

(1994) 06 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 3373 of 1990

General Manager, The B.E.S. and T. Undertaking

APPELLANT

Vs

Best Kamgar Sena and Another

RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Citation : (1994) 06 BOM CK 0078

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapadia, J.—This Writ Petition is filed by the Undertaking seeking to challenge the Order passed by the Industrial Court dated 28th August 1990 by which the chargesheeted employee was directed to be reinstated with 50% back wages and further by reduction on grade by one step for three years.

2. The facts giving rise to this Petition are as follows :

(a) On 9th December 1978, the chargesheeted employee, being a Bus-Conductor, was appointed by the Undertaking. On 2nd May 1979, he was dismissed for rude behaviour. The matter was settled and he was reinstated by the Undertaking.

(b) On 14th July 1981, the Bus Supervisor submitted a report to the Undertaking to the effect that on 14th July 1981, the Supervisor was posted to check the uniform of staff at kurla Division; that at about 5.30 a.m. in the morning, the Conductor reported for duty : that he reported for duty in a terry-cot private uniform and that he had not displayed his badge as well as BEST Conductor number paper badge properly. As per the report, the BUS Supervisor enquired of the chargesheeted employee as to why he was not in uniform and also as to why he had not displayed the badge. According to the said report, the chargesheeted employee challenged the authority of the Supervisor and also threatened him with dire consequences. As per the said report, abusive language was used by the employee and in the above circumstances, the report came to be made.

(c) On 4th August 1981, accordingly, he was chargesheeted.

(d) After an enquiry, the employee came to be dismissed on 24th Dec. 1982.

(e) Being aggrieved by the said dismissal, the employee preferred Application (BIR) No. 256 of 1982 to the Labour Court which came to the conclusion that the misconduct was proved. However, the Labour Court concluded that dismissal was not warranted and the punishment was shockingly disproportionate. In coming to the above conclusion the Labour Court found that the workman had put on the uniform of terry-cot which was not supplied by the B. E. S. T. The Labour Court also found that terry-cot uniforms were more convenient than the cotton cloth uniforms. The Labour Court also found that two uniforms per annum are supplied to the employees/ Conductors. The Labour Court also found substance in the contention of the workman that his uniforms had gone for washing and, therefore, he had put on the uniform of terry-cot and not of cotton cloth, In the above circumstances, the Labour Court found that although the workman was guilty of misconduct dismissal was not warranted. In the above circumstances, the Labour Court directed reinstatement of the workman with continuity of service from 24th December, 1981. However, 50% of the back wages were directed to be withheld. In the above circumstances, punishment to that extent was awarded by the Labour Court. In absolute figure Rs. 75000/- were allowed to be withheld by the Undertaking and the workman was paid the balance amount of Rs. 75,000/-. The back wages were of Rs. 1,50,000/- approximately.

(f) Being aggrieved by the said decision, Appeal was preferred to the industrial Court. By the impugned Order, the Industrial Court partly allowed the Appeal of the Undertaking and came to the conclusion that the conductor was guilty of misconduct and in the facts and circumstances of the case, the industrial Court confirmed the Order of the Labour Court and further directed that the Conductor should be reduced in grade by one step for three years.

(g) Being aggrieved by the Order of the Industrial Court, the Underrating has filed the present Writ Petition. At the stage of admission, there was no stay of reinstatement. In the circumstances, the Conductor stood reinstated from 1990 and he is working in the Undertaking.

3. The only point which is required to be considered in the present case is whether the punishment impugned by the industrial Court was fair and proper and whether the Undertaking was right in dismissing the employee. The Industrial Court has come to the conclusion that the Labour Court was right in concluding that the workman was guilty of misconduct. However, the punishment of dismissal appears to be excessive. The finding of the Labour Court in paragraph 11 to the effect that two uniforms were supplied by the Undertaking for the year; that the said uniforms were sent for washing and the fact that the employee had worn the uniform of terry-cot although amounted to misconduct and although it did not justify use of abusive language qua the Superior, withholding of the back wages the extent of Rs. 75,000/- and reduction in grade

by one stage for three years was an adequate punishment. The Industrial Court was, therefore, right in imposing the above punishment. No interference is called for. Punishment of dismissal is not justified. In any event, in view of the subsequent event viz. that the petitioner has been reinstated and he has been working as a Conductor from 1990 with the Undertaking, I am not inclined to interfere with the impugned Order passed by the Industrial Court.