
(1984) 09 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition 1569 of 1984

Bhiwa Y. Mulam and another	Vs	APPELLANT
Indabrator Limited and another		RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Citation : (1984) 49 FLR 309 : (1985) 1 LLJ 20

Hon'ble Judges : H.N. Kantharia, J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

Kantharia, J.—By this Writ Petition the petitioner Bhiwa Y. Mulam (hereinafter referred to as "the workman"), challenges an award passed by the learned Industrial Tribunal, Maharashtra, Bombay, in Reference (IT) No. 93 of 1979, on 30th January, 1984.

2. The short facts leading to the filing of this Writ Petition are that the petitioner was employed by M/s. Indabrator Limited (hereinafter referred to as "the employer") as a Welder. He was working there for about five years. He was an active member of petitioner No. 2 Trade Union i.e., Engineering and Metal Workers" Union and was also a member of the Factory Committee of the said Union. According to him, the employer did not like their employees joining the said Union and, therefore, they encouraged another Union called Bharatiya Kamgar Sena to come up and started harassing the members of the Union to which the workmen belonged. He further alleged that the Factory Committee consisted of five workmen out of which three employees, including the petitioner, were removed from services on false and baseless charges. Thus, the present workmen himself was charge sheeted on 3rd July, 1976 on the allegations that on the said day at about 3.00 p.m. when Works Manager Pathak was taking rounds and while he was in the first day from the passage near the Shearing machine he saw the present workman, one Gaikwad and T. A. Devassi kutty standing near the marking table and Gaikwad was signing some paper kept inside the drawer of that table. Pathak took out that paper from the drawer. The

said paper was in two sets of duplicate with carbon paper and contained signatures from Sr. No. 21 to 63 and Gaikwad had signed at Sr. No. 63, and that this act of the workman amounted to misconduct under model standing order being commission of act subversive of discipline on the premises of the establishment. The petitioner-workman filed a reply to this charge-sheet on 6th July, 1976 pointing out that the allegations made against him were false and that on the relevant day and time he was waiting for the Crane Operator to turn the job which job was by the side of the table where he was standing. At that time Gaikwad passed from there when he took this signature on a representation to be sent to the Municipal Commissioner in connection with the removal of Ram Mandir at Lalbaug. On behalf of the workman it was also contended that he was charge-sheeted on a totally fabricated story with a view to victimise him because he was an active functionary in the Union. The employer thereafter held a domestic enquiry against the workman. The Enquiry Officer C. C. Khandhadia found the workman guilty of charge levelled against him viz, commission of act subversive of discipline on the premises of the establishment. The employer accepted the findings of the enquiry officer and terminated the services of the workman as and by way of dismissal vide their letter dated 30th November, 1977. Thereafter, the petitioners raised an Industrial Dispute by a letter dated 25th May, 1978 demanding reinstatement of the workman with full back-wages. The said dispute was admitted in conciliation and since the dispute could not be settled, the Government of Maharashtra by an order dated 13th March, 1979 made a reference to the Industrial Tribunal. On behalf of the workman a statement of claim was filed before the Tribunal justifying the demand which was resisted by the employer by filing a Written Statement. Parties also filed documents relied upon by them. Neither the workman nor the employer adduced any oral evidence before the Tribunal. Records and proceedings of the domestic inquiry were admitted in evidence which were considered by respondent No. 2, the learned Industrial Tribunal who by his impugned award held that the dismissal of the workman was unjustified but rejected the workman's demand for reinstatement and instead passed an order directing that workman be paid compensation equivalent to his two years wages. Being aggrieved by the said award, the workman filed the present Writ Petition.

3. Mr. Kotchar, appearing on behalf of the workman, first of all submitted that the allegations made against the workman do not amount to misconduct and that the workman should not have been charge sheeted and no enquiry should have been held against him. In any case, according to him, this was certainly not a case in which the employer should have passed an order of dismissal against the workman even if it was held that he had committed misconduct, further submitted Mr. Kotchar. He also urged that the punishment awarded to the workman by the employer was so disproportionate to the alleged misconduct that it amounts to victimisation apart from the fact that the workman was victimised purely on accounts of the fact that he was an active participant in the Trade Union activities. Therefore, Mr. Kotchar submitted that this is fit case where

the workman should be reinstated with continuity of service and full back-wages. Controverting the submissions made by Mr. Kotchar, Mr. Puri who argued the matter on behalf of the Employer urged that the dismissal order in this case was fully justified. In the submission of Mr. Puri, the indiscipline on the part of the workman was serious. Mr. Puri's contention thus is that the punishment was not disproportionate to the misconduct alleged and proved against the workman.

4. Now, it is true that the misconduct alleged against the workman can be said to have been proved. The employer as well as the workman adduced oral as well as documentary evidence on their behalf at the domestic inquiry. We have been taken through this entire evidence by Mr. Kotchar and Mr. Puri which reveal that the workman did collect signatures of other workmen during working hours on the factory premises. It makes no difference whether such signatures were collected for some social or religious cause or for Trade Union activities. Therefore, we are unable to persuade ourselves to agree with Mr. Kotchar that his is not a case in which the workman should have not been charge-sheeted and no domestic enquiry should have been held against him.

5. However, for this misconduct the order of dismissal of the workman is not a proper punishment. The learned Tribunal also held that dismissal order was not justified in this case. We also feel that the incident was not of that serious nature which warranted dismissal of the workman. Extreme punishment of dismissal can only be inflicted in cases involving grave and serious misconduct. A very emphatical contention was raised by Mr. Kotchar that once having held that punishment was disproportionate to the misconduct alleged against the workman it should be inferred that the workman was victimised. Mr. Puri with equal emphasis at his command urged that this is not a case of victimisation. We find quite some substance in the submission of Mr. Kotchar but regard being had to the facts and circumstances of this case, we are not inclined to probe further in the question of victimisation especially when we are inclined to upset the impugned award partially on other aspect of the matter which we shall presently point out.

6. The learned Tribunal, regard being had to the fact that the punishment inflicted on the workman was disproportionate to the misconduct proved against him, rightly upset the order of dismissal. He granted compensation to the workman as stated above. But in our opinion, this punishment is also not proper. In practical life, the workman has lost the job which is an extreme punishment. It is true that he got some monetary benefits. But what is the use of such benefits when one loses employment. In the instant case, we cannot think of punishment to the workman as and by way of losing job for the misconduct proved against him. We are, therefore, inclined to set aside the order passed by the learned Tribunal. The workman was suspended on 5th July, 1976 and was dismissed on 30th November, 1977. During this period he was not paid full wages. We are ordering his reinstatement with 50% back-wages right from his day of suspension. It means that during the period of suspension he will get only

half the wages which, in our opinion, is adequate punishment with which the workman can be visited for the misconduct proved against him.

7. In this view of the matter, we order that the workman be reinstated with continuity of services right from the date he was suspended on 5th July, 1976. The question that remains then is as to what amount of back-wages should be ordered to be paid to the workman. In this connection, Mr. Kotchar has very rightly urged that once it is held that the order of termination of the workman was bad in law, he is entitled to full back-wages. But in this case the employer had made an application, of course at the fag end of the trial, that they be allowed to adduce evidence to the effect that the workman was gainfully employed when not in Company's service and therefore he was not entitled to full back-wages. Unfortunately, this application made by the employer which, of course was very vehemently opposed on behalf of the workman was rejected. Anyway, the fact remains that the employer was not given reasonable opportunity to adduce evidence to show that during the period of unemployment the workman was gainfully employed elsewhere. If the Company was allowed to adduce this evidence it could be proved that he was not entitled to full back-wages. In such a situation ordinarily we would have remanded the matter back to the Tribunal with a view to find out whether the workman, as contended by the employer, was gainfully employed when he was out of job. However, since the matter was pending final disposal for long we are not inclined to remand it. Instead of doing that, with a view to see that the matter finally ends here, we would better decide here and now as to what should be the back-wages, taking into consideration the facts and circumstances of this particular case. Fortunately in this matter both the counsel appearing on behalf of the respective parties have left the matter as to the back-wages to us. And for the reason that the employer was not given opportunity to lead evidence to prove that while the workman was out of employment he was gainfully employed elsewhere, we feel that the ends of justice will be served if we order that the workman be paid 50% back-wages right from the day he was suspended till one week from today i.e., 10th September, 1984 from which day the workman shall be deemed to have been reinstated and he shall be thereafter entitled to full back-wages. We would like to make it clear here that his reinstatement will be with continuity to services for the purpose of all the consequential benefits. During the suspension period if the workman was paid any wages, those amounts shall be adjusted.

8. In the result, rule is partly made absolute with costs which we quantify at Rs. 500/-.