
(2008) 02 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No. 2599 of 2007

Infomedia India Ltd.

APPELLANT

Vs

Tata Press Employees' Union and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (2008) 117 FLR 984 : (2008) 3 LLJ 226

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

Bench : Single Bench

Advocate : S.P. Salkar, for the Appellant;

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, by consent of counsel returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent of counsel and at their request taken up for hearing and final disposal.

2. These proceedings under Article 226 of the Constitution of India have been instituted in order to challenge an award of the Labour Court in a reference to adjudication u/s 10 of the Industrial Disputes Act, 1947. The Labour Court has held that the two charge sheeted workmen had committed serious misconduct upon which an order of dismissal from service could not be regarded as harsh or disproportionate. The Labour Court was of the view that the workmen were consequently not entitled to an order of reinstatement with full back wages. Having held thus, the Labour Court has awarded compensation in the amount of Rs. 2 lakhs to one of the two workmen, (A.S. Borade), and Rs. 3 lakhs to the other (V.B. Sawant). The correctness of this order is challenged by the employer.

3. The two workmen to whom the present dispute relates, were charge sheeted in a disciplinary enquiry of January 19, 1991. The allegation was that on August 22, 1990 and September 14, 1990, the workmen had unauthorisedly left their

place of work, resorted to an illegal and unjustified stoppage of work and that they participated in a gherao of the Managing Director and the General Manager, incharge of production. In respect of the second event, it is alleged that the workmen instigated the others to proceed on an illegal strike. The workmen participated in the enquiry. The enquiry Officer held that the charge of proceeding on an illegal strike and of riotous and disorderly behaviour on the premises of the establishment was proved, as well as the charge of the commission of an act subversive of discipline. An order of dismissal was passed. Upon a reference to adjudication, the Labour Court initially held that the enquiry was fair and proper, but came to the conclusion that the findings of the Enquiry Officer were perverse.

4. The order of the Labour Court was challenged by the management and that Petition under Article 226 of the Constitution of India resulted in a judgment of this Court in *Tata Infomedia Ltd. v. Tata Press Employees' Union* 2005 II CLR 463. This Court came to the conclusion that the charge of misconduct was found to have been established on the consideration of the entire evidence and that besides the evidence adduced on behalf of the management, the admissions contained in the evidence of charge sheeted workmen supported the charge of misconduct. This Court held that this was not a case of perversity in the findings recorded during the course of disciplinary proceedings. During the course of the judgment, this Court observed as follows:

The evidence showed that, it was only when the State Reserve Police intervened that the gathering of the workmen who had resorted to a gherao was dispersed.... The entire approach of the Labour Court is with respect thus flawed. The Labour Court has found fault with the findings of the Enquiry Officer on the ground that the witnesses for the management had ignored the circumstance that the General Manager (Personnel) V.V. Kanuga had also been gheraoed by the rival union. This circumstance which has weighed with the; Labour Court is extraneous to the entire proceeding because the charge of misconduct against the workmen related to a gherao of the Managing Director and the Production Manager with the resultant, stoppage of work. Once the charge of" misconduct was established, the allegation of victimization, as the Supreme Court has held in *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* (supra) would lose its significance particularly, in the absence of any cogent evidence in regard to victimization in the present case. Similarly, the Labour Court was entirely in error in holding that the management had not moved the Labour Court for a declaration in regard to the illegality of the strike. From the evidence, including the admissions of the charge sheeted workman it was evident that there was a concerted stoppage of work upon the instructions of a representative of the union and that the workmen had stopped" work both on August 22, 1990 and September 14, 1990. There was no occasion, therefore, for the Labour Court to hold that a proceeding ought to have been initiated for getting the strike declared as illegal before disciplinary proceedings could be sustained.

5. The proceedings were thereafter remitted back to the Labour Court for determining the question as to whether the punishment which has been imposed was disproportionate to the charge of misconduct.

6. Upon the remand of the proceedings, the Labour Court came to the conclusion that the act of misconduct which is attributable to the workmen was serious and that the punishment of dismissal from service could not consequently be regarded as harsh and disproportionate. At this stage, it would be material to advert to the findings which have been arrived at in paragraphs 9 and 12 of the judgment. The Labour Court also accepted the submission of the employer that the manufacturing activities at Prabhadevi Establishment had been discontinued with effect from April 1, 2001 and no work was, in fact, available. Consequently, the Labour Court held that no case for reinstatement has been made out. The Labour Court, however, made a passing reference to the evidence of the management witnesses during the enquiry that the members of a rival Union had also taken part in an act of misconduct as the workmen ; involved in the reference, but no action has been taken against the members of the rival Union. Having thus observed, the Labour Court held that looking to the misconduct committed by the workmen, their length of service, unblemished service record and discriminatory attitude of the employer, compensation of Rs. 2 lakhs and Rs. 3 lakhs respectively should be granted to the two workmen.

7. On behalf of the petitioner, the finding of the Labour Court has been assailed on the ground that having once come to the conclusion that the charge of misconduct was serious and that the penalty of dismissal from service could not be regarded as harsh and disproportionate, the Labour Court was manifestly in error in granting compensation. Learned Counsel submitted that no case of discrimination whatsoever was established and in any event, once a finding of misconduct is held to be serious enough, that would rule out any element of victimization. Moreover, it was submitted on behalf of the management that the allegation against the members of a rival Union related to the gherao of Shri Kanuga, the General Manager (Personnel), in respect of a completely different incident for which no chargesheet had been issued to any workmen. On the other hand, counsel appearing for the Respondent has supported the findings and the conclusion of the Labour Court.

8. Consequent upon the judgment of this Court dated March 23, 2005, the Labour Court was called upon to decide the question as to whether the punishment which was imposed was disproportionate to the charge of misconduct. In the course of the earlier judgment, this Court had arrived at the conclusion that there was no perversity in the finding that was recorded in the course of the disciplinary enquiry. The Labour Court had already held that the enquiry was fair and proper. During the course of the earlier judgment, this Court noted that the Labour Court had found fault with the findings of the Enquiry Officer on the ground that the witnesses for the management had ignored the circumstance that the General Manager (Personnel), had also been gheraoed by

the rival Union. This Court expressly arrived at the finding that the aforesaid circumstance was extraneous because the charge of misconduct against the workmen related to gherao of the General Manager, and the Production Manager which had resulted in the stoppage of work. This Court held that once the charge of misconduct is established, the allegation of victimization would lose its significance, particularly in the light of the judgment of the Supreme Court in *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, . From the aforesaid finding, it is evident that the issue as to whether the members of the rival Union had been dealt with on a different footing altogether, was the subject matter of the earlier decision. An allegation of discrimination must be established on the basis of cogent evidence which was totally lacking in the circumstances of this case. The Labour Court came to the conclusion that the charge of misconduct was serious and that the punishment of dismissal was not harsh or disproportionate. Having so held, the Labour Court has completely transgressed the limits of its jurisdiction u/s 11A of the Industrial Disputes Act, 1947, by awarding the compensation in the amount of Rs. 2 lakhs and Rs. 3 lakhs respectively. Once the charge of misconduct is held to be serious enough to warrant imposition of the penalty of dismissal, it was not open to the Labour Court to direct the employer to pay compensation for the reasons which have weighed with the Court.

9. In these circumstances, there is merit in the challenge which has been made before the Court in these proceedings. The Petition will have to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer Clause (a).