
(1993) 07 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 316 of 1990

Bharat Textiles Mills

APPELLANT

Vs

Datt Ramalaxman Gore and Others

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 LLJ 92

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : I.A. Saiyyed, for the Appellant; S.M. Dharap, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—By this writ petition under Article 226 of the Constitution the petitioner Company seeks to challenge the order of the Industrial Court dated August 21, 1989 passed u/s 84 of the Bombay Industrial Relations Act, 1946 in Appeal (IC) No. 12 of 1985. By the said order, respondent No. 1 is ordered to be reinstated with continuity of service and payment of 40% of the back wages from the date of termination of service till reinstatement.

2. The facts giving rise to this writ petition are as follows:-

(a) Pursuant to the charge-sheet dated November 29, 1982 the petitioner was charged for resorting to and continuing with the strike from January 18, 1982. The said strike was declared as illegal by the Labour Court on February 12, 1982 in Application (LCB) No. 91 of 1982. According to the said charge-sheet, after the declaration of the strike as illegal by the Labour Court, the management brought to the notice of the workman the fact that the strike is declared as illegal by the Labour Court. Many of the clerks resumed work. According to the charge-sheet, the petitioner did not resume work. In the circumstances, an inquiry was held and pursuant to the said inquiry the service of respondent No. 1 came to be terminated.

(b) Ultimately, the matter came by way of Application (BIR) No. 323 of 1983 before the Labour Court. By a judgment and order dated December 14, 1984 the Labour Court came to the conclusion that the domestic enquiry was fair and proper and that the action of the company in terminating the services was in accordance with the law. Accordingly, the said application came to be dismissed.

(c) Being aggrieved by the said order of the Labour Court, respondent No. 1 preferred Appeal (IC) No. 12 of 1985.

(d) By a judgment and order dated August 21, 1989, the Industrial Court reversed the judgment of the Labour Court. According to the Industrial Court, the punishment of dismissal was shockingly disproportionate. The Industrial Court considered various judgments of the Supreme Court as well as the evidence on record and came to conclusion that respondent No. 1 had not actively participated in the strike and that there was no evidence to show that he had taken active part in the strike. Accordingly, the Industrial Court came to know that the punishment of dismissal was not warranted.

(e) Being aggrieved by the said judgment of the Industrial Court, the petitioner company has filed the present writ petition. At the stage of admission, stay with regard to the reinstatement was expressly refused by this Court and respondent No. 1 has been reinstated. As regards the backwages, only 40% has been given to the workman.

3. Mr. Saiyyed, the learned Counsel appearing on behalf of the petitioner, submitted that the said workman had taken part in an illegal strike and, therefore, the Labour Court was right in refusing to interfere with the order of termination passed by the petitioner. He further submitted that there was no reason to interfere with the said finding of fact recorded by the Labour Court. Mr. Saiyyed further submitted that no basis whatsoever has been given by the Industrial Court for granting 40% back wages from the date of dismissal till reinstatement. Accordingly, it was submitted that the order of the Industrial Court was liable to be set aside.

4. I do not see any merit in the said contention. The Industrial Court has given cogent reasons for coming to the conclusion that the punishment was shockingly disproportionate. The dismissal of the workman was not warranted as he did not take active part in the strike. In the circumstances, the Industrial Court was right in granting reinstatement. However, the Industrial Court also found that the workman did take part passively in the strike which was declared as illegal and, therefore, the Industrial Court has directed the reinstatement with continuity of service and payment of 40% backwages. The order is fair and just and there is no reason to interfere with the said order of the Industrial Court.

5. Accordingly, the writ petition fails. Rule is discharged with no order as to costs.

6. Certified copy expedited.