
(1992) 07 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 1751 of 1985, with W.P. No. 4121 of 1985

Bai Jerbai Wadia Hospital

APPELLANT

Vs

Shankar Ram Chandra Mali

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1993) 1 LLJ 785

Hon'ble Judges : H.D. Patel, J

Bench : Single Bench

Advocate : T.S. Shetty, for the Appellant; I.A. Sayed, for the Respondent

Judgement

1. By these writ petitions under Article 227 of the Constitution, the petitioners have challenged an award dated January 29, 1985 passed by the learned Labour Judge presiding over the 1st Labour Court at Bombay, in Reference (IDA) No. 22 of 1985. As the petitions arise from the same award, they are heard together and are being disposed of by this common judgment.

2. The petitioner (in Writ Petition No. 1751 of 1985), Bai Jerbai Wadia Hospital for Children, is a public charitable hospital (hereinafter referred to as "the said hospital"). The 1st respondent in the said petition, Shankar Ram chandra Mali, was employed by the said hospital from January 1, 1969 as a gardener and at the relevant time he was working as a senior gardener. He shall be hereinafter referred to as "the Workman". It was alleged against him that on July 3, 1979 he was on duty from 7.00 a.m. onwards. At about 11.15 a.m. on that day, he was not found at the place of his duty and on search being made by his colleagues he was found sleeping in a store room. The matter was reported to the Assistant Dean of the hospital by name R. A. Darure, who personally went to the store room situated in the garden and noticed that the workman was drunk and was unable to stand properly and comprehend questions put to him. His pupils were dilated and the eyes bloodshot. Dr. Darure sent him to K.E.M. Hospital for medical examination and confirmation whether he was drunk. The Chief Medical

Officer of the K.E.M. Hospital confirmed the opinion of Dr. Darure that the workman was in a drunken state. The workman was, therefore, given a show-cause notice on July 9, 1979 calling upon him to explain his misconduct of being found drunk while on duty. He gave a reply on July 12, 1979 and contended that on the day in question he was sleeping in the store room as he was not well and that he had taken some medicine two days ago. He also requested for being excused for the misconduct on his part and assured the hospital management that he would not repeat such a mistake in future. Since the reply of the workman was not found satisfactory by the hospital management, the workman was charge-sheeted for misconduct of being drunk while on duty and commission of an act subversive of discipline on September 10, 1979. The workman gave a written explanation to the charge-sheet on September 13, 1979 and contended that what he had stated earlier was correct and showed his readiness and willingness to face the domestic enquiry. A domestic enquiry was accordingly held on September 18, 1979 during which the management of the hospital examined 6 witnesses in support of their case including the Assistant Dean Dr. R. A. Darure. The workman examined one Govinda Sahad Toskar as his witness. The Enquiry Officer submitted his report on September 25, 1979 finding the workman guilty of the charges levelled against him. On considering the report of the Enquiry Officer and the past record of the workman, the hospital management dismissed the workman by an order dated January 14, 1980. The workman made a mercy petition to the hospital management on January 25, 1980 expressing regrets for his misconduct and further assuring the management of the hospital that he would behave himself. The mercy petition was rejected. The workman, therefore, raised an industrial Dispute through his union for reinstatement and continuity of service with full back wages. The dispute was referred to the Labour Court.

3. After the workman filed his statement of claim and the hospital the written statement, the hospital produced all the papers of domestic enquiry already held against the workman and other relevant documents in the Labour Court. With the consent of both sides, the learned Labour Judge undertook the exercise of deciding the propriety and legality of the domestic enquiry as a preliminary issue. In support, the hospital adduced the evidence of the Enquiry Officer R. S. Damania and the workman examined himself. After hearing both sides, the learned Labour Judge came to the conclusion, by Part I award on July 19, 1984, that the domestic enquiry was vitiated as the principles of natural justice were not followed by the Enquiry Officer. However, by the said award, the learned Labour Judge granted permission to the hospital to lead evidence on merits to justify the dismissal order passed against the workman. In the Labour Court, the hospital adduced the evidence of Dr. R. A. Darure and the workman examined himself. On appreciation of the evidence adduced before him, the learned Labour Judge, by Part II award dated January 29, 1985, came to the conclusion that the hospital could not prove beyond reasonable doubt that the workman was under the influence of alcohol and that he was sleeping at a particular time while on

duty. He, accordingly, directed the hospital to reinstate the workman without back wages but with continuity of service for the purpose of pension and gratuity.

4. Being aggrieved, the hospital invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing Writ Petition No. 1751 of 1985 and the workman filed Writ Petition No. 4121 of 1985 to the extent of challenging the award denying him the full back wages.

5. Now, the record produced before me clearly shows that the findings of the learned Labour Judge that the hospital could not prove that (1) the workman was sleeping while on duty and (2) at that time he was under the influence of alcohol are totally perverse. Thus, the workman was given a show-cause notice on July 9, 1979 that on July 3, 1979 he was found sleeping in the store room meant for keeping the garden tools at about 11.15 a.m. and at that time he was found drunk although on duty and why his services should not be terminated. He did not dispute while giving his reply on July 17, 1979 that he was not on duty at a particular time but stated that he was not well and was, therefore, sleeping and that if he had committed any mistake he may be pardoned. He did not even state in his explanation that he had not consumed alcohol at that particular time. Thereafter he was served with a charge-sheet dated September 10, 1979 again making the same allegations that on July 3, 1979 while on duty he was found sleeping in the store room and was under the influence of alcohol at about 11.15 a.m. To the said charge-sheet, the workman replied on September 13, 1979 reiterating the stand taken by him earlier while replying to the show-cause notice and further stated that he himself wanted a domestic enquiry to be held against him and he would be ready with his witnesses to face such a domestic enquiry. In other words, now also he does not dispute that at the relevant time he was not sleeping and was not under the influence of alcohol and was not on duty. Thereafter, the evidence which the workman gave in the Labour Court is quite cryptic and only discloses that the workman had taken medicine for two days prior to the day of the incident and he was sleeping at the relevant time as he had stomach ache and that he had not been taken for medical examination to K.E.M. Hospital. Even now he does not state in his evidence that at the relevant time he was not on duty and that he was not under the influence of alcohol. On the other hand, the evidence of Dr. R. A. Darure shows that when it was complained to held by some gardeners at about 11.15 a.m. that the workman was not found at his place of work and that on being searched he was found drunk and sleeping in the store room he (Dr. Darure) himself went there and found that the door of the store room was not latched from inside but was simply closed which he opened and noticed that the entire room was smelling of alcohol and the workman was sleeping on the ground. He asked the watchman to wake up the workman, which was done, and when the workman woke up he was not able to stand and was also not in a position to walk as his gaits were unsteady. He was put a couple of questions by his witness and the workman was not able to give coherent replies. His breath was smelling of alcohol and eyes were red and conjunctive and totally red. He, therefore, sent him to K.E.M. Hospital for

medical examination with a covering letter. He received the case papers and the opinion of the K.E.M. Hospital as per Exhibit C-11 which shows that the pupils of the workman were semi-dilated and reacting to light. His breath was smelling of alcohol and he was not able to walk steadily. The doctor at the K.E.M. Hospital opined that the workman was under the influence of alcohol, and that he had consumed alcohol. Therefore, this evidence makes it crystal clear that the management of the hospital proved that on the day in question and at the relevant time the workman was under the influence of alcohol and was found sleeping while on duty. The learned Labour Judge was, therefore, absolutely in error when he came to the conclusion that the hospital could not prove that on the day in question at the relevant time the workman was on duty and that he was drunk. For coming to such faulty conclusion, the learned Labour Judge held that no duty register or attendance card was produced by the hospital to show that the workman was on duty, forgetting the fact that could not be the only evidence when the workman himself does not dispute that he was not on duty. For the purpose of finding out whether or not the workman was under the influence of alcohol at the relevant time, the learned Labour Judge found fault with the hospital that they did not examine witness from the K.E.M. Hospital. The learned Labour Judge forgot the fact that Dr. Darure, who was himself a medical man, gave evidence in clear terms that he had found the workman under the influence of alcohol at the relevant time. There is nothing to suggest that Dr. Darure had any oblique motive to falsely involve the workman and to give false evidence against him in a Court of law. If the K.E.M. Hospital witness was examined, that evidence would have given corroboration to the evidence of Dr. Darure but that does not mean that the uncorroborated testimony of Dr. Darure should not be relied upon, especially when he was supported by the documentary evidence that was available from the K.E.M. Hospital. It is not the case of the workman that the document was fabricated in the K.E.M. Hospital and produced by Dr. Darure with the sole intention of booking the workman in a false case. I am more than convinced from the totality of the evidence that the hospital could prove clearly that on the day in question and at the relevant time the workman was found drunk and sleeping while on duty. Therefore, the misconduct alleged against the workman was proved by the hospital and the findings arrived at by the learned Labour Judge to the contrary were perverse in as much as such findings were arrived at contrary to the evidence on record.

6. At this stage, Mr. Saiyed, appearing on behalf of the workman, urged that despite the fact that the workman was found guilty of the misconduct alleged against him, he may not be visited with the extreme penalty of dismissal from service and mercy be shown to him by inflicting on him some suitable minor punishment. Mr. Shetty, appearing on behalf of the hospital, submitted that the past record of the workman was too bad to be shown any mercy to him inasmuch as on 10 occasions he was warned and was suspended thrice for diverse acts of misconduct from the year 1974 to 1977. I find lot of substance in the submission of Mr. Shetty that the past record of the workman is too bad to

deal with him leniently. I have been taken through the past record of the workman and I find that on three occasions he was found drunk on March 28, 1977, April 4, 1977 and July 8, 1977. On March 28, 1977, he was warned for disorderly behaviour under the influence of liquor with the mother of a child patient. On April 4, 1977 he did not report for duty and remained inside the quarters provided to him as he was under the influence of liquor and was not heeding to any calls to report for duty. He was suspended for two days on that account. On July 8, 1977 he was suspended for two days for being drunk on April 9, 1977 and not reporting for duty in the afternoon. These three misconducts are very grave which are in addition to 10 more for which he had been not only warned but also suspended. However, Mr. Shetty was fair and kind enough to make a statement that instead of passing an order of dismissal against the workman, he may be deemed to have retired effective from January 14, 1980. In other words, the submission of Mr. Shetty is that the punishment inflicted on the workman of dismissal may be replaced by an order of retirement which would enable the workman to earn all the terminal benefits arising out of his long service with the hospital.

7. In this view of the matter, Writ Petition No. 1751 of 1985 succeeds and the impugned award dated January 29, 1985 passed by the learned Labour Judge presiding over the 1st Labour Court, Bombay, in Reference (IDA) No. 22 of 1981 granting reinstatement with continuity of service to the workman is quashed and set aside. Instead, it is held that the workman stands retired effective from January 14, 1980. The management of the hospital is directed to give all the terminal benefits accruing in favour of the workman upto January 14, 1980 within six months from today during which time the workman shall hand over peaceful and vacant possession of the quarters occupied by him within the hospital premises. Rule in Writ Petition No. 1751 of 1985 is made absolute accordingly with no order as to costs.

8. Writ Petition No. 4121 of 1985 fails and the same stands rejected. Rule is accordingly discharged with no order as to costs.