

(1995) 11 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 3239 of 1990

Ashok Hari Gite c/o Association of Engineering Workers

APPELLANT

Vs

V. Galaxy Knives (P) Ltd. and Others

RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 73 FLR 1267

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India is directed against an Award dated 13th December, 1989, made by the Labour Court, Nasik, in Reference (IDA) No. 60 of 1982 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The Petitioner was employed in the service of the First Respondent in its industrial establishment from the year 1974. He was served with a charge-sheet alleging against him misconduct of participation in an illegal strike. An enquiry was held into the charges alleged against the petitioner which resulted in his being found guilty and dismissed from service from 3.5.1981.

3. The Petitioner raised an industrial dispute before the Government Labour Officer. The Assistant Labour Officer submitted a failure report and thereafter a reference of the dispute for adjudication was made to the Labour Court, Nasik, vide Reference (IDA) No. 60 of 1982. The Labour Court, in the first instance, by an order made on 19th October 1984, came to the conclusion that the domestic enquiry held against the Petitioner workman was legal, fair and proper and that the findings of the Enquiry Officer were not perverse. However, by the final Award the Labour Court came to the conclusion that the punishment awarded to the Petitioner workman was disproportionate and harsh as compared to the proved misconduct. Despite the said finding, the Labour Court declined the relief

of reinstatement with continuity of service and full back wages and granted only a lumpsum of Rs. 5000/- (Rupees Five thousand only) in lieu of reinstatement and back-wages to the Petitioner workman.

Hence this writ petition.

4. The Labour Court has raised the following issues and answered them as under :-

"ISSUES :

1. Whether the second party workman proves that the findings recorded by the inquiry officer could be dubbed a perverse?
2. Whether the order of dismissal passed by the employer i.e., the first party could be said to be proper or illegal?
3. Whether the workman proves that the punishment awarded to him is shockingly disproportionate or harsh to the charges proved?
4. Whether the workman is entitled to reinstatement with continuity of service?
5. Whether the workman is entitled to full back wages?
6. What relief, if any, is the workman entitled to?
7. What order?

FINDINGS :

1. No.
2. No.
3. Yes.
4. No.
5. No.
6. As per final order.
7. As per order below.

A perusal of the discussion in the Award on Issues 1 to 3 shows that the Labour Court was of the view that though the charge of participation in an illegal strike was proved against the Petitioner, in as much as there was no additional charge of violence, instigation or any other over-act alleged against the Petitioner, the punishment of dismissal was harsh and disproportionate, taking into consideration that the Petitioner had nine years' service and there was no adverse record produced before the Labour Court. To sum up, the Labour Court recorded a clear finding that the punishment of dismissal awarded to the Petitioner workman by the First Respondent was harsh and disproportionate. However, when it came to the question of relief, the Labour Court relied on a

vague statement of the witness examined by the First Respondent Employer that the financial condition of the Employer was "not so good" and that the First Respondent Employer found it difficult to accommodate the petitioner workman. Although the petitioner deposed on oath that he continued to be unemployed despite efforts made by him, the Labour Court the relief of reinstatement and granted paltry monetary benefit to the Petitioner workman in lieu of reinstatement and back wages.

5. Shri C.U. Singh learned counsel appearing for the First Respondent, contends that in view of the long time which has elapsed between the date of dismissal till today, it would be inappropriate to grant the relief reinstatement. He relies on the judgments of the Supreme Court in the case of Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, and in the case of Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others, . In my view, neither judgment lays down any proposition of law as canvassed. In both the judgments, the Supreme Court has virtually proceeded on the concessions across the Bar that the ends of justice would be met by awarding a lumpsum compensation which was fixed considering the facts of the case. Hence, the contention that reinstatement in inappropriate relief cannot be accepted.

6. The next contention of Shri Singh is that, inasmuch as the misconduct of going on and continuing on an illegal strike after it was declared as illegal, has been proved, even if the punishment of dismissal is found to be harsh and disproportionate, the proved misconduct should not go unpunished. He contends that the entire back-wages should be denied on account of this proved misconduct. It is not possible to accept this contention in its entirety.

7. Shri Singh also relied on the judgment of the Supreme Court in Baldev Singh Vs. Presiding Officer, Labour Court, Patiala and Another, and contends that denial of full back-wages was held to be adequate punishment for minor misconduct of deviating from the set route by a driver of a bus of a Public Corporation. That may be so in the peculiar fact of that case. In my view, the decision lays down no proposition of law as canvassed by learned counsel.

8. In my view, there are no good reason for denying reinstatement or back-wages to the Petitioner. The Award of" the Labour Court is erroneous and needs to be interfered with.

9. Writ petition is allowed. The impugned order of the Labour Court dated 13th December 1989 made in Reference (IDA) No. 60 of 1982 is hereby quashed and set aside. It is held that the Petitioner is entitled to reinstatement with continuity of service and full back-wages. The First Respondent is directed to reinstate the Petitioner workman in service and pay him full back-wages within a period of eight weeks from today failing which the back-wages shall attract simple interest at the rate of 12 per cent annum. If the amount of Rs. 5000/- (Rupees Five thousand only) awarded by the Labour Court has already been collected by the petitioner workman, the First Respondent Employer shall be entitled to set it off

from the amount of back-wages payable to the Petitioner workman. Rule is made absolute accordingly.

10. The First Respondent to pay costs of this writ petition quantified at Rs. 500/- (Rupees : Five hundred only).

11. Certified copy expedited .