
(1995) 03 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No. 6116 of 1988

Bombay Presidency Golf Club Ltd.

APPELLANT

Vs

B.L. Sawalesh Warkar and Another

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1995) 71 FLR 632 : (1996) 1 LLJ 796

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : S.D. Puri, for the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India is directed against Part II Award of the 10th Labour Court, Bombay, dated August 10, 1988, made in Reference (IDA) No. 386 of 1985 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act")

2. The Petitioner is a prestigious Members Club in Bombay famous for its eighteen holes Golf Course. The Second Respondent was working as a Caddie master in the employment of the Petitioner Club and his duty was to supervise the work of Golf Caddies. The petitioner Club conducts National and International Golf Championship Tournaments. On February 12, 1984 there was one such Golf Tournament conducted on the premises of the Petitioner Club. At about 11.00 A.M. on that day the Second Respondent was found loitering in the main hall of the Club, though he had no business to remain there in the performance of his duties. He was instructed by Suryakant Patel, President of the Petitioner Club, not to loiter in the main Hall, but to go and supervise the working of Caddies. Instead of obeying the instructions given to him, the Second Respondent lost his temper and created commotion in the hall by shouting at the President of the

Petitioner, in the presence of all Members and their Wives, " What do you think - because you are the President of the Club you are the Prime Minister of India?" and then, gesticulating with his hand, he shouted in a loud voice, "Nikaljao Bahinchod". Thereafter, he went out and instigated other staff members, of the club to go on strike resulting in an illegal strike resulting in an illegal strike on the part of the staff members including the Second Respondent from 11.30 A.M. to 12.30 P.M. The Second Respondent was served with the charge-sheet dated March 7, 1984 detailing the misconduct against him and directing him to give an explanation and attend the domestic enquiry. By his reply given on the same day, the Second Respondent totally denied the allegations against him and contended that the allegations against him were not true and based on some misunderstanding. The Second Respondent requested the Petitioner Club to hold an inquiry as per rules and give a fair and full opportunity to defend himself. A detailed inquiry was held between April 4, 1984 to May 15, 1984. The Second Respondent initially participated in the inquiry, but subsequently avoided the inquiry by repeated requests for adjournments and, despite adjournments given to suit his convenience, he failed to attend the inquiry. The Enquiry Officer came to the conclusion that the Second Respondent did not wish to participate in the inquiry and concluded the inquiry on May 15, 1984. The Enquiry Officer made his report in which, he found that the allegations made against the Second Respondent had been proved by the evidence on record and concluded that three misconducts alleged against the Second Respondent had been proved beyond any reasonable doubt and" that the Second Respondent was guilty of all three misconducts. Pursuant to the said findings, the Second Respondent was dismissed by an Order dated May 19, 1984, after considering the seriousness of the charges alleged against him and his past record, which was far from satisfactory. The Second Respondent raised an industrial dispute which came to be referred initially to the 7th Labour Court, Bombay. The Labour Court, in the first instance, went into the question whether the domestic enquiry held against the Second Respondent was legal, fair and proper. After recording evidence on the said issue, by his Part 1 Award dated August 11, 1987, the learned Judge of the Labour Court held that the enquiry held against the Second Respondent was legal, fair and proper. The Labour Court also held that there were sufficient justifying reasons for the Enquiry Officer to continue and conclude the inquiry ex-parte in view of the non-cooperative attitude of the Second Respondent workman. The Reference was thereafter posted for hearing on other issues. In the mean-while, the reference came to be transferred to the 10th Labour Court for further disposal in accordance with law. The Labour Court thereafter made the impugned Part II Award dated August 10, 1988 in which it held that the punishment was unjust and shockingly disproportionate and directed the Petitioner Club to take the Second Respondent in service with continuity of service by paying 30 per cent of his wages from the date of his dismissal i.e. May 19, 1984. Being aggrieved by this order, the Petitioner Club is before this Court.

3. the only issue that needs to be considered is whether the interference by the

Labour Court with the order dismissal was justified, even on the footing that it had sufficient powers u/s 11-A of the Act. The issues which were framed for consideration by the Labour Court and answered were:

"Issues

1. Whether the punishment given to the workman is just and adequate?
2. Whether the workman is to be reinstated with continuity of service and full backwages with effect from May 19, 1984?
3. What Order?

Findings

- 1.No.
2. Entitled to reinstatement with continuity of service from the said date with 30% of back wages.
3. As per final Order

The Labour Court categorically rejected the defence sought to be made out by the Second Respondent before the Labour Court, about Suryakant Patel having angrily shouted against him under an influence of liquor, as unbelievable. The Labour Court also concluded that it was safe to accept the testimony of the Petitioner's witnesses that the Second Respondent was found loitering in or near the main Hall of the Club at the time of the incident. It also accepted that Second Respondent's duty was to supervise the work of Caddies. The Labour Court also held that the second Respondent was instructed by Lt. Col. Hodgson and then by Suryakant Patel, the Secretary and President of the Club, to go to the shed where the Caddies were and that it was his first duty to go to the shed. The Labour Court was conscious of the fact that, on the date of the incident, there were tournaments being conducted by the Petitioner Club in which the players were playing and the Caddies accompanied by the players had to be supervised by the Second Respondent. The Labour Court concluded , by observing: "Therefore, I am of the firm opinion that he failed to obey the instruction given by Mr. Suryakant Patel. It was his duty to go to the Caddie shed when he was asked to do so. Non-observance of the just instruction is nothing but a case of disobedience of a lawful and reasonable order of the superior. Therefore, in any view charge(a) is completely proved."

4. Turning then to the other part of the charge that the Second Respondent had misbehaved with the Office Bearers of the Club and had used abusive words to the President of the Club, the Labour Court dissected the Charge into two with regard to the words used. About the words, "what do you think because you are the President of the Club, you are the Prime Minister of India," the Labour Court was of the view that they were not abuses in nature. As to the other abusive words recorded in the inquiry, the Labour Court concluded that the words were abusive and uttered at the President, Suryakant Patel. The Labour Court,

however, rationalised the behaviour of the Second Respondent, by saying:

"Many a time one who is upset for any reason utters such words while departing from the unpleasant event with which he was faced. Therefore, one who overhears the same should not unnecessarily feel that they were hurled at him."

In this view of the matter, the Labour Court straightaway concluded that the latter part of the charge about misbehaviour with Patel was not proved. Having carefully perused the Impugned Order of the Labour Court I am of the view that the manner of exercise of jurisdiction was, to say the least highly irregular, if not outright perverse. In the first place, the evidence on record does not show that the Second Respondent was departing from the scene of the misconduct or that he was muttering the abusive words. The evidence of Lt. Col. Hodgson and Suryakant Patel shows that they reprimanded the Second Respondent for leaving the place of work and loitering in the main Hall, but he refused to go from there, stood there and hurled abusive words at Suryakant Patel. Any attempt to underplay this misconduct or to soft-pedal the issue as done by the Labour Court, was hardly justified. |

5. On the issue of strike also, the finding recorded by the Labour Court is perverse. The evidence on record showed that, soon after the incident i.e. at 11.30 A.M. on the material date, the strike of all the staff commenced and ended at about 12.30 P.M., despite the fact that the Golf Tournaments were going on. The Muster Roll shows the remark that the staff of the House Dept. went on illegal strike from 11.30 a.m. to 12.30 p.m. on that day. All the workers had submitted a joint statement under their signature admitting that they had gone on strike. The evidence of Hodgson clearly shows that the workers had gone on illegal strike on February 12, 1984 at the instigation of the Second Respondent, from 11.30 A.M. to 12.30 P.M. Even the evidence of Suryakant Patel showed that the Second Respondent had, immediately after the incident, instigated all staff members to go on strike, resulting in strike from 11.30 a.m. to 12.30 pm. Since the inquiry had already been held to be legal, fair and proper and this was the material in the inquiry to show that there was instigation of strike on the part of the Second Respondent, the finding of the Labour Court that there was no instigation is perverse.

6. Then we turn to the finding of the Labour Court on the quantum of punishment. The Labour Court itself came to the conclusion that the charges levelled against the Second Respondent were rather serious which resulted in a strike for one hour. However, from this, the Labor Court jumped to the conclusion that the first charge was not serious and, therefore, the punishment of dismissal was shockingly disproportionate. The past record of the Second respondent, which was produced before the Labour Court, indicated that from time to time there were complaints made against the Second Respondent for which he had given explanations and once he had been given a memo as he was : found urinating near the Club. Because serious action had not been taken against the Second Respondent in the past, the Labour Court facilely thought that the

misconduct of the Second Respondent was washed away and, therefore his part record must be assumed to be clean.

7. The seriousness of the misconduct had to be judged against the backdrop of the circumstances. The misconduct did not occur in a remote corner of the work shed, far from the sight of members. The Golf Tournaments conducted by the Petitioner Club are prestigious and well advertised and in fact, form the bedrock of its reputation as a top ranking Golf Club. During the Golf Tournament conducted by the Petitioner Club, wherein not only members but even outsiders participate, where there is a large gathering of ladies, gentlemen, and presumably, children, if a misconduct as proved against the Second Respondent takes place, the least one can say is that, it is a case of gross indiscipline. The Court could have considered showing leniency, if the subsequent conduct of the Second Respondent had indicated a measure of contrition on his part. After misbehaving with the President of the Club, the Second Respondent went and instigated his co-workers to go on an illegal strike. When a charge sheet was served on him, his explanation was not an apology, but added insult to injury by maligning the President of the Club of having misbehaved with him under the influence of liquor. If this is the conduct of the Second Respondent, I fail to see any scope for mercy or leniency. In my view, the Labour Court utterly misunderstood the purpose of the jurisdiction vested in it by Section 11-A of the Act.

8. Mr. Ganguli, for the Second Respondent, made a faint plea that the Labour court being fully empowered to exercise jurisdiction u/s 11-A of the Act had exercised discretion and, therefore, this Court ought not to interfere in writ jurisdiction. I am unable to agree. When a statute vests jurisdiction in a subordinate Court, it is expected that the jurisdiction is exercised not arbitrarily but for good reasons, with judicial discretion. To say the least, the exercise of jurisdiction in this case does not display judicial discretion, but judicial caprice. I am, therefore, of the view that the order of the Labour Court needs to be interfered with in the exercise of Writ Jurisdiction.

9. In the result, the writ petition is allowed, the impugned Award of the Labour Court dated August 10, 1988 made in Reference (IDA) No. 386 of 1985 is hereby quashed and set aside and it is held that the Second Respondent is not entitled to any relief.

10. In the circumstances of the case, there shall be no order as to costs.