

(1988) 09 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 1206 of 1981

Indian Cork Mills Private Ltd.

APPELLANT

Vs

P. Unnikrishnan of Bombay and Another

RESPONDENT

Date of Decision : 27-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 4 BomCR 127 : (1989) 58 FLR 139 : (1989) MhLj 24

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : P.M. Patel and L.V. Taulikar, for the Appellant; K.K.V. Kurup, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—This petitioner under Article 226 impugns an award given by a Labour Court pursuant to the reference of an industrial dispute raised against the petitioner by the 1st respondent.

2. The petitioner Company is a manufacturer of cork products and has a factory at Powai, Bombay-12. The workman was working as a supervisor in the stopper Department of the factory and it was his duty to supervise the packing and write out the packing slips. The management of the company accused the workman of being in league with the buyers of its products, in that, vast quantities not purchased by them went into packs meant for them. The packing slips were deliberately underrecorded. The explanation given by the workman was found to be not satisfactory. Eventually he came to be dismissed and the conciliation attempted having failed, the dispute was referred to the 2nd respondent for adjudication.

3. The employer and worker put forth their respective cases vis-a-vis an enquiry allegedly held prior to the passing of the dismissal order. The preliminary issue was decided against the petitioner, the second respondent holding that there was

no enquiry and that if what was done be held to be an enquiry the same was not proper and fair. The Company then led evidence to prove the alleged misconduct. According to the Labour Court the worker was guilty of gross negligence resulting in serious monetary loss to the employer and that the dismissal was justified. The employer's action could not be given retrospective approval and the employee could not be given reinstatement with back wages. The via media the Court chose was an award of 65% of the wages that the workman could have got between 4-1-1974. i.e. date of dismissal to 30-1-1981. i.e. the date of award. The legality of this award is questioned by the petitioner.

4. Petitioner's contention is that the workman's misconduct having been established and the penalty of dismissal found to be opposite, the 2nd respondent should have applied the rule of relation back and rejected the claim in its entirety. The key to unravel the complexities of the problem posed lies in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, . The Court in that case considered 4 earlier decisions on the subject of the doctrine of relation back vis-a-vis a dismissal preceded by the absence of an enquiry or a defective one. The result of the survey is set out in the penultimate para of the judgment, the relevant portion for the purposes of this case reading thus:

"We would, however, like to add that the decision in P.H. Kalyani Vs. Air France Calcutta, is not to be construed as a charter for employers to dismiss employees after the pretence of an enquiry. The inquiry in the instant case does not suffer from defect so serious or fundamental as to make it nonnest. On an appropriate occasion it may become necessary to carve an exception to the ratio of Kalyani's case so as to exclude from its operation at last that class of cases in which under the facade of a domestic inquiry the employer passes an order gravely detrimental to the employee's interest blatantly and consciously violating principles of natural justice may well be equated with the total absence of an inquiry so as to exclude the application of the "relation-back" doctrine".

The principle deducible from the foregoing may be enumerated thus:

1. The character of the misconduct viz. an imputation of moral turpitude or of negligence etc. ascribed to the employee is of great importance in the application of the principle.
2. The precise degree of imperfections in the enquiry held has to be investigated and categorised.
3. The theory of relation back is no rigid and inflexible formula to be applied to every case where the misconduct ascribed is established in the course of adjudication.

It is only after the 1st two stages are over that the Court proceeds to determine the relief awardable.

5. Tested in the light of the above what we find is that the employee was guilty

of negligence of a gross nature. A workman so remiss could not inspire confidence in the employer to warrant a direction for continuance in service. Neither could it be forgotten that his remissness had cost the employer a pretty penny. But the company had tried to cut corners by not holding an enquiry or in the alternative holding one which was a parody of even the elementary requirements of justice. This then was a mixed case and the Court had a duty to strike the middle path. The employee had done the unforgettable though not the unforgiveable. The employer had resorted to a violation of the basic rights of the workman. The theory of relation back could not apply wholly. In the circumstances the worker was given 65% of the wages and up to the date of award. I see no error. In fact the order is eminently fair. For that reason also the writ jurisdiction is uninvokable.

6. The petition fails and is dismissed with parties being left to bear their own costs.