

"If it shall appear to any Judge, either on the application of the party or otherwise, that a suit or matter can be more advantageously heard by a bench of two or more Judges, he may report to that effect to the Chief Justice, who shall make such order thereon as he shall think fit".

In my opinion, the case is fit one for making a report to the learned Chief Justice in terms of Rule 28.

8. In view of the above discussion, I direct the Prothonotary and Senior Master to

place the papers along with this order before the learned Chief Justice with a recommendation that the petition be placed on Board for hearing before a Bench of two or more Judges as the Hon"ble Chief Justice deems fit.