

(1999) 11 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 2956 of 1993

Hawaladar Singh

APPELLANT

Vs

M/s. Taigrania Metal and Steel Industries and another

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2000) 1 ALLMR 296 : (2000) 2 BomCR 171 : (2000) 1 BOMLR 547 : (2000) 85 FLR 408 : (2000) 2 MhLj 220

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : I.A. Engineer, instructed by Colin Gonsalves, for the Appellant; Piyush Shah, instructed by N.B. Shah, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner workman had joined the employment of the respondent company in January 1982 as a labour. He was issued a show cause notice on 7th February, 1984, It was alleged in the said show cause notice that he had abused time office in-charge in filthy and abusive language which was recorded verbatim in the said show cause notice. It is also alleged that he had threatened Shri Nyati, the time office in-charge that he would beat him with his shoes. The said show cause notice contained all the details. A written explanation was submitted by the petitioner by his letter dated 8th February, 1984, whereby he had denied the charges. The respondent employer instituted an enquiry in the said charges. The petitioner had participated in the enquiry. He was represented by a representative in the enquiry. After the enquiry was concluded the petitioner was dismissed from employment by an order dated 2nd May, 1985. The petitioner filed a complaint before the Labour Court alleging unfair labour practice by the respondent within the meaning of Item 1 of the Schedule IV of the M.R.T.U. and P.U.L.P. Act. The Labour Court held that the domestic enquiry which was held by the respondent employer was fair and proper and further held that the punishment of dismissal was not shockingly disproportionate to warrant

any interference with the order of dismissal. In view of these findings the Labour Court dismissed the complaint. The petitioner carried this order in revision u/s 44 of the Act before the Industrial Court. The Industrial Court also by its order dated 15th April, 1993 dismissed the revision application. I may mention here that both the courts below have dealt with the contentions of both the parties elaborately and have given reasons for their conclusions.

2. Being aggrieved by the said order of the Industrial Court the petitioner has approached this Court. The learned Advocate for the petitioner has submitted that the enquiry was not fair and proper and that the petitioner was not given a reasonable and adequate opportunity to defend himself on the ground of petitioner not being served with a "regular" charge sheet. I do not find any substance in this submission as the petitioner was admittedly served with a show cause notice giving all the details and the petitioner even had submitted his reply to the same. There is, therefore, no substance in the contention of the learned Advocate for the petitioner that after a show cause notice a regular charge sheet should follow mentioning the heads of the standing order etc. and in the absence of such a charge sheet principles of natural justice are violated. The purpose of serving a charge sheet or a show cause notice is to call upon the delinquent workman to submit his explanation for the allegations or charges contained therein. In the present case the respondent company did serve the petitioner with a show cause notice giving all the details of the charges levelled against him calling upon to submit his written explanation, which was even submitted by him. I, therefore, find no merit in the said contention of the learned Advocate for the petitioner.

3. The second contention raised by the learned Advocate for the petitioner is that the enquiry was held in English language which the petitioner did not know or understand. It is, however, clearly admitted by him that he was defended by a representative at the enquiry who knew English language and understood the same. In these circumstances, it is difficult to accept the submission of the learned Advocate for the petitioner that the principles of natural justice were violated. No prejudice also is shown to have been caused to him.

4. The third ground on which the enquiry is assailed by the learned Advocate for the petitioner is that a copy of the report or the findings of the Enquiry Officer was not furnished to the petitioner, and therefore, he had no opportunity to make a representation to the employer, i.e. the respondent company on the point of punishment. The learned Advocate did not or could not point out any standing order or rule to the effect that a copy of the report or findings of the Enquiry Officer should be furnished to the delinquent workman before an order of dismissal was passed. In any case, there is no such law that a second show cause notice before dismissal should be given along with a copy of the Enquiry Officer's report or findings. I, therefore, do not find any substance in this contention also.

5. Fourthly, it was submitted by the learned Advocate for the petitioner that the

findings of the Enquiry Officer were perverse. Both the Labour Court and Industrial Court have recorded concurrent findings of fact that the findings recorded by the Enquiry Officer are based on material on record and evidence recorded, and therefore, there was no perversity in the findings of the Enquiry Officer. I, therefore, do not find any substance in this contention also. Not even a single fact was pointed out to base the submissions of the learned Advocate for the petitioner that findings were perverse. The last submission of the learned Advocate for the petitioner was that the punishment of dismissal was shockingly disproportionate. I have carefully perused the show cause notice and the written explanation given by the petitioner. I have also carefully gone through the findings recorded by the Labour Court and the Industrial Court regarding the proportionality of the punishment. Despite, there being concurrent findings of both the courts below that the punishment was not shockingly disproportionate, I have myself considered the question of punishment. In the facts and circumstances of the present case, when the petitioner workman had behaved in the manner described in the show cause notice, I do not think that the punishment meted out to him was shockingly disproportionate or was in any way illegal and improper.

6. On the point of punishment, the learned Advocate for the respondent company has cited a judgement of the Supreme Court in the case of *Inspecting Assistant Commissioner, Bombay & others v. Sharat Narayan Parab*, reported in 1998(1) C.L.R. 186. The Supreme Court has applied the test of a reasonable person while inflicting the punishment. According to me, when anyone is abused and threatened and assaulted, it would lead to serious consequences. In the present case, the petitioner workman had indulged into abusing his superiors in filthy language and had also threatened them with assault if they were to come out from their office. The conduct or the behaviour of the petitioner workman was indeed a serious one and in my opinion, no reasonable man would tolerate such an abusive language and threat. More so, no employer would ever tolerate such a language and behaviour of his employee. Para 5 of the above judgement is very clear which reads thus:--

Para 5. "It is also urged on behalf of learned Counsel for the respondent that the punishment was disproportionate to the charges. We cannot go into the question of punishment unless we are of the view that the punishment imposed is such that no reasonable person could ever have imposed such a punishment looking to the circumstances of the case. The present case is not one such case. Looking to the conduct which has been held by the inquiry officer as proved, the punishment imposed cannot be considered as unreasonable, much less grossly so."

7. It is also pointed out by the learned Advocate for the respondent company that the company is closed since last 3 to 4 years.

8. In any case, the petition fails and it is dismissed accordingly with no orders as to costs. Rule is discharged. C.C. expedited.

9. Petition dismissed.