

(2009) 08 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 5160 of 1997

Bhangar Bros. and Co. Pvt. Ltd.

APPELLANT

Vs

Engineering Workers Union and Shri S.N. Kamble

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Companies Act, 1956 — Section 11A
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 123 FLR 1016 : (2010) 1 LLJ 167 : (2009) 6 MhLj 65 : (2009) 7 SLR 536

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : P.K. Rele, Rajesh Rele and Vinod Tayade, instructed by Piyush Shah, for the Appellant; N.D. Buch, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Counsel appearing on behalf of respondent No. 1.

2. By this Petition which is filed under Articles 226 and 227 of the Constitution of India, petitioner is challenging Part-II award passed by the Labour Court whereby Labour Court was pleased to hold that the punishment awarded by Enquiry Officer was not just, fair and proper and the punishment of dismissal of workman given by the petitioner herein was disproportionate to the misconduct which was alleged against the workmen and, secondly, the order of termination was quashed and set aside. The said punishment was modified with the punishment of reprimand with loss of wages till their termination and, thirdly, the petitioner herein was directed to reinstate the workmen with continuity of service and full back-wages till 22/07/1985.

3. Brief facts are as under:

4. Petitioner is a Private Limited Company incorporated under the Companies

Act, 1956 and had a factory at Kalve, District Thane and it was engaged in manufacturing of electric motors. Respondent No. 1 is a registered trade union. There was a dispute and difference between the petitioner and some of its workmen. According to petitioner herein, on 06/07/1979, petitioner received a letter from the 1st respondent informing it that all workmen had joined respondent No. 1 to represent them as the sole bargaining agent and, consequently, the petitioner should not enter into any agreement or settlement with recognized Union or a group of workmen. According to the petitioner, services of one Mr Bhagwan Gawde were terminated by the petitioner for misconduct on 30/07/1979 and, on the same day, five workmen approached the Director of the petitioner and asked him to take back the said Mr. Bhagwan Gawde which request was turned down by the Company. It is the case of the petitioner that these workmen stopped the work and also instigated other workers to stop the work. According to the petitioner, they also switched off the electricity connection of the machine shop and other departments at 4.30 p.m and, as a result, the work in 2nd shift came to stand still which position continued till 23/08/1979. It is also alleged that two other workmen switched off the electricity connection of the Drilling Department and Machine Department.

5. Petitioner issued lockout notice dated 09/08/1979 informing the workmen that they intended to give effect to the said notice from 25/08/1979. However, since 80 workmen reported for work on 23/08/1979, the petitioner gave an intimation to all workmen by Registered Post A.D and under certificate of posting to report for duties and informed them the intention of the petitioner not to give effect to the lockout notice. Petitioner also gave intimation to the Assistant Commissioner of Labour vide letter dated 03/09/1979. Respondent No. 1 addressed a letter to the petitioner alleging that the petitioner had prevented workmen from resuming duties since 30/07/1979 and, thereafter, workmen reported for duties. However, they were advised that except suspended workmen, other may resume duties. However, the workmen did not accede to the request made by the petitioner herein. Accordingly, charge sheet was served on all the workmen. A reply was given by the concerned workmen and the inquiry officer conducted the inquiry and came to the conclusion that the charges against the said workmen had been proved and the workmen were dismissed from services of the petitioner.

6. Petitioner filed complaint (ULP) No. 30 of 1982 for a declaration that the strike was illegal. Respondent No. 1 filed their statement of claim. Written Statement was filed by the Petitioner. Labour Court passed Part-I award dated 06/01/1995, holding that the enquiry conducted against the workmen concerned was invalid and permitted the petitioner to prove the charges before the Court. Against this order, petitioner filed Writ Petition in this Court vide Writ Petition No. 6503 of 1995. This Writ Petition was allowed and the order passed by the 2nd respondent on the Part-I award was set aside and this Court came to the conclusion that the inquiry conducted against the workmen concerned was legal, fair and proper and further directed the 2nd respondent to proceed with Part-II award. The respondent 2nd framed issues including the issue on perversity of findings of the

enquiry officer, despite the order of the High Court. Petitioner, therefore, filed an application for review of the said order. Thereafter, however, by order dated 31/08/1996, the second respondent re-framed issues including the issue of Enquiry Officers report and findings. Labour Court, thereafter, passed the impugned Part-II award dated 30/04/1997. This award was published by the Labour Commissioner on 12/08/1997. Being aggrieved by the said Part-II award, present Petition has been filed under Articles 226 and 227 of the Constitution of India.

7. Mr. Rele, the learned Senior Counsel appearing on behalf of the the petitioner made three-fold submissions. Firstly, he submitted that it was not open for the Labour Court, after having held that findings of the Enquiry Officer were not perverse, to fall back on the evidence led before him to establish as to whether the misconduct was proved or not and it was not open for the Labour Court to go into the correctness of the findings of the Enquiry Officer to decide whether the punishment was justified or not. Secondly, it was submitted that it was not open for the Labour Court to assess the gravity of the misconduct proved at the enquiry with reference to the evidence led before him vis-a-vis the findings and conclusions of the Enquiry Officer. Thirdly, it was submitted that the Labour Court had erred in granting back-wages to the dismissed workmen for the period during which the workmen in employment were on strike which was declared to be illegal. It was, therefore, submitted that the Labour Court had clearly exceeded its jurisdiction u/s 11A of the Act in interfering with the punishment on erroneous and extraneous grounds. He relied upon the following judgments of the Apex Court:

Sr. No

Name of Parties

CITATIONS

1

Bharat Heavy Electricals Limited v. Chandrashekar Reddy and Ors.

(2005) 2 SCC 481

2

Workmen of Firestone Tyre and Rubber Co. v. The Management and Ors.

1973 I LLJ 279/299

3

Workmen of Ballamadies Estate and Ors vs. Management, Balamadies Estate and Ors.

2008 I LLJ 673

4

Employers in relation to the Management of West Bokaro Colliery of TISCO Ltd.
v. Concerned workman Ram Pravesh Singh

2008[116]FLR 1107

5

Usha Breco Mazdoor Sangh v Management, Usha Breco Ltd., and Anr.

2008[118]FLR 400

He further submitted that the charge of absentism which was levelled against the workmen having been proved, the Management was justified in dismissing workmen from service. He again relied upon the following judgments:

Sr. No.

Name of the parties

CITATIONS

1

Delhi Transport Corporation v. Sardar Singh

2004 II LLJ 543

2

State of Punjab Vs. Jagir Singh

2004 III CLR 969

3

Rabiya Khatun (Smt.) and Ors v. MSRTC, Akola

2009 I CLR 299

4

Mahesh Kumar Narottambhai Kantharia v. Admn. Officer, Nagar Prathmik Shikshan Samiti, Surat and Anr.

2002[92] FLR 215

He then submitted that, in any case, Labour Court erred in directing payment of back-wages during the period of illegal strike. He submitted that despite the order dated 11/06/1982 declaring the strike illegal, the petitioner was compelled to close down the factory and as such no back- wages could be paid from the date of illegal strike i.e from 27th April 1982 till the date of closure. He submitted that there was no evidence produced by the workmen or any averment made that they were not gainfully employed during the relevant period. No evidence of

victimization was brought on record and, as such, the impugned award was liable to be set aside. He lastly submitted that though the finding was given by Labour Court that all charges have been proved and after having given finding that the issue of perversity was not open for consideration in view of decision of the High Court, yet, Labour Court proceeded to analyze the findings of Enquiry Officer and came to the conclusion that the findings are perverse and are not sufficient to award punishment of dismissal of workers.

8. The learned Counsel appearing on behalf of respondent No. 1, on the other hand, submitted that these workmen were prevented from joining the work with the help of antisocial elements and these employees were assaulted and sustained serious injuries. She further submitted that enquiry was conducted into the alleged charge-sheet in three groups. In the first group, 20 employees were covered, in the second group 90 employees were covered and in the third group, 5 employees were covered. She submitted that in the first two groups, concerned workmen were those employees who were admittedly charge-sheeted for absence without leave while five employees in the third group were charge-sheeted for willful insubordination. She submitted that though charges in respect of first two groups and third group were not identical, yet, they were held to be guilty without application of mind on the gravity of alleged misconduct. She submitted that Labour Court has rightly directed reinstatement of the workmen and had rightly come to the conclusion that there was total non-application of mind on the part of Enquiry Officer as well as the Petitioner in dismissing the employees from service.

9. After having heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Counsel appearing on behalf of respondent No. 1 at length, in my view, there appears to be some substance in the submissions made by the learned Senior Counsel appearing on behalf of the petitioner. It is an admitted position that, initially, Labour Court had, in its Part-I award, held that the enquiries were not just, fair and proper and had directed the petitioner to lead evidence to prove its charges. However, Writ Petition filed by the Petitioner against the said Part-I award was allowed and setting aside the said Part-I award, it was held by this Court in Writ Petition No. 6503/1995 that the enquiries conducted against the workmen concerned were legal, fair and proper and the Labour Court was directed to proceed with the Part-II award.

10. It is quite settled position in law that while considering the gravity of misconduct in Part-II award, after it has been held by the High Court that the enquiries were fair, just and proper, it was not open for the Labour Court to consider whether the findings recorded by the Enquiry Officer were perverse or not. Surprisingly, the Labour Court accepts this well settled position and holds that issue of perversity was not open for consideration by him and, yet, the Labour Court makes the following observations.

These are the issues which are agitated by the parties to this reference. There are limitations to this Court to consider the issues as it is; as agitated by the

parties to this reference particularly in view of the parties approached to the High Court and agreed the fairness of enquiry, and the High Court has declared the enquiry to be fair and proper. This Court cannot decide that, the findings of the enquiry officer are perverse or otherwise, as the High Court has declared the enquiry to be fair and proper and this Court cannot express any view on the findings as it will again reason enquiry once it is declared fair and proper enquiry by the Hon"ble High Court, the only way open to this Court would be to see, whether the findings recorded indeed empowers the employer to impose harsh punishment of dismissal.

After having recorded the aforesaid findings, Labour Court appears to have done exactly the opposite and has proceeded to consider whether the findings recorded are proper or not and in para 7 of its Part-II award a attempt appears to have been made to analyze the findings of the Enquiry Officer and in para 9 following finding has been recorded.

9. Such a back ground whether any such story can be allowed for the first time when there was no mention of any sit down strike from 2nd shift by the Workmen of 30.7.79, in the charge sheet, as pre history to the framing of the charge. The allegations which are not forming part of the charge sheet are clearly out of the scope of investigation by the enquiry officer and therefore such a arguments cannot be allowed. The workmen concerned are not supposed to meet out the allegations which are not incorporated in the charge sheet. In order to allow any re-history for framing of charge sheet there must be allegations or circumstances explained by the management to frame the charge sheet. Even the Enquiry Officer did not resort to the allegations of any such allegations which were not incorporated in the charge sheet.....

11. In my view, in the teeth of the observations made by Labour Court in its order dated 22/07/1996, the Labour Court in Part-II award could not have given contrary findings to the issues recorded by it. Labour Court having held that the charges are proved, proceeds to question the findings of the Enquiry Officers on the basis of evidence led before Labour Court. In my view, therefore, Labour Court has committed an error of law which is apparent on the face of record. Labour Court, at the highest, could have considered that where the charges levelled against the workmen having been proved, whether the order of dismissal has been passed on the basis of the said misconduct which was alleged against the concerned workmen. Instead of doing that, Labour Court has clearly reappreciated the findings of Enquiry Officer and has come to its conclusion in Part-II award which is impugned in this Petition.

12. Under these circumstances, in my view, the impugned Part-II award is liable to be set aside and the matter will have to be remanded to the Labour Court for purpose of deciding and passing Part-II award afresh after hearing both sides. Unfortunately, more than 10 years have passed after the order was passed by Labour Court. However, in view of the law laid down by this Court and the Apex Court, It is not possible for this Court to independently consider and decide

whether the findings are perverse or not. In these circumstances, therefore, there is no other option left with this Court but to remand the matter to Labour Court.

13. Accordingly, the impugned Part-II award is set aside. The matter is remanded to the Labour Court to decide the Part-II award afresh as expeditiously as possible and, in any case, within a period of six months from today on merits and in accordance with law.

14. Writ Petition is allowed in the aforesaid terms and disposed of.