

(2009) 12 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition (LD) No. 2152 of 2009

Goregaon Petrol Supply Co. and Another	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Citation : (2010) 3 ALLMR 277

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Ashish Kamath, instructed by Sanjay S. Gawde, for the Appellant; J. Saluja, AGP for Respondent No. 1 and N.M. Ganguli, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The First Petitioner is a partnership firm which conducts a Petrol Pump at S.V. Road, Goregaon. An incident took place on 22nd March 2006, when three workmen including the Third Respondent were called to the cabin of a partner to enquire about another workman, Soma Ghadshi, who was not reporting for duty and had not furnished a written intimation for overstaying the period of leave. The aforesaid workman had been asked by the management on 20th March 2006 about his unauthorised absentism and was directed to submit his written explanation. It was reported by the management that the Third Respondent asked the co workman not to furnish anything in writing. When the Third Respondent was asked to explain his conduct, it was alleged that he started shouting and used filthy language against the partner of the Petitioner and threatened that the Petrol Pump would be shut down if the management addresses any query to the co employee .The Third Respondent was suspended on 22nd March 2006. Following the suspension, the workman addressed a letter on 23rd March 2006 apologizing for the incident. A collective letter was addressed by all the workmen on 1st April 2006 apologizing for the incident and seeking a revocation of the order of suspension that was issued to the Third

Respondent. A letter was also addressed on behalf of the Union on 1st April 2006.

3. The management issued a chargesheet on 27th March 2006, setting out the aforesaid allegation and charging the workman inter alia with willful insubordination and of the commission of an act subversive of discipline. An Enquiry Officer was appointed and the workman was allowed to be represented by a defence representative who was an Advocate. During the course of the enquiry, the workman accepted that he had signed a letter of apology, Exhibit 11, and stated that its contents were true. The workman also accepted the correctness of the collective letter signed by all the workmen. The Enquiry Officer came to the conclusion that the charge of misconduct was proved, in his report dated 26th June 2006. A copy of the report was forwarded to the workman on 30th June 2006. An order of dismissal was passed on 3rd July 2006.

4. The workman instituted a complaint of unfair labour practices under Items 1(a), (b), (c), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. During the course of his cross⁴ examination, the workman admitted that he was represented by an Advocate and that he had raised no protest during the course of the enquiry that the recording of the Enquiry Officer was not proper. The workman admitted his own letter of apology and the letter addressed by all the workmen collectively.

5. The Labour Court by its judgment dated 27th February 2008, came to the conclusion that the enquiry was fair and proper and the finding of the Enquiry Officer was not perverse. By its judgment dated 28th January 2009, the Labour Court came to the conclusion that the complaint of unfair labour practices was lacking in substance. The complaint was accordingly dismissed. In revision, the Industrial Court, by its order dated 31st August 2009, remanded the proceedings back to the Labour Court.

6. The only ground on which the Industrial Court remanded the proceedings, was that the Labour Court had failed to consider whether the Model Standing Orders were applicable to the establishment. The Industrial Court held that in the absence of service rules applicable to the establishment, it was not possible for the revisional Court to consider as to whether the action of the employer was in accordance with such Rules.

7. Counsel appearing on behalf of the Petitioners submitted that the workman had not raised any challenge to the enquiry on the ground of the alleged inapplicability of the Model Standing Orders, either in the complaint of unfair labour practices or in the memo before the revisional Court. Reliance was sought to be placed on judgments of the Supreme Court in support of the submission that even in the absence of the Model Standing Orders, the employer is not precluded from holding a disciplinary enquiry. On the other hand, it is urged on behalf of the workman that the question which has been raised in the order of the Industrial Court, goes to the root of the matter and hence a remand is

warranted.

8. The record before the Court will indicate that even before the enquiry commenced, letters were addressed to the management by the workman, by all the workmen collectively and by the Union. In his letter dated 23rd March 2006, the workman expressed an apology for the incident which had taken place on 26th March 2009 and sought leniency. Similar were the contents of the letter dated 1st April 2006, addressed by the workmen collectively. During the course of the enquiry, the workman accepted having signed the aforesaid letter and correctness of the contents thereof. Evidence was adduced for and on behalf of the workman in the complaint of unfair labour practices. There was no substantial challenge whatsoever to the fairness of the enquiry. Neither in the complaint of unfair labour practices, nor before the Labour Court, was there any challenge on the part of the workman to the convening of the enquiry on the ground of the alleged inapplicability of the Model Standing Orders. The Industrial Court has referred to the submission recorded in paragraph 7 of the judgment of the Labour Court. In paragraph 7 of the judgment of the Labour Court what was recorded as having been argued before the Labour Court is that the misconduct which was proved against the workman "is not an employment misconduct at all" and on the other hand, "it had arisen due to pure trade union activities". In other words, the contention of the workman was that he was victimised for trade union activities. This is a completely different submission than what the Industrial Court perceived it to be. The point which has been raised in the judgment of the Industrial Court, for the first time, was not raised in the proceedings before the Labour Court. The point was not raised before the Labour Court in the complaint of unfair labour practices. There is no reference thereto in the affidavit in lieu of the Examination-in-Chief. The memo of the Revision Application before the Industrial Court is also silent on such a challenge. In these circumstances, the Industrial Court was clearly in error, in allowing the submission to be raised. There was no justification for the order of remand.

9. In any event, the submission is wholly devoid of merits, having regard to the well settled position in law. The employer is not precluded from holding a disciplinary enquiry even if the Standing Orders do not apply to the establishment. In *Agnani (W.M.) v. Badri Das* 1963 I L.L.J. 684 the law on the subject has been crystalised in the judgment of the Supreme Court thus:

It is true that in the absence of standing orders, it would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as

worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction. As we have already observed, it is not possible and we do not propose to lay down any general rule in that behalf. When standing orders were framed, there is no difficulty because they define misconduct. In the absence of standing orders, the question will have to be dealt with reasonably and in accordance with commonsense.

In *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, the Supreme Court held that in the absence of a Standing Order, unsatisfactory work of the employee may be treated as misconduct in certain circumstances and an enquiry would be necessitated. The Supreme Court held thus:

In the absence of any Standing Order, the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work it should be taken that her discharge was tantamount to punishment for an alleged misconduct. If this conclusion is correct the management was not justified in discharging the respondent from service without holding a proper enquiry.

10. For the aforesaid reasons, the entire approach of the Industrial Court has suffered from a perversity of approach and is liable to cause a miscarriage of justice. The Industrial Court was clearly in error in allowing a challenge, which was not raised before the Labour Court or before it, in the memo of Revision, to be raised for the first time. In any event, the challenge is lacking in merit or substance.

11. The Labour Court held that the enquiry was fair and proper; that the findings did not suffer from perversity and that the punishment did not warrant interference. The Industrial Court has not considered these aspects which arise in the revisional application. Hence, it would be for the Industrial Court in revision to decide the Revision Application on merits. In order to facilitate this exercise, the impugned order of the Industrial Court dated 31st August 2009 is set aside. Revision Application No. 25 of 2009 is restored to the file of the Industrial Court, which shall pass an order afresh on the Revision Application, after hearing the parties. All the rights and contentions, except on the issue which has been decided in this judgment, are kept open. Rule made absolute in the aforesaid terms. No order as to costs.