

(1995) 11 BOM CK 0039
In the Bombay High Court
Case No : Writ petition No. 1366 of 1992

I.B. Inamdar

APPELLANT

Vs

The B.E.S.T. Undertakings and Others

RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 78, 79, 84
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 506

Citation : (1996) 73 FLR 1279 : (1996) 3 LLJ 694

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna J.

1. This Writ Petition under Article 226 and 227 of the Constitution of India is directed against an Order dated 24th December, 1992 made by the Industrial Court, Bombay in Appeal (IC) No. 36 of 1990 u/s 84 of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act")
2. The Petitioner was employed as a Bus Driver in the service of the First Respondent, which is an undertaking of the Bombay Municipal Corporation which, inter alia, carries on the business of transport of passengers by bus in Greater Bombay.
3. On 23rd October, 1984 at about 10.15 a.m. one Ambedkar, Assistant Traffic Officer No. 3, was distributing pay cards of ex gratia payment to the employees of Deonar Depot. The Petitioner was not given any such pay ticket as he was not eligible for the said ex gratia payment. The Petitioner accosted Ambedkar and demanded that he be given a pay ticket. When Ambedkar informed the petitioner that no pay ticket could be given to him as the petitioner was not eligible for the ex-gratia payment, the petitioner lost his cool and picked up quarrel with Ambedkar during the course of which he abused him in filthy words and threatened to kill him. This incident took place at the Deonar Bus Depot, where

both of them were working at the material time. A charge-sheet was served upon the petitioner alleging misconduct under Standing Order 20(i). He was also prosecuted for an offence u/s 506 of the Indian Penal Code. The prosecution failed, as the learned Metropolitan Magistrate acquitted the petitioner by giving him the benefit of doubt. A regular domestic enquiry was held into the charges alleged against the petitioner by the charge-sheet. As a result of the enquiry, the Enquiry Officer found the petitioner guilty of the charge alleged against him. After considering his past records, the First Respondent dismissed the petitioner from service on 11th March, 1985.

4. The petitioner sent an approach notice as contemplated by Section 42(4) of the Act demanding reinstatement with full back wages and, having not obtained satisfaction, followed it up with an application u/s 79 read with Section 78 of the Act before the Labour Court at Bombay. By an order dated 30th April, 1990, the Labour Court held that the findings of the Enquiry Officer were perverse and not flowing from the evidence on record and in any event that the punishment of dismissal was shockingly disproportionate to the misconduct proved against the petitioner. On these findings, the Labour Court directed the First Respondent to reinstate the Petitioner with full back wages and continuity of service.

5. Being aggrieved by the Order of the Labour Court, the First Respondent appealed to the Industrial Court u/s 84 of the Act vide Appeal (IC) No. 36 of 1990. The Industrial Court in exercise of its appellate power came to the conclusion that the Labour Court had erred in appreciating the evidence on record and holding that the findings of the Enquiry Officer were perverse and not flowing from the evidence on record in the enquiry. The Industrial Court also held that, though the actual words of filthy abuse had not been repeated by the witness during the domestic enquiry, there was sufficient evidence to bring the misconduct home to the Petitioner. In this view of the matter, the Industrial Court concluded that the Petitioner was guilty of the misconduct of abusing and quarreling with a co-worker during working hours. However, the Industrial Court was of the view that, even after consideration of the past record, of dismissal against the Petitioner was disproportionate to the proved misconduct. On this reasoning, the Industrial Court maintained the order of reinstatement of the Petitioner in service with continuity, but modified the order as to back-wages to 50% of the back-wages from the date of his dismissal till the date of reinstatement. It is this order of the Industrial Court which is impugned in the present Writ petition.

6. I have had the benefit of the learned arguments of Shri Kochar in support of the Petition. With his help I have perused the judgments of the two Courts below and, upon an overall view of the matter, I am satisfied that the order of the Industrial Court does full justice to the Petitioner and requires no interference at the hands of this Court.

7. Three grounds weighed with the Labour Court for interfering with the order of dismissal passed against the Petitioner. First, that the filthy abuses were not

repeated. Second, that there were some inconsistencies in the statements of the witnesses. Third, that even if the misconduct was proved, it ought not to have been visited with the ultimate punishment of dismissal. These are the grounds which weighed with the Labour Court. The Industrial Court, in appeal, discharged the first two, but accepted the third ground. Even after holding that the misconduct had been proved, the Industrial Court was inclined to hold that the dismissal was disproportionate punishment. Though holding that the misconduct had been proved to its own satisfaction, the Industrial Court was of the view that deprivation of 50% of the back-wages would be condign punishment in the circumstances of the case. I am in agreement with the view of the Industrial Court and the Order of the Industrial Court needs, therefore, to be upheld.

8. At this stage, Shri Kochar, however, urges that I may clarify a point which normally poses a difficulty in matters as to back-wages. He points out that an order of reinstatement was made by the Labour Court by its Order dated 30th April, 1990 (which perhaps was stayed during the pendency of appeal before the Industrial Court) but was finally upheld and confirmed by the Order of the Industrial Court dated 24th December 1991. Shri Kochar contends that, as a result of the two judgments below, the Petitioner is entitled to reinstatement and the reinstatement should, in fact have been given to him from 30th April, 1990. The reduction of back-wages would only mean that the back-wages payable from the date of dismissal till the date of Labour Court's order would have to be paid only to the extent of 50%. Shri Kochar informs the Court that Writ Petition No. 955 of 1992 filed by the First Respondent against the same impugned Order challenging the direction as to reinstatement and payment of 50% of back-wages has already been dismissed by this court. The contention of Shri Kochar appears to be correct. It is clarified that the First Respondent shall be liable to pay to the Petitioner 50% of the back-wages between the date of dismissal (11th March, 1985) till 30th April, 1990 but thereafter, the Petitioner shall be entitled to full back-wages from 30th April 1990 till the date of his reinstatement.

9. In the result, the Writ Petition fails. Rule discharged with no order as to costs.