

(2006) 04 BOM CK 0127

In the Bombay High Court

Case No : Writ Petition No's. 754 and 833 of 2006

Godrej and Boyce Manufacturing Co. Ltd.

APPELLANT

Vs

Suhas Hari Bhalerao
 Suhas Hari Bhalerao Vs Godrej
and Boyce Manufacturing Co. Ltd.

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 ALLMR 445 : (2006) 3 BomCR 22 : (2006) 109 FLR 1157 :
(2006) 4 MhLj 825

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Advocate : J.P. Cama and Sushma Joshi, instructed by Haresh Mehta and Co. in Writ Petition No. 754 of 2006 and P.M. Mokashi, in Writ Petition No. 833 of 2006, for the Appellant; J.P. Cama and Sushma Joshi, instructed by Haresh Mehta and Co. in Writ Petition No. 833 of 2006 and P.M. Mokashi, Writ Petition No. 754 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

S.U. Kamdar, J.—These two writ petitions are challenging the order and judgment delivered by the 3rd Labour Court Bombay dt.19.7.05 in Reference (IDA) No.59 of 1992. By the impugned order and judgment the Labour Court has given a finding that the workman who is the petitioner in writ petition 833 of 2006 is guilty of serious misconduct of go- slow by not providing sufficient amount of production as per the benchmark fixed by the management. The Tribunal has after considering the finding given in detail on the basis of evidence has come to the conclusion that the management is able to prove misconduct by virtue of fact that the production provided by the workman was much less then required by the company as per the norms so specified and thus there was a go slow as well as insubordination. However, while passing the final award Tribunal has set aside the punishment of dismissal and has directed employee to be reinstated back in the service but without any back wages. The claim of compensation is also

rejected. It is this order of the Tribunal dt.19.7.05 which is challenged by the workman as well as the employer.

2. The employer has challenged the award by filing writ petition no.754 of 2006 and has contended that having given a finding that the petitioner workman is guilty of major misconduct as per the standing order then it was not open for the Tribunal to direct reinstatement of the workman in the job. The petitioner employer thus, contends that the Tribunal ought to have dismissed the complaint and ought not to have given a relief of reinstatement. In support of the aforesaid contention, the learned counsel for the petitioner employer has relied upon a judgment of the Apex Court in the case of Bharat Forge Co.Ltd. v. Uttam Manohar nakate reported in 2005 1 CLR 533 particularly para 31 and 32 of the said judgment. The said paragraphs are reproduced hereunder:

31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

32. In The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., , it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceeding, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.

3. In so far as aforesaid contention is concerned, the Tribunal has given a finding in para 41 and 42 that the punishment imposed is shockingly disproportionate. In so far as aforesaid contention is concerned, the Tribunal has given a finding in para 41 and 42 that the case is an isolated case of go slow and no case is made out for extreme penalty of dismissal. The Industrial Tribunal has also taken into consideration that this is not a case of concerted union activity of undertaking to a go slow so as to effect the management seriously. In fact the petitioner employer has drawn my attention to the two letters which are annexed at E.A to the petition as well as Ex.B to the petition. which suggest that the employee was suffering from sever back-ache and in fact because of that he was transferred to "Dog Rocker Assembly Stage" job process.

4. In my opinion, this is not a case where the Tribunal's finding holding that the extreme penalty of dismissal should not be imposed requires to be interfered with under Article 226 of the Constitution of India. I am of the opinion that in the facts and circumstances of the present case, the Tribunal was right and justified in reducing the penalty by disallowing the back wages to the petitioner and granting the case of reinstatement. In my opinion, merely because there is less than prescribed production by one employee a penalty of dismissal is not justified. Even his past record is unblemished. Thus, there is no merit in writ

petition no.754 of 2006 preferred by the employer.

5. This leads me to the writ petition no.833 of 2006 which has been preferred by the employee who has also challenged the impugned order. The learned counsel has contended that the Tribunal was not justified in taking into consideration the evidence which is laid subsequent to passing of Part I of the Award. He has contended that before passing of Part I Award the employer has laid the evidence of one Mohamed Hanif Shaikh. The said evidence was on merits and thereafter the Labour Court has passed a part I award on 25.9.03 inter alia holding that the enquiry was fair and proper but the findings of the enquiry officer were perverse. It has been contended by the learned counsel for the petitioner workman that even after holding in Part I Award that the findings by Enquiry officer are perverse, Labour Court was not entitled to permit the respondent employer to lead a fresh evidence before the court to prove the misconduct as has been done in the present case by leading the evidence of Mohd.Hanif Shaikh on 12.8.04. It has been contended that the Labour court has after considering the evidence of Mohamed Hanif Shaikh on 12.8.04 given a finding that the petitioner workman is guilty of the alleged misconduct. The learned counsel has contended that the labour court should have only considered the evidence which was led prior to giving part I award and should have ignored the subsequent evidence.

6. In support of the aforesaid contention the learned counsel for the petitioner workman has relied upon a judgment in the case of Chandikaprasad Mishra v. Shree Babulnath Mandir Charities and Anr. reported in 2000 2 CLR 121 wherein the learned single Judge of this court has quoted the Judgment of Apex Court in the case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . By relying on the principle laid down in para 61 of the said judgment, the learned counsel has contended that in sub para 2 and 3 of para 61 thereof, the Apex court has held that if the management opts for single enquiry before the Labour Court by contending that the domestic enquiry held by them in the first instance is legal, valid and proper and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously desires to adduce additional evidence before the Tribunal justifying its action then in that case no inference can be drawn, that the management has given up the enquiry conducted by it and when the management relies on the enquiry conducted by it and simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal in the first instance, to consider whether the proceedings conducted by the management are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits no longer survives.

7. In the aforesaid judgment in sub-paras 4 and 5 of the para 61, the court has further held that it is open for the management to deal with, in the first instance only in respect of a preliminary issue i.e. , the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no

additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to lead additional evidence before giving finding in respect of Part II of the award and try to prove that the charges levelled against the workman is legal and valid.

8. In view of the aforesaid I do not find any substance in the arguments advanced by the learned counsel for the petitioner. In the present case, after leading evidence a finding is given on the preliminary issues in Part I Award by the Tribunal that the enquiry was fair and proper but the findings are perverse. In support of the case that the finding of Officer is not perverse, witness has deposed that the said finding is not perverse as there is no sufficient material available before the Enquiry Officer who has investigated the charges. I do not find that such evidence by itself dis-entitles the management to lead fresh evidence after findings are given in Part I of the award that the same are perverse. In fact under part 4 and 5 of the aforesaid judgment it is open to the management to prove the misconduct before the court by leading evidence and that also after the evidence is concluded in respect of enquiry under part I award.

9. In my opinion once the Labour court has given a finding in Part I Award that the findings of the enquiry officer are perverse then it is the duty of the management thereafter to establish the said charge by leading further evidence before the Labour Court itself. The said exercise has been done by the management in the present case and thus, in my opinion the contention advanced by the learned counsel for the petitioner workman has no substance and is liable to be rejected.

10. The next contention advanced by the learned counsel for the petitioner is that the finding given by the Labour court holding that the petitioner workman is guilty of said misconduct is perverse and without any merits. In support of the said contention the learned counsel for the petitioner has taken me through the evidence of Mohamed Hanif Shaikh and has tried to contend by relying upon pr 11 that the norms of 78 complete Dog Rocker Assemblies is not established by virtue of the documents relied upon in support thereof. In my opinion in writ jurisdiction under Article 226 of the Constitution of India, it is not permissible for me to reappreciate the evidence led before the Trial Court. It is more than sufficiently demonstrated that there is sufficient material before the Labour court to arrive at a finding whether the petitioner workman is guilty of misconduct or not. Once having given a said finding by the Labour court it is not permissible for me to come to a different conclusion by re-appreciating evidence in Writ Jurisdiction. This is not a case of no material on record. Thus, both the petitions fail and are dismissed accordingly.