

(1999) 09 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 4496 of 1999

Bajaj Auto Limited

APPELLANT

Vs

Kalidas Devram Patil

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 1 ALLMR 413 : (2000) 2 BomCR 630 : (2000) 84 FLR 157 : (1999) 3 MhLj 857

Hon'ble Judges : B.H. Marlappalle, J

Bench : Single Bench

Advocate : R.V. Ghuge, for the Appellant; S.S. Pawar, for the Respondent

Judgement

B.H. Marlappalle, J.—Heard Shri Ghuge, learned Counsel for the petitioner Company and Shri S.S. Pawar, learned Counsel for the respondent employee. Rule. Taken up for final hearing forthwith, by consent.

2. The respondent employee came to be appointed on probation with effect from 1st November, 1986 as an Assembler in the Final Assembly section of the petitioner-company, located in the MIDC area at Waluj. The union had submitted a charter of demand and it appears there was some dispute in that regard between the management and the union and as a result of which the operations of the factory were suspended with effect from 7th November, 1987 followed by a lockout which commenced from 23rd November, 1987. The office and supervisory staff, as well as the managerial staff were reportedly exempted from this lockout.

3. The respondent was one of the employees covered by the lockout and it is alleged that on 10th February, 1988 he went to the house of one Shri Shashidharan Pillai (Stenotypist Tkt. No. 3211-75974) at about 6.00 p.m. along with another co-worker by name Shri R.S. Tawade (Tkt. No. 5211-77270) and D.G. Mulani (Tkt. No. 5132-76680) and some other workmen, who were covered by the lockout. It was alleged that the respondent, along with his colleagues,

entered into the house of one Mr. Samuel and caught hold of him on which Mr. Samuel informed that he was not an employee of the petitioner Company and in fact he was the employee of M/s. Lupin Laboratory Ltd. Shri Samuel was left and respondent No. 1 thereafter caught hold of Shri Pillai who was present at the spot. Shri Pillai was assaulted with Bamboo sticks and the earthen pot, which was lying in the garden, was picked up by the respondent No. 1 and thrown on the head of Shri Pillai as a result of which he received bleeding injury on his forehead and was shifted to the hospital. A chargesheet came to be issued against the respondent employee on 5th of March, 1988 alleging that the respondent was guilty of misconduct under Clause 21 (xi) and (xiii) of the Certified Standing Orders applicable to petitioner's factory.

4. The respondent employee filed his reply to the chargesheet and denied the charges. Consequently, a domestic enquiry was instituted and the Inquiry Officer completed the inquiry and submitted his findings on 17th December, 1988. While issuing the chargesheet the respondent employee was also put under suspension pending the inquiry. The findings recorded by the Inquiry Officer held that the charges levelled against the employee were proved and the same findings were accepted by the management. Taking into consideration the seriousness of the charges proved against the respondent, as well his tenure of service, the management issued dismissal order on 25th January, 1989 against the respondent, by way of punishment.

5. The respondent raised a demand of reinstatement with back wages and continuity in service and approached the Conciliation Officer under the Industrial Disputes Act, 1947. As there was no settlement between the parties, the demand raised by the respondent employee came to be referred for adjudication by the Labour Court in Reference (IDA) No. 25 of 1990. The respondent filed his statement of claim in writing before the Labour Court and the management on its part opposed the reference by filing a written statement. The learned Judge of the Labour Court recorded evidence for giving the findings on the issues framed for consideration which are set out in para 5 of impugned award.

6. The Labour Court held that the inquiry conducted against the respondent employee was in keeping with the principles of natural justice, the findings of the Inquiry Officer were not perverse and the charges levelled against the respondent was duly approved. However, the learned Judge of the Labour Court held that the order of dismissal was not justified and, therefore, by the impugned Award dated 27th May, 1999 directed reinstatement in service without back wages and continuity of service. The legality and propriety of the said Award has been brought in question, in the instant writ petition.

7. It is pertinent to note that the learned Judge of the Labour Court observed that the respondent employee had assaulted Shri Pillai causing injury to him and it was a serious misconduct and that as per the provisions of the Standing Orders the punishment of dismissal was prescribed for a proved misconduct of such nature and the punishment awarded was in accordance with the provisions of the

Standing Orders. However, the learned Judge of the Labour Court went on to examine the attaining circumstances namely, there was a lockout in the company from 7th November, 1987 to 27th November, 1987, labour unrest and 88 employees were issued charge sheets for various misconducts and observed that the assault on Shri Pillai was by way of mistaken identity and it was an isolated incidence which did not warrant the extreme punishment of dismissal from service. The Labour Court placed reliance on a judgment of the Andhra Pradesh High Court in the of B. Balaraj v. Federal Sports (represented by its Assistant Works Manager), Hyderabad and others, 1996(2) L.L.N. 371 and the judgment of the Supreme Court in the case of Palghat BPL & PSP Thozilali Union v. BPL India Ltd. and another, 1996(1) C.L.R. 368.

8. It is, therefore, necessary to examine the following three issues in the instant petition viz. (i) whether the findings of the Labour Court that the assault at the hands of respondent employee on Shri Pillai was isolated and with misplaced identity, (ii) whether the reliance placed by the learned Judge of the Labour Court on the judgment of the Supreme Court in the case "Palghat BPL" (supra) is proper and (iii) whether the Labour Court was justified in substituting the punishment of dismissal with reinstatement coupled with denial of back wages and continuity in service by exercising his powers u/s 11-A of the Industrial Disputes Act

9. As the learned Judge of the Labour Court has held that the inquiry was conducted in keeping with the principles of natural justice and the findings of the Inquiry Officer were not vitiated, it would be necessary to take into consideration the enquiry report submitted by the Inquiry Officer to decide the first issue. Amongst the witnesses examined before the Inquiry Officer, it would be worthwhile to mention regarding the testimony of one Shri V.S. Abhyankar, who was working at the relevant time as Assistant Security Officer with the petitioner-company and was in fact staying in the neighbourhood of Shri Pillai. It is clear from the testimony of Shri Abhyankar as well as other witnesses that the assault on Shri Pillai was a preplanned event inasmuch on 10th February, 1988 Shri Abhyankar had spotted the respondent employee in the morning in the vicinity of Shri Pillai's residence while he was reaching the bus to go to the factory. The respondent-employee has been identified to be the person who directly assaulted Shri Pillai first with Bamboo sticks and then he picked up the earthen pot and threw on the head of Shri Pillai. The events do go to show that the respondent employee along with his colleagues had first identified the residence of Shri Pillai by visiting the area in the morning, he was aware that Shri Pillai, though was not covered by the lockout notice, was attending the duties. It is further proved that in the evening when Shri Pillai returned from the factory he entered the house of Shri Samuel and it was under these circumstances that Shri Samuel was first picked up by the respondent. However, this does not lead to the conclusion that Shri Pillai was assaulted by way of misplaced identity. The learned Judge of the Labour Court failed to apply his mind to the depositions of the witnesses, who were examined before the Inquiry Officer in support of the charges levelled

against him and if these depositions are considered, the findings that the incident of assault was an isolated incidence and it was by way of a misplaced identity cannot be sustained. In the case of Palghat BPL (*supra*) while the workmen were on strike as the management had suddenly backed out from the settlement in conciliation proceedings. On 14th March, 1983 while the three concerned workmen were standing at the BPL Bus Stop on Pollachi road, National High Way Diversion, they sighted the officers passing through the way and assaulted one officer by name Shri N.V. Subramanian and others. The Labour Court recorded a finding that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. However, the Supreme Court observed that the appellants alone were not members of the assembly of the workmen standing at the BPL bus stand and who has hurled stones towards the officers. It was under these circumstances the Apex Court held that the discretion exercised by the learned Judge of the Labour Court u/s 11-A of the Industrial Disputes Act to consider the quantum of punishment was justified and it did not call for interference. In the instant case, the eye-witnesses to the incidence have clearly stated that it was the respondent-employee who assaulted Shri Pillai by Bamboo sticks and threw the earthen pot on his head sustaining grievous hurt on his forehead. The intention to assault Shri Pillai was clear and loud in the behaviour of the respondent-employee and his colleagues. If regards be had to the attaining circumstances, the intention was double edged viz. (i) to ensure that Mr. Pillai was taught a lesson and he would not go to the factory for work and (ii) similarly placed employees who were attending to work, would refrain from going to the factory. In short, it was an action aimed at creating a terror amongst the employee reporting for duty and the assault was not due to any personal enmity or any other reason unconnected with the working of the factory.

10. In the case *Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Limited v. M.S. Ajmere and another*, 1979 Mh.L.J. 903 : 1980(1) L.L.J. 295 a Division Bench of this Court has examined the scope of powers of the Labour Court u/s 11-A of the Industrial Disputes Act and after referring to the judgment of the Supreme Court in the case of *Anand Bazar Patrika v. Their Employees*, 1963(11) L.L.J. 429 and in the case of *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, it is held that the award of the Labour Court is required to be tested on the touchstone of the principles enunciated by the Supreme Court in the case of "*Hind Construction*" (*supra*). It would be useful to reproduce the following observations of the Supreme Court in the case of *Hind Construction*:

"...In respect of punishment it has been ruled that the award of punishment for misconduct under the Standing Orders, if any, is a matter for management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such

punishment as itself showing victimisation or unfair labour practice."

11. There is no dispute that the respondent-employee was neither an active trade union worker nor an office bearer of the trade union representing the workmen of the petitioner's factory and, therefore, there was no reason to make out a case that he was dismissed by way of victimisation or by way of unfair labour practice on that score. When the incidence of assault had taken place on 10th February, 1988 the respondent-employee had not put in even two years of service and in fact he had put in about fifteen months of service. The nature of the charges proved against him is grave and, therefore, if all these factors are considered it cannot be said that the punishment of dismissal imposed on him was shockingly disproportionate. The reasons given by the learned Judge of the Labour Court to substitute the punishment of exercising the discretionary powers u/s 11-A of the Industrial Disputes Act are without application of mind to the facts on record and the power to exercise the discretion is flawed and, therefore, it cannot be sustained.

12. The behaviour of employees, as has been proved in the instant case, must be viewed seriously for maintaining efficiency and discipline in the establishment and in such cases the provisions of the Standing Orders must be allowed to be effective and should not be interfered with by the adjudicator. If the industrial development has to be achieved, the wheels of production must run uninterruptedly and the employees must maintain industrial harmony. Incidents of assault, either inside or outside the factory premises, akin to the instant case, are required to be dealt with strictly and in such cases an attempt to mould the punishment while exercising the powers u/s 11-A of the Industrial Disputes Act will amount to showing misplaced sympathy which is likely to cause not only miscarriage of justice but also a social injury. The judgment of the Division Bench of this Court in Sarabhai Chemicals case (supra) supports the case of the petitioner management regarding the quantum of punishment.

13. For the reasons stated above, it has to be concluded that the learned Judge of the Labour Court fell in grave error in allowing the reference partly and directing reinstatement. The reasoning given by the learned Judge of the Labour Court, in support of the said Award, is palpably wrong and, therefore the award cannot be sustained. The Award is, therefore, set aside and the punishment of dismissal, as effected by the management, is confirmed as the said punishment was warranted in the peculiar facts and circumstances of this case.

14. Rule made absolute in terms of the above order. No costs.

15. Petition allowed. Rule made absolute.