
(2003) 02 BOM CK 0090
In the Bombay High Court
Case No : L.P.A. No. 4 of 1991

Devgiri Textile Mills Ltd.

APPELLANT

Vs

Anil Ambadasrao Jawale and Another

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 97, 97A

Citation : (2003) 3 LLJ 537

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : I.A. Saiyed and V.N. Dankh, for the Appellant; S.S. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This Letters Patent Appeal arises from the judgment and order, dated December 3, 1990, passed in W.P. No. 3970 of 1989 by this Court (Single Bench). It would be appropriate to list out the factual matrix, in short, leading to Writ Petition No. 3970 of 1989.

2. The respondent No. 1 (hereinafter referred as the employee, for Short), was issued a chargesheet on December 24, 1983 alleging that while he was on duty in the first shift on December 21, 1983 he had left his work place and instigated the workers of the Ring Frame Department to illegally stop the work and accordingly the work was suspended. He had thus instigated and participated in an illegal strike by collecting the workers from Ring Frame Department, in front of the Spinning office and when they met the Spinning Master he had told them to restart the work, the employee disobeyed the orders. The charges, as per the Model Standing Orders applicable to the Textile Mills read as under:

(i) Going on an illegal strike or abetting, initiating, inciting or acting in furtherance of such strike;

(ii) wilful damage to work in process or to any property of the undertaking;

(iii) wilful insubordination or disobedience of any lawful and reasonable order of the superior;

(iv) indisciplined and indecent behaviour in the premises of the mills; and

(v) the commission of any act subversive of good behaviour on the premises of the undertaking.

3. In the said chargesheet it was also mentioned that the management had decided to hold a departmental inquiry and Sri A.S. Wagle, Administrative and Personnel Officer was appointed as an inquiry officer which would be commenced on December 28, 1983. On December 30, 1983 the employee submitted his reply to the chargesheet and while denying the charges he pointed out that he was an active office-bearer in the past and always fought by adopting legal means in the cause of the workers which was not liked by some other group as well as the management and, therefore, a farce was made to proceed against him. During the course of inquiry three witnesses were examined on behalf of the management and seven witnesses on behalf of the employee. The request of the employee to be represented by Sri V.D. Deshpande, who was a practicing lawyer, as well as a trade unionist was not acceded to and the employee therefore defended himself before the inquiry officer. The inquiry officer submitted his report on January 19, 1984 and had held that the following charges were proved against the employee:

(i) Disobedience of any lawful or reasonable order of a superior;

(ii) The commission of any act subversive of discipline.

4. The said report was accepted by the management and by order, dated February 11/20, 1984, he was awarded the punishment of dismissal from service on account of the above said two charges having been proved against him in the departmental inquiry.

5. Being aggrieved by the order of dismissal the employee approached the Labour Court at Aurangabad by filing an application under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 (BIR Act, for short). Both the parties relied upon the documentary evidence and after considering the said evidence as well as the rival contentions advanced by the respective parties, the Labour Court held that:

(i) the findings recorded by the inquiry officer were perverse;

(ii) the order of punishment required interference; and

(iii) the employee was entitled to the relief of reinstatement with continuity of service and back wages.

The Application (BIR) No. 20 of 1984 thus came to be allowed by the learned Judge of the Labour Court on August 10, 1988 and the order of termination was set aside by directing reinstatement within a month with continuity of service

and back wages from the date of termination.

6. Being aggrieved by the view taken by the Labour Court the management filed appeal (BIR) No. 2 of 1988 u/s 84 of the BIR Act and the said appeal came to be allowed by the learned Member of the Industrial Court at Aurangabad vide his judgment and order, dated August 23, 1989. The Industrial Court held that the Labour Court had committed an error by concluding that the findings of the inquiry officer were perverse. The employee, therefore, approached this Court in Writ Petition No. 3970 of 1989. It has been held by the learned single Judge that the findings recorded by the inquiry officer did not call for interference by the Industrial Court even under its appellate powers and the said findings could not be held to be perverse. It was, in addition, held that the management was guilty of discrimination inasmuch along with the employee another employee by name Sri S.R. Solunke from the Ring Frame Department was also issued a chargesheet for the same charges on December 24, 1983 itself but no action was taken against him and the learned counsel for the management was unable to subscribe any reason as to why no action was taken against Sri Solunke and only the petitioner-employee was chosen to proceed against. This Court went further in the matter of quantum of punishment and held that even if the acts of misconduct as set out in the dismissal order were presumed to be proved, the punishment of dismissal from service was grossly disproportionate to the said charges. It was for these reasons that the order passed by the Industrial Court was set aside and that of the Labour Court was confirmed by allowing the writ petition.

7. Sri Sayeed, the learned counsel for the appellant management has taken us through the inquiry report, the judgment of the Labour Court as well as the Industrial Court. From the record and proceeding we have also perused the inquiry proceedings. The officer, in his report dated January 19, 1984, recorded the following findings:

"It is an admitted fact that the Ring Frame Department of the mill was stopped at about 7.10 a.m. and was restarted at about 8.15 a.m. on December 21, 1983. It is also an admitted fact that Sri A.A. Jawale had participated in the said act of illegal stoppage of work. Now, the question remains is as to whether Sri Jawale A.A. instigated the workers of Ring Frame Department to stop the work. From the evidence on record, it is clear that Sri Jawale A. A. had instigated workers of Ring Frame section to stop the work."

Sri Sayeed, the learned counsel therefore, submitted that in addition to the charges mentioned in the order of dismissal the charge of initiating the workers to resort to an illegal strike was also duly proved and that being a more serious charge the punishment of dismissal was fully justified. He also submitted that the domestic Tribunal being a fact finding forum, the Labour Court as well as the Industrial Court would have limited jurisdiction to take a contrary view than the view taken by the inquiry officer in his findings and the conclusion drawn by the Labour Court that the findings were perverse was manifestly erroneous. On the

point of discrimination, it was initially submitted that such an issue was not raised at the threshold, i.e., before the Labour Court and the management was taken by surprise during the course of hearing of the petition. However, while justifying the action of the management, in not proceeding against the co-employee, i.e., Sri S.R.Solunke, it was submitted by the learned counsel that the said co-employee had accepted the charges and tendered his unconditional apology. He had also furnished an undertaking that he would not indulge in any such act in future. If a co-accused accepts the charges and furnishes an undertaking of good behaviour in future, the management would be fully justified in closing the disciplinary proceedings and exonerating such a co-employee. There can be no doubt on this general principle which has received its sanctity in the decision of the Supreme Court in the case of *The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor Industries Co. Ltd.* Bangalore, . On the issue of grossly disproportionate punishment, Sir Sayeed submitted that even one charge of misconduct proved against a workman could be a sufficient ground to award the capital punishment of dismissal and in the instant case it was held by the inquiry officer that the employee was found to be guilty of initiating the workers to go on illegal strike and, therefore, the punishment awarded to him could not be termed as grossly disproportionate. The punishment was justified and under the Model Standing Orders applicable to the establishment, such a punishment has been listed for a misconduct proved against the employee, urged the learned counsel.

8. Sri Kulkarni, the learned counsel appearing for the employee has supported the view taken by the Labour Court and confirmed by this Court. On the point of discrimination, our attention, has been invited to an affidavit presented before the Labour Court in Application (BIR) No. 20 of 1984 wherein specific averment was made by the employee that Sri S.R. Solunke was also chargesheeted for the same set of misconducts as the affiant was charged and the said Sri Solunke was continued in service by exonerating him, whereas the employee was picked up and victimised by an order of dismissal. On the basis of this affidavit, the learned counsel for the employee submitted that the ground of discrimination was not raised by surprise when Writ Petition No. 3970 of 1989 was being heard before this Court.

9. From the material available before us, the following facts have been established:

(i) The employee as well as Sri S.R. Solunke were present in the first shift commencing from 7.00 A.M. on December 21, 1983 in the Ring Frame Department.

(ii) A group of workers had stopped work for sometime and not for a period exceeding one hour and the employee as well as Sri Solunke were from this group of workers.

(iii) Sri Jagannath, the Supervisor/Foreman had noticed the stoppage of work by

about 8 to 10 workers and he had advised them to resume the work and the issue of the suspension order of Sri Rajwade could be sorted out after the arrival of the General Manager and in spite of this advice the group of workers did not restart the work.

(iv) The work restarted at about 8.10 a.m. with the intervention of the General Manager as well as the elected representatives of the union.

(v) There was no production loss at the end of the shift.

10. We have no doubt in our mind that the inquiry officer had conducted the inquiry fairly and properly and the inquiry proceedings were not vitiated on any count. Out of the three witnesses for the management two of them were workers from the very same Ring Frame Department and out of the seven witnesses examined in defence by the employee, two of them were from the Ring Frame Department and all had supported his defence. The workers on behalf of the management supported the charge that the employee had instigated the strike whereas two workers from the Ring Frame Department, who acted as defence witnesses, denied the charge and proceeded to state before the inquiry officer that the group of workers had stopped work for some time as an action of protest against the suspension order issued to Sri Rajwade. It would be appropriate for us, therefore, to examine the testimony of Sri G.Jagannath to consider the moot question as to whether the charge of initiating the workers to go on strike or stop work illegally is duly proved before the inquiry officer.

11. The depositions of Sri Jagannath recorded in Marathi on December 28, 1983 have been duly signed by him along with the inquiry officer, the chargesheeted workman and the presenting officer. In his examination-in-chief he stated that:

(a) on December 21, 1983 he reported for duty at 7.00 a.m. and at about 7.10 a.m. he entered the Ring Frame Department and noticed that near machine No. 27, seven-eight workers were standing near the door along with Sri Solunke and the employees;

(b) he noticed that some workers were not on their machines and when he asked Sri Sharma, Jobber (section No:2) as to why the Siders were not on the machines, the said Sharma replied to him that there was some disturbance and, therefore, the siders did not reach the machines;

(c) he, therefore, went near the machine No. 25 and talked to 8-10 workers regarding the disturbance, he then came in front of the Spinning office and noticed that a group of about 20-25 workers were coming to him by leaving their respective duties. He asked them the reason for disturbance and he was asked why the suspension order issued to Sri Rajwade was not withdrawn and they further told him that the said employee should be taken on duty immediately he informed them that the concerned clerk in the Ring Frame Department was on holiday and after his reporting for duty appropriate decision would be taken, in the meanwhile, some other workers also joined the group and he advised all of

them to report for work and on the arrival of the General Manager the issue could be sorted out;

(d) However, the workers from the Speed Frame, Carding and Blue Room Department resumed their duties and some of the workers from the Ring Frame Department were ready to work but with the help of such small number the work could not be started;

(e) so as to avoid the jamming of machines he had switched off the power and the workers from the Ring Frame Department did not resume duties, they refused to resume duties and they have all gathered outside the section and were discussing;

(f) On the arrival of the General Manager, discussions were held with the workers and resultantly the work resumed at about 8.15 a.m.

(g) Due to stoppage of work for about one hour there was a loss of 300 Kilos in production and thus the management suffered financial loss;

(h) when the workers had reported for duty they had no intention of stopping the work but at the instigation of the employee and other workers the work remained suspended for about one hour and fifteen minutes.

In his cross-examination subjected by the employee himself Sri Jagannath agreed that:

(a) when he entered the Ring Frame Department the employee was standing near the machine No. 27 and along with him Sri Solunke, Sri Sonkamble and other workers were present. While he was proceeding towards the machine No. 27, he had inquired with Sri Sharma regarding the disturbances and he was informed that as the siders did not report for duty the machines were not switched on;

(b) however, he did not ask the reasons, why the siders did not report for duty as the group of workers was standing near the door;

(c) Along with the employee other workers also came to the verandah near the Spinning office and the employee was on the forefront;

(d) he asked the employees regarding the reason for disturbances and workers asked him how long Sri Rajwade was likely to be kept under suspension;

(e) at that time the workers from other departments like Speed Frame, Blue Room and Carding were also present and as per his knowledge they had also switched off the machines.

It is pertinent to note that this star witness of the management did not state that he had seen the employee initiating other employees either to switch off the machines or not to start the machines. He also did not state that from any other employee like Sri Sharma, he had come to know that the employee had asked the other employees to do so. However, towards the closing of his examination-

in-chief he stated that the work was stopped at the instigation of the employee and other workers. The names of these other workers were not disclosed and in his cross-examination he stated that the employee and Sri Solunke along with the workers were discussing with him regarding the suspension of Sri Rajwade. He also did not state that after he had advised the workers to go and resume the duty, the employee directed or instigated or instructed the other workers not to do so. In the cross-examination he candidly stated that he was not aware whether the employee had instructed the workers in Carding, Blue Room and Speed Frame Department to stop the work after he had advised them to resume work and towards the closing of the cross-examination he stated that the Ring Frame Department was closed at the initiative of the employee.

12. This testimony of Sri Jagannath does not lead anywhere on the charge of initiating workers to stop the work when it is admitted that in the said Ring Frame Department there was a strength of about 75 workers and he had seen about 20-25 workers coming to him near the spinning office to discuss about the suspension of Sri Rajwade. If the employee was on the forefront of this group, that itself cannot be a ground to conclude that he had instigated other workers to stop the work.

13. Section 97 of the BIR Act deals with illegal strikes and Section 97-A of the said Act states that a stoppage of work shall be illegal if it is commenced or continued with the object of compelling the Central or State Government or any public servant to take or abstain from taking any particular course of action in regard to an industrial matter where the Central or State Government is not an employer in the industry concerned or if such stoppage is in support of or in sympathy with a strike which is illegal under this Act or the Industrial Disputes Act, 1947 or any other law for the time being in force whether or not in the same industry occupation or undertaking. If a strike is commenced or continued relating to an industrial matter specified in Schedule III or regulated by any Standing Order for the time being in force or without giving notice in accordance with the provisions of Section 42 shall be termed to be illegal. Even a strike in contravention of the terms of agreement or settlement or effective decision of a Wage Board would be also illegal. Clause 24 (b) of the Model Standing Orders attributing misconduct for participating or inciting or initiating a strike, reads thus:

"Going on an illegal strike or abetting, inciting, initiating or acting in furtherance thereof shall amount to an act of misconduct."

In the instant case one Sri Rajwade was issued an order of suspension on account of the alleged assault by him on a clerical staff member and there is no dispute that a group of workers had shown concern regarding his continued suspension and, therefore, they wanted to know from the management as to how long he was likely to be continued under suspension. The industrial action so resorted to by a group of workers resulted in stoppage of work for about one hour though the machines were switched off for fifteen minutes and such an act,

may be termed as illegal stoppage of work. However, on the basis of the record that we have perused, there is no doubt in our mind that it was not an individual act and it was a group action. There is no dispute that the employee, at the relevant time, was not a member or an office-bearer of any trade union, leave alone a representative trade union under the BIR Act and admittedly such a representative trade union did not exist so far as the establishment of the management is concerned. On shifting the entire evidence, which was placed, before the inquiry officer, we are in agreement with the finding recorded by the Labour Court that the charge of initiating or inciting other workers to go on illegal strike was not proved against the employee in the domestic inquiry and the dismissal order was proceeded only in respect of the two charges purportedly proved and stated therein.

14. Coming to the issue of discrimination practiced by the management in picking up the employee for awarding the punishment of dismissal, we may usefully reproduce the averments made in Para 7, of the petition memo.

".... During the pendency and in the proceeding in the said application, the petitioner filed an affidavit, dated November 25, 1986, pointing out that although the similar charges were levelled against Sri S.R. Solunke and enquiry was conducted no action was taken against him and thus the petitioner was discriminated and singled out for victimisation by harsh action of termination of service. The petitioner also filed relevant papers in support of the aforesaid contentions in the Labour Court. The petitioner says that the respondent No. 1 did not intend to take any action against Sri Solunke though sufficient time had passed."

There is no dispute that Sri S.R. Solunke was issued chargesheet on December 24, 1983, the charges levelled against him were identical as compared to the charges levelled against the employee and no action was proceeded further and he was continued in employment. When the petition came up for hearing the counsel for the management was unable to subscribe any reason as to why no action was taken against Sri Solunke. This Court, in para 5, observed thus:

"So far as the question of discrimination is concerned, it is an admitted position that most of the workers in the department had stopped the work but they were not proceeded against and only two persons were served with the chargesheet and one of them was left without any punishment at all. No specific reason has been made out by the management as to why the petitioner is chosen for inflicting this punishment. Management acting under the Standing Order cannot pick and choose an employee and pass any deterrent punishment on him. Sri Joshi, learned counsel appearing for the management, was unable to subscribe any reason as to why any action was not taken against Sri Solunke and only petitioner was chosen for it."

15. The appellant mill is undoubtedly a public sector undertaking and in the absence of its own service rules or Standing Orders framed it was following the

provisions of the Model Standing Orders framed by the Government of Maharashtra under the BIR Act. It was not the case of the management before this Court that the charges against Sri Solunke were dropped as he had tendered an unconditional apology and furnished an undertaking of good behaviour in future. The reliance on the decision of the Apex Court in the case of Workmen of the Motor Industries (supra) is, therefore, misplaced. It is well established that it is a discretion of the management to drop the inquiry proceedings if the delinquent tenders an apology and furnishes an undertaking for good behaviour in future but such was not the case placed before this Court when Writ Petition No. 3970 of 1989 was decided. We must emphatically note that the management did not file an affidavit in reply in the said petition and deny the averments made in Para. 7 of the petition memo. The learned counsel for the management, before us, submitted that the affidavit alleged to have been submitted on November 26, 1986 was, in fact, not submitted. If that be so nothing stopped the management from filing the affidavit in reply in Writ Petition No. 3970 of 1989 so as to take such a stand.

16. On the point of quantum of punishment we note that the role of the employee in the illegal stoppage of work for about one hour on December 21, 1983 is comparable with all those 8-10 or 20-25 co-workers who had suspended the work when Sri Jagannath entered in the Ring Frame Section and talked to them. For such group action the employee could not be held responsible singly unless the charge of initiating or inciting such illegal stoppage of work or strike was duly proved before the inquiry officer. If a group of workers had resorted to illegal stoppage of work, an appropriate remedy has been provided under the Payment of Wages Act. Sections 7, 9 as well as Section 10(1A) of the Payment of Wages Act, 1936 provides for a remedial measure which certainly serve as a deterrent against such group action. Even if the employee is held to be guilty of participating in illegal stoppage of work which spread over for about one hour, and his failure to obey the orders of Sri Jagannath to restart the work the punishment of dismissal from service, in our considered view, can be termed as grossly disproportionate punishment and, therefore, this Court was right in taking a view accordingly in Writ Petition No. 3970 of 1989. It was brought to our attention, during the course of hearing, that the Textile Mill has been closed down from June 1, 2002 and the employees were offered voluntary retirement scheme which was accepted by almost all of them. The employee could have availed the said benefit pursuant to the decision of the Labour Court and, therefore, when we uphold the order of the Labour Court, he would be deemed to be in continuous service and would be entitled to avail the benefits of the voluntary retirement scheme on par with other employees.

17. In the result, we dismiss this appeal and confirm the order passed by the Labour Court in Application (BIR) No. 20 of 1984. The amount on wages deposited in this Court and remaining in balance till May 31, 2002 shall be allowed to be withdrawn by the employee whereas the balance amount could be withdrawn by the management on account of the fact that from June 1, 2002 all

the workmen of the establishment accepted voluntary retirement and the operations have been closed down. No costs.

18. Undoubtedly, in case the employee has submitted or submits an application for voluntary retirement he shall be entitled for the benefits of the scheme as have been extended to other employees.