

(2008) 02 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 353 of 1997

Bajaj Auto Limited

APPELLANT

Vs

Vijay Pal Singh M. Bhura and Another

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2008) 5 BomCR 862 : (2008) 117 FLR 651 : (2008) 4 MhLj 780

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

Bench : Single Bench

Advocate : Ajay Khaire, instructed, M.S. Bodhanwalla and Co, for the Appellant;
N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The Petitioner company is aggrieved by the passed by the First Labour Court at Pune on in Reference(IDA)No. 211/1993. Reference has partly allowed by directing reinstatement of Respondent workman in his original post of with continuity of service but without backwages intervening period i.e. from 24-8-1992 till the date of the Award i.e. 16-11-1996. Award 16-11-1996beenthesafaiwalafor the

2. While granting Rule in this petition, this Court had stayed the impugned Award application filed by the Section 17B of the Industrial Act for short), this Court in toto respondent Disputes directed and workman Act, 1947 the on the under (the petitioner company to pay him wages at the rate last drawn by him and it appears that for the last more than ten years he is in receipt of the said benefit.

3. On 30-8-1991 the Respondent was issued a chargesheet alleging acts of misconduct as under:

(a) commission of an act subversive of discipline or good behaviour on the premises of the establishment (Clause 24 (1) of the Model Standing Orders) and

(b) drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment (Clause 24(k) of the Model Standing Orders).

The said chargesheet was replied by the Respondent on 10-9-1991 and he denied the charges. On the contrary he came out with a case that Shri A.S. Kulkarni -Section Manager (House keeping) had thrown a job at his left leg which resulted into an injury and to hush up the said incident a story was fabricated against him of unauthorizedly going on the terrace to wash the clothes and lodged a complaint against Shri Kulkarni despite the fact that he (the workman) had while climbing the steps hit his leg against the wall and sustained the injury. He was also chargesheeted for creating a scene in the dispensary as well as in the security office on the date of the incident i.e. on 12-8-1991 while he was working in the Engine Testing Section at about 1.00 p.m. A domestic enquiry was conducted against the workman between 4-10-1991 to 23-5-1992 pursuant to the notice of enquiry dated 25-9-1991 in which the workman had participated. The enquiry officer submitted his report and held the workman guilty. A copy of the report was forwarded to the workman on 22-7-1992 and he was called upon to explain as to why he should not be punished and finally by the order dated 23-8-1992 he was dismissed from service. The workman, therefore, raised an industrial dispute challenging the said order of dismissal and his demand for reinstatement in service with full backwages as well as continuity in service came to be referred for adjudication to the Labour Court in Reference(IDA) No. 211/1993.

3. By way of the Award part-I passed by the Labour Court on 17-10-1995 on the preliminary point regarding the enquiry, it was held that the enquiry was legal, fair and proper. While passing the Award part-II the learned Judge of the Labour Court held that some misconduct on the part of the workman was proved on the basis of the evidence led before the enquiry officer, but the punishment of dismissal was grossly disproportionate to the nature of the charges proved. Therefore, the Labour Court held that the workman was entitled for reinstatement with continuity of service but without backwages.

4. It is contended by the petitioner company that once the enquiry was held to be fair and proper and the charges were held to have been proved, the Labour Court would interfere with the punishment order in rarest of the rare case where the punishment is so disproportionate as to compel the Court to reach to the conclusion that it was imposed as and by way of victimisation and the punishment so awarded shocks the conscience of the Court. As per the petitioner company these principles are not applicable in the instant Award and, therefore, the Labour Court fell in manifest error in interfering with the order of punishment which is a managerial function and if the employee is found to be guilty, it is for the management to decide the quantum of punishment. It was further pointed out from the order of dismissal that there were more than 7 instances in the span of 10 years that the respondent workman had been with the company, when he was punished for acts of misconduct on some or the other count and

this went to show that his service record was far from being satisfactory. As per the Company while considering the issue of proportionality of the order of punishment, the learned Judge of the Labour Court did not consider the past record of service.

5. The chargesheet copy is on record but the findings of the enquiry officer have not been placed by the company on record. The chargesheet dated 30-8-1991 reveals the following charges namely;

(a) while on duty at about 1.00 p.m. on 12-8-1991 the workman had gone to the terrace to wash his clothes without obtaining permission from the superior.

(b) while climbing over the terrace, he was detected by his superior Shri Kulkarni while washing the clothes on terrace unauthorizedly, he cooked false story that Mr. Kulkarni had assaulted him with a job in the Engine Test Section.

(c) he was guilty of making false charges against the superior officer Shri Kulkarni and also creating a scene in the dispensary as well as in the security office of the company on 12-8-1991.

6. The Labour Court in the impugned Award noted that the workman sustained an injury on his left leg on 12-8-1991 was not in dispute and in the said matter the Labour Court relied upon the evidence of Dr. Janorkar-Medical Officer of the company. The Labour Court, therefore, did not agree that the workman had lodged a false complaint against Mr. Kulkarni just to save from the legal action, but the Labour Court accepted that the workman unauthorizedly had gone to the terrace to wash his clothes and the Labour Court held that even if the testimony of Shri Kulkarni was not considered, the testimony of the co-worker Shri Sonawane was required to be accepted and, therefore, this charge was proved. Thus, as per the Labour Court only one charge of going to the terrace without permission to wash his clothes during the duty hours was proved against the workman. Admittedly no further evidence was led before the Labour Court and both the parties proceeded on the basis of the evidence adduced before the enquiry officer.

7. The Labour Court noted that the workman had put in more than 10 years of service (date of joining 12-7-1981 and last drawn salary Rs. 3,400/-p.m.) and the charge proved was not so serious as to warrant capital punishment of dismissal from service. At the sametime his past record of service must deny the benefit of backwages prevailed with the Labour Court. Thus by invoking its power u/s 11A of the I.D. Act, the relief was moulded by the Labour Court.

8. In the case of U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd., the charges like going on illegal strike, disorderly behaviour and conduct endangering the life or safety of any person within the factory premises, holding or participating in the meetings, demonstrations and shouting of slogans inside the factory premises, unauthorised absence from duty for more than eight consecutive days and making false, vicious or malicious statement in public

against management or its officers were held to have been proved, while the charge of using insulting language against the superior was additionally proved. The punishment of dismissal was awarded which was challenged before the Labour Court and it held that the enquiry conducted was legal and proper and while granting reinstatement, denied the benefit of backwages for a period of 14 to 15 years. The High Court, at the instance of the management, held that once the charges were proved, the Labour Court ought not to have interfered with the quantum of punishment. The Supreme Court held that the power u/s 11A has to be exercised judiciously and the Labour Court is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned and while interfering with the punishment, the Labour Court has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the word "disproportionate" or "grossly disproportionate" by itself will not be sufficient. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. Though u/s 11A, the Labour Court has power to reduce the quantum of punishment it has to be done with the parameters of law. Possession of power is itself not sufficient and it has to be exercised in accordance with law. In the instance case, as noted above, the only charge which has been held to be proved by the Labour Court against the workman is that he was guilty of unauthorizedly going to the terrace to wash his clothes during his duty hours, which clearly meant that the respondent-workman was guilty of commission of an act subversive of discipline on the premises of the establishment and the second charge of disorderly or indecent or riotous behaviour on the premises of the establishment was not proved. Certainly, the nature of the charge proved was minor and would not call for a capital punishment of dismissal from service. Having regards to the evidence of Shri Kulkarni, Shri Sonawane and the Medical Officer as recorded before the Enquiry Officer, the Labour Court was right in its findings that only once charge was proved against the workman.

9. Having considered the reasoning set out by the Labour Court in the impugned order, I am satisfied that the Labour Court has not exceeded its powers and while invoking the discretionary powers u/s 11A of the Act has considered the nature of the charges proved, the past record of service which was unsatisfactory and the length of service of the workman so as to deny him the payment of

backwages while setting aside the order of dismissal. In my considered opinion no interference is called for in the view taken by the Labour Court, by exercising the supervisory powers of this Court under Article 227 of the Constitution and hence this petition must fail.

10. The petition is hereby dismissed. Rule discharged but with no order as to costs.

11. The payment of arrears from the date of Award till the date of reinstatement shall be calculated and paid by adjusting the amount already paid u/s 17B of the I.D. Act and the Award shall be implemented within four weeks from today.