

(1996) 03 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 5946 of 1995 and 677 of 1995

Cadbury India Ltd.

APPELLANT

Vs

V.B. Save and Others

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Citation : (1996) 73 FLR 1262

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

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—Rule in both Writ Petitions, returnable forthwith. Mr. Kochar, appearing for the 1st Respondent in Writ Petition No. 5946 of 1995, waives service on behalf of the 1st Respondent workman. Mr. Pavaskar, appearing for the 1st Respondent in Writ Petition No. 677 of 1996, waives service on behalf of the 1st Respondent employer. 2nd Respondent in both the Writ Petitions need not be served, being formal party.

2. By consent, Rule in both the Writ Petitions is called out and heard finally.

3. These two Writ Petitions are cross writ Petitions impugning the same Award (Part II) of the 2nd Labour Court, Thane, dated 30th August 1995 made in Reference (IDA) No. 24 of 1988.

4. The petitioner in Writ Petition No. 5946 of 1995 is the employer and the 1st Respondent therein is the workman. They shall hereinafter be referred to as the "employer" and the "workmen" respectively.

5. The workmen was dismissed by the employer after serving upon him a charge sheet dated 6th December 1985 and holding an inquiry thereinto. The charge was a serious charge that on 2nd December 1985 the workman had entered into an altercation with a co-employee during which he caught hold of the co-employee and slapped him and also called outsiders to help him in belabouring the co-employee. The Inquiry Officer found the workmen guilty of the charges

levelled against him. The employer consequently dismissed him from service. The workman demanded reinstatement and raised an industrial dispute therefor. The industrial dispute resulted in Reference (IDA) No. 24 of 1988 being made to the Labour Court, Thane, for adjudication. By Part-I Award dated 27th October 1994, the Labour Court held that the inquiry conducted against the workmen was fair and proper. By Part-II Award dated 30th August 1995, the Labour Court came to the conclusion that the punishment of dismissal was disproportionate to the mis-conduct proved against the workman and directed the employer to reinstate the workman with 50% of the back wages and without continuity of service. Being dissatisfied, both the parties have come up by way of Writ Petition-the employer challenging the direction as to reinstatement and back wages and the workman challenging the direction depriving him of continuity of service and 50% of the back wages.

6. Having perused the Writ petitions and having heard the lengthy arguments addressed to me by the learned Counsel on both sides. It appears to me that this is a situation where the solution lies midway between the two extremes. Though, the workman was found guilty on his own admission, I am not satisfied that the admission was full and unqualified with regard to all misconducts alleged. At least, on one term of the charge, the admission appears to be qualified and it is difficult to say that the workman would have been found guilty of all the charges fully to the extent as alleged. I am, therefore, of the view that the Labour Court was justified in holding that there was a certain amount of disproportionality in imposing the punishment of dismissal on the workman. However, the final relief given by the Labour Court appears to be somewhat incongruous. The Labour Court has directed reinstatement without continuity, but payment of 50% back wages. Had it been one or the other, there was no need for me to interfere. Since, it is partly one and partly the other, there is need to interfere.

7. Mr. Kochar vehemently urges that the workman is entitled to reinstatement with full back wages and continuity of service, while Mr. Pavaskar equally vehemently contends that the order of dismissal was fully justified and the workman should be deprived of all reliefs. I am not satisfied that either extreme contention is justified.

8. In my considered view, the ends of justice would be adequately met if the workman is reinstated with continuity of service and deprivation of full back wages. That way he would still retain his job; not lose the benefits of continuity of service and yet have a long career before him in which he can reform himself and not repeat the activities attributed to him.

9. With this end in my mind, I pass the following order :-

i) Writ Petition No. 5946 of 1995 is partly allowed to the extent that the direction for payment of 50% back wages as made in the impugned Award (Part II) dated 30th August 1995 is quashed and set aside.

ii) Writ Petition No. 677 of 1996 is also partly allowed to the extent that the

direction as to deprivation of the continuity of service is quashed and set aside.

iii) Consequently, the workman shall be entitled to reinstatement with continuity of service, but without back wages.

iv) Stay vacated. Reinstatement to be carried out not later than 1st April 1996.

(v) Rules issued in the Writ Petition are accordingly made partly absolute. There shall be order as to costs.

10. Issuance of certified copy of this judgment is expedited.