

(2008) 03 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1526 of 1997

Force Motors Limited (formerly known as Bajaj Tempo Limited)

APPELLANT

Vs

Shrikrishna Shivram Tungar and Another

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2008) 3 BomCR 53 : (2008) 117 FLR 606 : (2008) 2 LLJ 771

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : Sudhir Talsania and Pallavi Dedhia, for the Appellant;

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This Petition is directed against passed by the IIIrd Labour Court Reference (IDA) No. 150/1985 on 23-12-1996 said Award the Respondent workman was reinstated in his original post with continuity of service and 50% backwages.

2. The Petitioner is a Company incorporated under the Companies Act, 1956. It was earlier known as "Bajaj Tempo Limited" and subsequently it has been renamed as "Force Motors Limited". It has a factory at Akurdi, Pune and it manufactures commercial vehicles. The Respondent workman was employed in the said factory. He was issued a chargesheet on 18-2-1983 and it was alleged that on 22-1-1983 while he was on duty in the first shift, he had gone to the Inspection Department and whistled and hooted and forced the other workmen to stop the work. A departmental enquiry was instituted against him and the enquiry officer submitted his report on 19-10-1984. The enquiry officer held that the Respondent was present in the first shift on 22-1-1983 and he was guilty of the acts of misconduct levelled against him as per the chargesheet. Consequently, he was dismissed from service by way of punishment vide the order dated 20-10-1984 and the said dismissal order stated that his past record

of service was also taken into consideration. The Respondent raised an industrial dispute for his reinstatement and the said came to be referred to the Labour Court for adjudication in Reference (IDA) No. 150/1985.

3. On 18-1-1994 the Labour Court passed the part-I Award holding that the enquiry conducted against the Respondent was not legal, fair and proper and the findings of the enquiry officer were perverse. The said Award came to be challenged before this Court in Writ Petition No. 1456/1994 which was summarily dismissed on 28-3-1994. The Petitioner Company, therefore, filed Letters Patent Appeal No. 72/1994. By an interlocutory order dated 12-4-1994 the part-I Award was stayed and the Labour Court was directed to proceed further as if the enquiry held was fair and proper. On the final findings of the Labour Court, liberty was granted to either sides to move this Court, if necessary. On passing of the impugned Award, LPA No. 72/1994 came to be disposed off on 9-1-2002.

4. In view of the orders passed by this Court in LPA No. 72/1994 the only question that remained to be considered by the Labour Court in part-II Award was whether the punishment awarded was justified and the Labour Court held that the punishment of dismissal was not justified and, therefore, it granted reinstatement with 50% backwages by the impugned Award.

5. During the pendency of this petition, the Respondent workman died and his legal heirs have been brought on record. In spite of service of notice, they have not caused appearance till this date. The impugned Award was stayed by this Court while granting Rule on 25-3-1997 and by the said order the Respondents right to apply for the benefits u/s 17B of the Industrial Disputes Act, 1947 was protected. However, during the last about more than 10 years, no such application was filed by the Respondent workman during his lifetime. The presumption to be drawn is either he was gainfully employed or he was physically incapacitated to undertake any employment.

6. The reasoning given by the Labour Court in support of the impugned Award of reinstatement with 50% backwages reads as under: The workman was out of employment since long back and he has not got any other job and he is conducting this matter since long back. If there was a misconduct on the part of the workman, he must have realised his act. Considering the facts of the case and position of the workman, it will be just and proper to give the relief of reinstatement. If the reinstatement is not granted with continuity of service then there will be heavy loss of the workman. Therefore, reinstatement should be granted with continuity of service. As regards backwages, some lesser punishment should be given to the workman. Therefore, 50% backwages be given to that workman. This lesser punishment will meet the ends of justice. Therefore, I decide issue No. 1 in the negative and issue No. 2 accordingly i.e. reinstatement with 50% backwages."

7. It is well settled that awarding punishment for an act of proved misconduct is in the realm of managerial prerogative of the employer and even u/s 11A of the

Industrial Disputes Act, the Labour Court/Industrial Tribunal will not interfere with the punishment awarded by the employer unless the punishment was found to be grossly disproportionate to the acts of proved misconduct. In other words, the Labour Court has powers to interfere with the quantum of punishment if the same is found to be shockingly disproportionate to the nature of charges proved. Even while interfering with the quantum of punishment u/s 11A of the I.D. Act, it is necessary for the adjudicator to set out reasons justifying the said interference or moulding of the relief. In the instant case this Court had directed the Labour Court to proceed with the reference on the basis that the enquiry conducted was fair and proper. The Labour Court has accepted that the charge of misconduct levelled against the workman was proved. The Petitioner Company had submitted before the Labour Court that the charge proved against the workman was serious in nature and, therefore, taking into consideration his past record of service there was no reason to interfere with the order of dismissal. The Labour Court gave the above stated cryptic reasons to cause interference in the order of dismissal and in disregard to the past service record which infact is far from being satisfactory as is clear from the following tabular statement.

8. It is obvious that the Learned Judge of the Labour Court only proceeded on the basis of sympathetic considerations and it was a misplaced sympathy. Before the enquiry officer the Petitioner Company had examined two witnesses namely Shri A.A. Sarvan who had submitted his report dated 22-1-1983 and Shri H.V. Koli who was a co-workman. Mr. Sarvan had stated before the enquiry officer that the Inspection Department was just opposite his machine and the workman had come from inspection department to the Crank Shaft Department. Mr. Koli was one of the workmen who had worked with the Respondent and he admitted before the enquiry officer that the workers were requested initially to stop the work and when they did not respond, they were forced to stop the work in the first shift. This was nothing short of instigating and forcing the workmen on duty to go on an illegal strike which is a serious act of misconduct.

9. I am, therefore, satisfied that the Learned Judge of the Labour Court fell in gross errors to interfere with the order of dismissal and the reference ought to have been dismissed. The reasoning set out by the Labour Court in moulding the relief is perverse and without taking into consideration the seriousness of the charges proved against the Respondent as well as his past record of service.

10. Hence, this Petition succeeds and the same is hereby allowed. The impugned Award is quashed and set aside and Reference (IDA) No. 150/1985 stands dismissed. Rule is made absolute accordingly with no order as to costs.