

(1994) 09 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 1782 of 1984

Girni Kamgar Sena and Others

APPELLANT

Vs

S.D. Rane and Others

RESPONDENT

Date of Decision : 26-09-1994

Acts Referred:

Citation : (1995) 70 FLR 60 : (1995) 1 LLJ 1142

Hon'ble Judges : V.P. Tipnis, J;A.M. Bhattacharjee, J

Bench : Division Bench

Judgement

Tipnis, J.—The Girni Kamgar Sena, a trade union and two workers of the Raghuwanshi Mills Ltd., filed this petition challenging the order of the Industrial Court, Bombay.

2. The petitioner No. 1 is a trade union and the workers in the Raghuwanshi Mills Ltd., Bombay are the members thereof. The petitioner Nos. 2 and 3 were employees and working in the spinning department and were members of the petitioner No. 1 union.

3. On 2nd December 1980 all the workers of the respondent went on spontaneous strike at 12 noon. The strike lasted for a couple of hours. The Mills obtained exparte declaration from the Labour Court on 21.2.1981 that the said strike was illegal. Thereafter on 15.3.1981, four identical charge-sheets against the four workers including the petitioner Nos. 2 and 3 were issued by the Mill. The allegations were that they participated in the illegal strike and also incited the operatives to strike work. A regular domestic inquiry was held for the alleged misconduct. The workers contended that the strike was spontaneous and nobody has incited. After the inquiry all the 4 workers including the petitioner Nos. 2 and 3 were dismissed from service with effect from 27.5.1983.

4. The petitioner No. 1 Girni Kamgar Sena and the 4 dismissed workers filed a Complaint (ULP) No. 60 of 1981 before the Labour Court at Bombay alleging that the Mill had engaged in unfair labour practice falling under Item No. 1(g) of

Schedule IV of the MRTU and PULP Act. It is an admitted position that during the pendency of the Complaint No. 2 of the workers who were dismissed were reinstated by the Mill. As such the dismissal of the remaining two who are petitioner Nos. 2 and 3 herein was any considered by the Labour Court.

5. The Labour Court held that the evidence of two witnesses during the inquiry i.e., that of one Mr. Dave, Labour Officer and Shri Khan, Manager was vague and contradictory. The Labour Court came to the conclusion that there is no direct or specific evidence before the Enquiry Officer to fasten the guilt of incitement against the 4 workers. The Labour Court found that the findings given by the Enquiry Officer are perverse and the order of dismissal is illegal and improper. The Labour Court wondered as to on what basis 2 of the dismissed workers were reinstated and why the remaining two were treated differently. The Labour Court observed that the Mill is unable to explain why out of large number of strikers only the complainants were selected for punitive action and why subsequently the two dismissed workers were reinstated. He thus held that the Mill is guilty of unfair labour practice. By his Judgment and order dated 6th August, 1983 the learned Presiding Officer of the 3rd Labour Court, Bombay, therefore, allowed the complaint and directed the Mill to reinstate the petitioner Nos. 2 and 3 with effect from 27.5.1981.

6. Being aggrieved by the said decision the Mill preferred Revision Application (ULP) No. 13 of 1983 to the Industrial Court at Bombay. The Industrial Court observed that only in cases where error apparent on the face of the record is evident in the order passed by the Labour Court, the Industrial Court can interfere u/s 44 of the Act. The Industrial Court further observed that the strike was declared illegal by the Labour Court and the striking workers contravention of the provision of Bombay Industrial Relations Act is also a misconduct mentioned in the Standing Order and incitement to other operatives to strike work in contravention of the provisions of the Bombay Industrial Relations Act is also a misconduct under the Standing Order. The Industrial Court observed that it is an admitted position that the workers participated in the strike and when the strike was declared illegal by the Labour Court then the Labour Court Judge was not justified in holding that the misconduct proved to have been committed by the workers was of minor or technical nature. Striking work in contravention of the provision of the Bombay Industrial Relations Act is one of the misconducts mentioned in the Standing Orders. The learned Judge also observed that under the Standing Orders in awarding punishment the Manager shall take into account the gravity of the misconduct, the previous record of the operative and any other extenuating circumstances that may exist. The Industrial Court further observed that when the punishment of dismissal is provided for misconduct under the Standing Orders, dismissal of the workers cannot be considered as shockingly disproportionate. So far as the reinstatement of other two dismissed workers is concerned the Industrial Court observed that they were reinstated because they tendered written apology whereas the 2 remaining workers did not tender such written apology. The Industrial Court further observed that merely because 2

workers were taken back on their expressing regret and unconditional apology, it does not mean that by rule of thumb, same principle should be applied to the other remaining 2 workers. The Industrial Court also did not accept the finding of the Labour Court that the Enquiry Officer's finding to the effect that the workers had incited other operatives, is perverse finding. The Industrial Court went further in observing that even if the said finding is not accepted as correct, still in as much as the workers had participated in the illegal strike, they were guilty of misconduct for which punishment of dismissal could be awarded. The Industrial Court felt that the Labour Court has misdirected itself and erred in holding that the misconduct under the Standing Orders 21(b) is of minor or technical character and the dismissal order made against the respondents amounted to shockingly disproportionate punishment. The Industrial Court therefore in its revisional jurisdiction interfered with the order of the Labour Court and quashed the order passed by the Labour Court by his judgment and order dated 22.2.1984.

7. Being aggrieved by the said judgment and order of the Industrial Court the Girni Kamgar Sena a trade union and the 2 dismissed workers have filed the present petition. The Mill respondent No. 3 though served did not appear at the time of the hearing of the petition.

8. We have heard Dr. Kulkarni, learned counsel appearing for the petitioners. We have gone through the record and both the judgments delivered by the Labour Court as well as the Industrial Court. Dr. Kulkarni strongly relied upon the judgments of the Apex Court in a well known case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others,

9. Now the admitted position in the matter is that the strike was only for a couple of hours and there is absolutely no allegation of any violence whatsoever or any incitement to violence. It is also very relevant that two out of the four workers have been reinstated. The Labour Court observed that it is not known why those two workers were reinstated and the remaining two have not been reinstated. The Labour Court felt that this is indicative of the absence of grievous guilt as against the said workers. The Industrial Court on the other hand observed that the two workers were reinstated because they tendered written apology. It is difficult to find any basis for this assumption, as the Labour Court has specifically observed that it is not known why the two workers were reinstated. Even accepting that all the four workers participated in the illegal strike, in view of the fact that there was absolutely no violence, that the strike was only for a couple of hours and that admittedly two workers similarly situated were reinstated, definitely suggest that the misconduct was not of such a degree and nature as to invite maximum penalty of dismissal. It is difficult to appreciate reasoning of the Industrial Court to the effect that in as much as the penalty of dismissal is provided for misconduct of participating in the illegal strike, it cannot be held that the penalty of dismissal is shockingly disproportionate. On the contrary when anyone of the several punishment, differing widely in its severity,

can be inflicted for a particular misconduct, then which of the punishment is to be awarded must necessarily depend upon the facts and circumstances of each case, seriousness and the nature of the participation as also seriousness of the conduct of the individual workers. In the facts and circumstances of the case before us we find nothing objectionable if the Labour Court came to the conclusion that the punishment of dismissal is shockingly disproportionate.

10. However, in view of the fact that the strike was declared illegal and that admittedly the workmen had participated in the same, it is clear that they were guilty of misconduct of participating in an illegal strike. Therefore, though punishment of dismissal is obviously shockingly disproportionate while ordering reinstatement, this aspect will have to be taken into consideration. After having considered the facts and circumstances of the case we are of the opinion that reinstatement with denial of half back wages would be just and proper order.

11. In the result petition partly succeeds. The judgment and order dated 22nd February 1984 passed by the learned Member of the Industrial Court Bombay in Revision Application (UPL) No. 13 of 1983 is quashed and set aside and it is directed that the Respondent No. 3 Raghuwanshi Mills Ltd., shall reinstate the petitioner No. 2 Ravindra Harishchandra and Petitioner No. 3 Chandrakant Rajaram in service with effect from 27th May, 1981 within one month from the date of receipt of this order. However, so far as the back wages are concerned, the workmen concerned shall be entitled to half of the back wages till their actual reinstatement.

12. Rule made absolute in the aforesaid terms. There shall be no order as to costs. Issuance of the certified copy expedited.