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(2005) 12 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 873 of 2001

Hanumant Pandurang Indalkar APPELLANT

Vs

Tata Engineering and Locomotive Co. Ltd. and Another RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Oaths Act, 1969 — Section 7

Citation : (2006) 2 ALLMR 630 : (2006) 109 FLR 443 : (2006) 2 MhLj 583

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Arshad Shaikh, for the Appellant; C.U. Singh, K.S. Bapat, H. Vakil and Mehta, instructed by Mulla and Mulla and Craiagie Blunt and Caroe, for the Respondent

Judgement

Nishita Mhatre, J.—This petition is directed against the Awards of the Labour Court in Reference (IDA) No. 469 of 1991 dated 19th October, 1996 and 23rd June, 2000. By Award Part-I dated 19th October, 1996, the Labour Court had held that the enquiry conducted against the petitioner in respect of charge-sheet dated 29th October, 1988 was fair and proper. However, the enquiry conducted in respect of the charge-sheet dated 25th March, 1989 was found to be in violation of the principles of natural justice and, therefore, vitiated. By Award Part-11 dated 23rd June, 2000, the Labour Court came to the conclusion that the punishment imposed on the petitioner was just and, therefore, dismissed the Reference.

2. The petitioner was in service with Tata Engineering & Locomotive Company Limited, respondent No. 1 herein (hereinafter referred to as "the Company") as a Millwright Mechanic in the Auto Division of the Company''s Pimpri Works. The petitioner was one of the activists of the Telco Kamgar Sanghatana, one of the two Unions operating in the establishment of the Company. The other Union was the Telco Employees Union. On 27th May, 1988, a transfer order was issued to the petitioner transferring him from Chinchwad to Pimpri. A charge-sheet was

issued to the petitioner on 29th October, 1988, inter alia, for using abusive language against his superiors, A second charge-sheet was issued on 25th March, 1989 for commission of acts of violence on the factory premises on 15th March, 1989. Separate enquiries were held in respect of both the charge-sheets by two different Enquiry Officers. By an order dated 7th March, 1991, the petitioner was dismissed from service. The criminal proceedings which had been instituted by the Company against the petitioner for the acts of violence allegedly committed by him on 25th March, 1989 ended in an acquittal on 30th October, 1993.

3. After his dismissal, the petitioner invoked the machinery available under the provisions of the Industrial Disputes Act, 1947 and obtained a Reference to the Labour Court for adjudication of his dispute regarding reinstatement with continuity and full backwages. Pleadings were filed by both the parties. Various contentions were raised by the petitioner to submit that the enquiries conducted against him were in violation of the principles of natural justice. According to the petitioner, he was not furnished the enquiry report before imposition of the penalty which has caused great prejudice to him and, therefore, the entire enquiry was vitiated. After evidence of both the parties was led, the Labour Court came to the conclusion that the enquiry which was instituted in respect of the charge-sheet dated 29th October, 1988 i.e. with regard to the use of abusive language, was fair and proper. The Labour Court, however, came to the conclusion that the Company had violated the principles of natural justice while conducting the enquiry in respect of the charge-sheet dated 25th March, 1989 i.e. for violent and riotous behaviour on 15th March, 1989. The Labour Court permitted the Company to lead evidence afresh in respect of the second charge-sheet. Accordingly, the Company examined two witnesses, V.G. Mudkanna and S.M. Cariappa. The petitioner examined himself in rebuttal. Interestingly, the examination in chief recorded by the Enquiry Officer in respect of Cariappa was treated as examination-in-chief of that witness before the Court although the enquiry had been vitiated.

4. On a consideration of the evidence led, the Labour Court came to the conclusion that the punishment of dismissal should be substituted by one of discharge from service. Accordingly, the petitioner was discharged from service and the Company was directed to pay all legal dues to the petitioner including gratuity, provident fund and all other legal dues.

5. Mr. Shaikh appearing for the petitioner submits that the enquiry in respect of the charge-sheet regarding the use of abusive language cannot be considered to be fair and proper as held by the Labour Court. He submits that the Company had not furnished the enquiry report to the petitioner as required in the case of Union of India and others Vs. Mohd. Ramzan Khan, . He submits that non-furnishing of the Enquiry Officer''s report had greatly prejudiced the petitioner as he was unable to establish before the disciplinary authority that the Enquiry Officer''s findings were perverse and therefore no punishment should be imposed

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on him. He submits that once an enquiry has been set aside, the material on record or evidence recorded at such an enquiry should not be read as evidence before the Labour Court nor can such material be relied on, unless the same was exhibited before the Labour Court. Cariappa''s deposition recorded by the Enquiry Officer was treated as the examination-in-chief before the Labour Court, which procedure was highly irregular and violative of the principles of natural justice according to the learned Advocate. He further submits that the Labour Court was in error in holding that the petitioner deserved to be dismissed for using abusive language when the perversity of the findings of the Enquiry Officer was not considered although the enquiry in respect of that charge-sheet was held to be fair and proper. According to the learned Advocate, the first charge-sheet in any event was not proved and the misconduct alleged against the petitioner was a minor misconduct for which he need not have been punished with the order of discharge. The learned Advocate urges that the charge-sheet regarding riotous and disorderly behaviour has not been proved. He submits that the petitioner was not present on 15th March, 1989 when the incident of riotous and disorderly behaviour allegedly occurred. There is no evidence on record to indicate that anybody had been assaulted by the petitioner as alleged. He then urges that there are extenuating circumstances which required the order of discharge to be set aside. He submits that the petitioner was given a good conduct award and a merit certificate which indicated that the past service record of the petitioner was exemplary. He further submits that the petitioner has been discriminated against as out of a large number of persons who were charge-sheeted in respect of the riotous and disorderly behaviour on 15th March, 1989, the petitioner had been singled out for unfair treatment. According to the learned Advocate, there were no allegations levelled against the petitioner in the charge-sheet issued on 25th March, 1989, involving him in the incident of 15th March, 1989. He, therefore, urges that the order of discharge as directed by the Labour Court should be set aside and the petitioner should be reinstated with continuity of service and full backwages.

6. Mr. C.U. Singh for the Company submits that the abusive language used by the petitioner was sufficient reason to dismiss him from service. According to the learned Counsel, there were no allegations of bias nor of violation of the principles of natural justice against the Enquiry Officer who conducted the enquiry in respect of the first charge-sheet i.e. regarding use of abusive language. The Enquiry Officer''s report was furnished to the petitioner although a little late after concluding the enquiry. However, this report was furnished about a year before the petitioner was finally dismissed and, therefore, no prejudice could be said to have been caused to the petitioner by non-furnishing of the enquiry report. He submits that the Supreme Court has now time and again held that unless the delinquent workman is able to establish that non-furnishing of the enquiry report has caused prejudice to the delinquent, an enquiry need not be set aside only on this ground. He relies on the judgment in the case of Mahindra & Mahindra Ltd. v. N.B. Naravade 2005 107 Bom. L.R. 848 and Lalit

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Popli Vs. Canara Bank and Others, . As regards the acceptance of Cariappa''s evidence led before the Enquiry Officer as evidence before the Labour Court, the learned Counsel submits that the Labour Court is not an independent Court within the meaning of the Criminal Procedure Code. Under the Oaths Act, 1969, it was not necessary for the evidence to be recorded on oath before the Labour Court. The learned Counsel urges that the Advocate for the petitioner having consented to the inclusion of the evidence of Cariappa recorded before the Enquiry Officer as the examination-in-chief before the Labour Court, the petitioner could not now object to the same. The learned Counsel then submits that several submissions had been made at the bar on behalf of the petitioner which do not find place in either the Statement of Claim filed before the Labour Court or in the Writ Petition. He, therefore, submits that the Labour Court cannot be faulted for accepting the evidence of Cariappa led before the Enquiry Officer as the examination-in-chief in Court. The learned Counsel points out that the Labour Court had in fact considered the perversity of the findings of the Enquiry Officer in respect of the first charge-sheet and had held that the charge-sheet had been sufficiently proved. In such circumstances, he submits that there is no need to interfere with the order of discharge in a Writ Petition under Articles 226 and 227 of the Constitution of India. The learned Counsel then pleads that assuming the enquiry in respect of the charge-sheet dated 25th March, 1989 is vitiated and the findings of the Labour Court also in respect of that enquiry cannot be accepted, the enquiry in respect of the first charge-sheet regarding use of abusive language was itself sufficient to dismiss the workman.

7. I will now consider the charge-sheet dated 29th October, 1988 issued for using abusive language and insubordination. In respect of this charge-sheet and enquiry, the learned Advocate for the petitioner submits that the Company had not found the charge levelled in the first charge-sheet serious enough to dismiss the workman and in fact the dismissal order issued to him referred mainly to the second charge-sheet. He submits that the enquiry report submitted by the two Enquiry Officers, who have held two separate enquiries in respect of both the charge-sheets, were not supplied to the petitioner and, therefore, the enquiry conducted against the petitioner in respect of the charge-sheet dated 29th October, 1988 as well as 25th March, 1989 was vitiated. On a perusal of the Award Part-I of the Labour Court, I find that there is no need to disturb the findings of the Labour Court since the Labour Court has rightly held that the enquiry against the petitioner in respect of the charge-sheet dated 29th October, 1988 was conducted in a fair and proper manner. In my view, the petitioner has not made out any case for setting aside this enquiry. The mere fact that the enquiry report was not furnished till the approval application was filed would not vitiate the enquiry as the alleged prejudice caused to the petitioner has not been made out. After the observations in the case of Mohd. Ramzan Khan, the Supreme Court in the case of Managing Director, ECIL v. B. Karunakar 1993 (2) CLR 1129, has held that unless the workman is able to indicate the prejudice caused to him by not being furnished with the enquiry report, it would not lead

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to the inference that the enquiry was vitiated. In any event, in the present case, the report of the Enquiry Officer was furnished approximately a year before the dismissal of the petitioner. The second enquiry was then in progress and the petitioner had not been dismissed. Therefore, the petitioner had ample opportunity to demonstrate to the Disciplinary Authority that the enquiry was vitiated or that the findings of Enquiry Officer were perverse. In my view, Award Part-I considered all these factors and since no prejudice has been established by the petitioner by the non-furnishing of the enquiry report in respect of the first charge-sheet, there is no need to set aside Award Part-I.

8. The question which will now have to be addressed is whether the submissions of the learned Advocate for the petitioner that the Labour Court has not considered the perversity of the findings of the Enquiry Officer in respect of the first charge-sheet is sustainable. On a perusal of Award Part-II, I find that the Labour Court has considered the findings of the Enquiry Officer in respect of the first charge-sheet and has found that the findings are not perverse and that the misconduct of insubordination and use of abusive language has been proved against the petitioner. The Labour Court has reappreciated the evidence before the Enquiry Officer and has come to the conclusion that the findings were not perverse and were required to be sustained.

9. The Labour Court on the basis of these findings has not considered whether the punishment of dismissal was appropriate if only the charge-sheet dated 29th October, 1988 is considered. The Labour Court has taken into account both the charge-sheets and having concluded that the misconducts levelled against the petitioner in both the charge-sheets had been proved, has held that the dismissal order should be altered to an order of discharge. This approach of the Labour Court cannot be faulted. The Labour Court need not have considered the propriety and reasonableness of the punishment imposed in respect of each charge-sheet individually. The dismissal order mentions that the punishment of dismissal was being imposed in view of the misconducts committed both by way of use of abusive language and insubordination as well as riotous and disorderly behaviour. In my view, therefore, there is no need to disturb the findings of fact of the Labour Court that the Enquiry Officer has correctly held that the petitioner had committed the misconduct of using abusive language against his superiors and of insubordination.

10. The second charge-sheet dated 25th March, 1989 was issued as a result of violence in the factory premises which occurred on 15th March, 1989. The petitioner was prosecuted for his alleged involvement. The criminal proceedings ended in an acquittal on 30th October, 1993. Although the alleged incident of violence occurred on 15th March, 1989, a charge-sheet was issued only on 25th March, 1989, ten days later. According to the Company, it required some time before the charge-sheet would be issued in order that the veracity of the complaints of individual workman against the petitioner could be ascertained, prima facie. The, enquiry in respect of this charge-sheet dated 25th March, 1989

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has been held to be vitiated by the Labour Court since it was of the view that the Enquiry Officer had breached the principles of natural justice while conducting the enquiry. The Labour Court permitted the Company to lead evidence before it to sustain the charge against the petitioner. The Company accordingly examined one M. G. Mudkanna. His examination-in-chief and cross- examination was recorded by the Labour Court. The second witness of the Company, S.M. Cariappa was the Security Officer present when the incident occurred on 15th March, 1989. This witness was also examined before the Enquiry Officer. The Company instead of examining this witness before the Labour Court, has merely stated that his deposition before the Enquiry Officer should be treated as his examination-in-chief before the Labour Court. According to the learned Counsel for the Company, parties had agreed to such a procedure being adopted and the Labour Court had treated the examination-in-chief of Cariappa recorded by the Enquiry Officer as the examination-in-chief before the Labour Court. This fact is disputed by the learned Advocate for the petitioner who submits that such a concession was made in Reference (IDA) No. 2 of 1992 in respect of K.S. Thorat. The petitioner in Reference (IDA) No. 468 of 1991 i.e. the present petitioner, had not agreed to any such procedure being adopted. He submits that assuming such a concession was made, once the enquiry is vitiated, no evidence or material on record before the Enquiry Officer can be treated as evidence before the Labour Court. The Labour Court cannot consider any such material while deciding whether the misconduct is proved.

11. In the present case, the application at Exhibit 66 allegedly made by the Company is not on record. The record and proceedings before the Labour Court have been produced before me and as rightly pointed out by the learned Advocate for the petitioner, Exhibit 66 is not available on the record. Therefore, it must be presumed that no such concession was made by the workman. That being the position, the evidence recorded by the Enquiry Officer in respect of Cariappa could not have been considered as examination-in-chief by the Labour Court. Assuming that be so, one will have to consider whether the procedure adopted by the Labour Court on relying on material recorded by the Enquiry Officer during the course of the enquiry which had been vitiated. It is trite that strict rules of evidence do not apply to proceedings in a domestic enquiry or before the Labour Court or Industrial Tribunal. However, the fundamental principles must be followed. When the evidence led in another proceeding is to be considered as evidence before the Court, it is necessary for the party relying upon such evidence to bring on record a copy of that evidence and the Court may then rely upon the same. In the present case, the material sought to be relied on or read as evidence was part of a vitiated enquiry. In my view, once the enquiry has been vitiated because it was not held in a fair and proper manner, any evidence led before the Enquiry Officer cannot be read as evidence before the Labour Court. The Company is entitled to examine all its witnesses afresh before the Labour Court and the workman is then given an opportunity to cross-examine them. Having found that the enquiry was vitiated, it was necessary for

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the Labour Court to direct the Company to lead evidence afresh. Had Cariappa made the same averments as he had stated before the Enquiry Officer by filing an affidavit in lieu of examination-in-chief before the Labour Court, it could have been accepted as fresh evidence before the Labour Court, However, the Company chose not to produce the material or the statements made by Cariappa before the Enquiry Officer, afresh before the Labour Court and merely relied on the examination-in-chief recorded by the Enquiry Officer. This procedure is highly irregular and, therefore, the evidence of Cariappa cannot be accepted.

12. Mr. Singh for the Company submits that no objection was raised by the petitioner for reading Cariappa''s evidence recorded by the Enquiry Officer as the examination-in-chief before the Labour Court. He submits that Cariappa was cross-examined by the petitioner without demur. Strict rules of evidence are not applicable and need not be followed before the Labour Court which, according to the learned Counsel, is not a Court. He submits that Section 7 of the Oaths Act does not require evidence to be recorded on oath and hence material which were recorded before the Enquiry Officer could be read as evidence before the Labour Court. In my view, this submission cannot be sustained for more reasons than one. Firstly, the Labour Court has been held to be a Court in State of Maharashtra v. Labour Law Practitioners'' Association and Ors. 1988 Mh.L.J. 191 : 1988 (1) CLR 850. Furthermore, once an enquiry is vitiated, all the material before the Enquiry Officer is to be discarded by the Labour Court. The Labour Court cannot consider any such material unless the same is produced afresh before it in accordance with law. If the procedure adopted by the Labour Court is assumed to be correct, it would mean that when an enquiry is vitiated, the Labour Court would only be required to consider the evidence recorded by the Enquiry Officer and arrive at its own conclusions on the basis of such evidence. However, this is not the procedure or the law as laid down in various judgments of the Supreme Court right from the decisions in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , etc. The Supreme Court has time and again observed that where no enquiry has been held or a defective enquiry is held, the Company is provided an opportunity to prove the charge levelled against the workman before the Labour Court. Obviously, proving a charge would mean that evidence would be required to be led before the Labour Court in order to establish the same. The Company, in the present case, has not led any evidence of Cariappa although he has been cross-examined by the petitioner. In my view, the procedure adopted by the Labour Court is highly irregular and unsustainable and, therefore, the evidence of Cariappa is discarded.

13. Therefore, one has to now consider whether the evidence of Mudkanna was sufficient to bring home the charge against the petitioner. Mudkanna has been examined before the Labour Court and cross-examined by the workman. His evidence has been considered by the Labour Court, who has found that the evidence indicated that the petitioner had been rightly charge-sheeted and that

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the charges levelled had been proved. I see no reason to differ from the view taken by the Labour Court. On a perusal of the Mudkanna''s evidence, I find that he has deposed that the petitioner assaulted him after he (i.e. Mudkanna) was pulled out of his car. He has stated that he was taken to the factory dispensary by an ambulance for treatment. He was then examined at Sasson Hospital and a medical certificate mentioning the injuries was issued. In my view, this witness has stood his ground while being cross-examined and the assault by the petitioner has been proved.

14. The question now remains is whether the petitioner ought to be discharged from service for the acts of misconduct committed by him. Mudkanna in his evidence had admitted that the petitioner had been rewarded on 2nd May, 1987 for good work. The learned Counsel for the Company submits that besides this incident which occurred on 15th March, 1989 and the abusive language used by the petitioner, there was no other earlier act of misconduct on the part of the petitioner. He, however, submits that the misconduct which had been proved against the petitioner is sufficient to dismiss him from service. The Labour Court having taken a lenient view in the matter by directing that the dismissal be converted to discharge, the learned Counsel urges that this Court should not interfere with the punishment awarded.

15. The petitioner was in service from the year 1976. He has tried to make out a case that he was not present in the factory premises on 15th March, 1989. He has also examined witnesses on his behalf including his wife. The Labour Court has taken a possible view which need not be interfered with.

16. Rule discharged. No order as to costs.

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