

(1956) 08 BOM CK 0008

In the Bombay High Court

Case No : Appeal (I.C.) No. 366 of 1956

Jasmine Mills (Private) Ltd.

APPELLANT

Vs

Mill Mazdoor Sabha

RESPONDENT

Date of Decision : 23-08-1956

Acts Referred:

Citation : (1956) 08 BOM CK 0008

Hon'ble Judges : M.R. Meher, J

Bench : Single Bench

Judgement

1. This is an appeal against an order of the judge, second labour court, Bombay, directing the reinstatement of Sri Rama Kondiba Bhosale, a canteen boy in the employ of the appellant company.

2. The facts are as follows. The employee concerned was charge sheeted for misconduct by dishonesty in connexion with the company's business and neglect of work. It was alleged against him that he returned five short coupons. The only point taken by the sabha in the application to the labour court was that in the inquiry by the management no coupons were produced and no shortage of coupons nor the employee's responsibility was established and that the employee was innocent.

3. The company in its written statement replied that the supervisor asked the employee to explain why he brought five coupons less; he thereupon gave in writing that he had brought five coupons less. In the inquiry before the manager he denied that there was shortage of coupons though he had admitted in writing to the supervisor that he had brought five coupons less. The employee concerned had been several times warned or suspended on previous occasions for similar misconduct, that the dismissal was legal and proper.

4. The labour court was of the view that the inquiry was not properly held in that some witnesses were not examined during the inquiry. The labour court however rightly took evidence on the subject of the employee's misconduct and came to

the conclusion that the writing (Ex. 17) in which Sri Rama Bhosle had admitted that he had brought five less coupons was probably not his, that even if it was the shortage may have been due to carelessness or negligence, that it was possible that in view of the previous acts of such neglect, the employee could have been charged with habitual neglect of duty but that was not the charge. In the result, he directed the reinstatement of the employee. The company being dissatisfied with this decision has appealed and it is urged that the lower court ought to have held that the dismissal was proper.

5. Now the first point that arises is whether the employee returned five coupons short. There is evidence showing that the employee used to be given tea and eatables to sell. Account was kept of the articles given for sale which was by coupons, and Rama Bhosle returned five coupons short. At that time Sri Sinha who is not now in the employ of the company was the head canteen supervisor. Witness Sri Dhake, the supervisor, has stated that in finding the shortage he reported to Sri sinha, that Rama Bhosly was called, and on being asked to give it in writing did so. The writing is Ex. 17 and bears the signature of Rama Bhosle, and is countersigned by Sri Amila Dhake. The labour judge having compared the signatures of Rama Bhosle with two signatures on letters admittedly bearing his signature, came to the conclusion that though the signature on Ex. 17 was not dissimilar to the signatures of the employee on other documents, the signature on Ex. 17 was probably not his. In coming to the conclusion, I am afraid the labour judge has fallen into a serious error. It is hazardous for a court to base its finding on only a comparison of signatures without the help of expert evidence. Besides the labour judge has not expressly disbelieved the evidence of Sri Dhake the supervisor who has countersigned Ex. 17 and has stated that Sri Rama Bhosle signed it in his presence. If the finding of the labour judge is correct Ex. 17 is a forgery. The labour judge has entirely overlooked that there was no conceivable motive for the head supervisor and supervisor to forge the document. In fact the labour judge has stated that it was not alleged that there were any bad relations between Sri Rama Bhosle and the supervisor and head supervisor. Taking into consideration the evidence in the case I have no doubt that Ex. 17 was signed by Rama Bhosle.

6. But the matter does not end here. For the labour judge says that even if there was admission on the part of Rama Bhosle of shortage of five coupons, it was no admission of dishonesty and that the shortage may have been due to carelessness in handing out cups of liquids like tea and coffee. He has relied on the supervisor's statement that shortage does not necessarily mean that the employee was dishonest. But the supervisor has clearly stated that a little larger quantity of tea is given to avoid shortage by reason of more tea being given in cups. So it was not likely that there could be, shortage of five coupons. But the important fact is that at no time was it the case of Rama Bhosle that the shortage may have been due to mistake or inadvertence or pouring out more tea. In the application to the labour court there is no such suggestion nor in the statement of Rama Bhosle before the labour court. The only ground urged in that

application is that there was no shortage of coupons. The suggestion about inadvertence was not put in cross-examination of the manager, and it was for the first time put to the supervisor in cross-examination. If this defence was a plausible one, it would have been taken in the application to the labour court. But the difficulty about accepting such a suggestion is that on three previous occasions Rama Bhosle had been suspended or warned for depositing short coupons. If the question was whether the shortage of five coupons in this case was due to dishonesty or not, the circumstances that on a number of occasions the employee was punished for similar shortages could have been taken into consideration for determining whether this shortage of five coupons was due to dishonesty or due to mistake or carelessness. But as stated above the defence of Rama Bhosle in the inquiry by the manager and the application filed on his behalf by the union to the labour court was that it was not true that he deposited five less coupons. Rama Bhosle has in his evidence stated that he was told by the supervisor that the coupons were short but the coupons were not counted in his presence. If an employee whose duty is to give all the moneys collected by him to his employer does not so and states that he has deposited more money than the employer admits, and if this statement is false, it is reasonable to infer that he has misappropriated the moneys and in such circumstances a court would not be justified in holding that possibly there is some other explanation other than dishonesty. The position in the present case is not dissimilar to this illustration. In my opinion it is a reasonable inference from the evidence that Rama Bhosle was guilty of dishonesty in respect of the shortage of five coupons. In view of this and the fact that he was on three previous occasions fined or suspended for similar shortages the order of dismissal ought not to be interfered with.

7. The labour judge has stated that as Rama Bhosle was not charged with habitual neglect of duty but only with neglect of duty it was not necessary to deal with it. Now, under the standing order 21 neglect of duty is not treated as misconduct but standing order 21(1) makes habitual negligence punishable as misconduct. Clause 21(1) was stated in the charge. He was also charged with dishonest conduct under standing order 21(d). The defence of the employee was that he had never been dishonest or negligent. Now, all the evidence was before the labour court and if that evidence established habitual negligence, it seems to me that the error in the charge as framed by the manager would not preclude the court from finding on the evidence that the employee was guilty of habitual negligence. [Vide case of *Vithal Shetty v. Chokshi Silk Mills, Bombay - (IX) F.J.R. 332*]. Exhibit 19A shows that Rama Bhosle was on four occasions suspended and on two occasions warned for neglect of duty; and that two of the suspensions and one of the warnings were in respect of shortage of coupons. The employee has in his evidence stated :

"It is true that I was twice suspected for shortage of coupons. I do not remember. I was twice suspended for neglect of work. One of the warnings was for loss or shortage of coupons."

Sri Jahagirdar who conducted the case for the company in the lower court stated at the hearing of the appeal that the word "suspected" is a mistake for "suspended," and Sri Sowani who appeared for the union did not contest this submission. Whatever that may be, and whether the employee used the word "suspected" or "suspended", the evidence before the labour court if it did not establish dishonesty in connexion with five coupons, established habitual negligence. Even if I had come to the conclusion that the evidence was not sufficient to prove dishonesty but was sufficient to prove habitual negligence, I would have found it difficult to uphold the order of reinstatement and force the services of such an employee on the employer in a position requiring trust, and that too an employee who is so irresponsible as to deny, on his oath, his own signature to a document.

8. For the foregoing reasons the appeal is allowed. The order of the labour court is set aside, and the application of the union before the labour court is directed to be dismissed.