

(1987) 09 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2295 of 1982

Keshav Soma Tawde and others

APPELLANT

Vs

State Peoples (Pvt.) Ltd.

RESPONDENT

Date of Decision : 10-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 114, 380

Citation : (1988) 2 LLJ 410

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Judgement

1. The original petitioner-Keshav Soma Tawde (since deceased) was in the permanent employment, as a compositor, on monthly salary of Rs. 464 for 29 years, of the first respondent, State Peoples (Private), Ltd., Company, Janmabhumi Bhavan, Ghoga Street, Fort, Bombay 400 001. He was charge sheeted on 22nd June 1977, on the allegation that he was involved in an offence of theft of the property belonging to the first respondent and that he absented from duty. He has submitted explanation to the charge sheet on 28th June 1977, denying the allegation made against him. Thereafter, a domestic enquiry was held in which he was found guilty and ultimately by an order, dated 9/19 November 1977, he was discharged from service with immediate effect.

2. Aggrieved by the said action of the first respondent, the said workman lodged a complaint with the Government Labour Officer, Bombay, for his restatement with continuity of service and back-wages. However, the first respondent refused to take him back in the service and hence, the Government Labour Officer was constrained to close the proceeding on 22nd September 1978. The workman then submitted the demand to the first respondent on the same day for his reinstatement with continuity of service and back-wages. The first respondent rejected his demand by a letter, dated 26th September 1978.

3. Thereafter, the workman by his letter, dated 2nd October 1978, approached

the Deputy Commissioner of Labour (Administration), Bombay, seeking his intervention in the dispute. Accordingly, conciliation proceedings were initiated on 16th October 1978, and the demand of the workman was admitted in the conciliation on 21st November 1978. In the course of conciliation proceeding, the first respondent expressed willingness to settle the dispute on monetary basis and sought adjournments on many occasions but did not settle the dispute. Consequently, the Conciliation Officer recorded failure report on 19th January 1979, and submitted the same to the Deputy Commissioner of Labour (Administration), Bombay. Thereafter, the dispute was referred to the second respondent presiding over the Eighth Labour Court, Bombay, for proper adjudication. On appreciation of the evidence adduced before him and after giving a reasonable opportunity of being heard to the parties, the second respondent by his award, dated 29th June 1982, held that the domestic enquiry was proper and fair and was conducted in observation of the principles of natural justice and that the findings of the enquiry officer were not perverse and further that the punishment inflicted on the workman was justified. He accordingly rejected the reference. The said award passed by the second respondent was impugned in this writ petition under Art. 226 of the Constitution. During the pendency of this writ petition, the original petitioner, Keshav Soma Tawde, died and, therefore, the petition is continued and proceeded by legal heirs and representatives of the said Keshav Soma Tawde, i.e., the petitioners IA and IB.

4. Now, the second respondent rejected the reference on appreciating the evidence adduced before the enquiry officer and the finding submitted thereon. A perusal of the said evidence shows that including the workman Keshav Soma Tawde, four witness were examined by the enquiry officer. Thus, Bhikaji Laxman Bagwe, who was working as a foreman in the Marathi composing department of the first respondent, deposed that on 18th June 1977, at about 10.45 A.M., he had seen Kasinath Narayan Ambekar, the brother of one of his colleagues by name Suryakant Ambekar, in the company of Keshav Soma Tawde. He had also seen Keshav Soma Tawde bringing lead which was tied in paper folding. He had further noticed Kashinath and Keshav chewing pans together and leaving the department. He suspected them, and, therefore, he gave signal to watchman Parashnath Singh. The evidence of Bagwe does not show that Keshav Soma Tawde (deceased workman) was noticed in the act of committing theft of lead quotation belonging to the first respondent. Thereafter, evidence of Parashnath Singh indicates that he had caught Kashinath Narayan Ambekar as a thief. Therefore, Singh's evidence also does not involve Keshav Soma Tawde in the act of committing theft. The third witness examined on behalf of the first respondent at the domestic enquiry was Dhirubhai Desai, works manager of the first respondent. His evidence shows that after Kashinath was caught by Singh, he was taken to Dhirubhai Desai. Desai questioned him and obtained two packets of lead. The said Kashinath informed Desai that he had gone to the company to see Suryakant whom he knew and that Suryakant took him to Keshav Soma Tawde on the first floor and the said Keshav Tawde handed over two packets of lead to

him (Kashinath). This version of Dhirubhai Desai shows that his evidence was hearsay evidence. The deceased workman was involved only by the real thief, viz., Kashinath. Lastly, Keshav Soma Tawde himself was examined at the domestic enquiry and he stated in clear terms that he had not given lead quotation to the brother of Suryakant as alleged and that the allegations made against him were false. Therefore, from the evidence adduced at the domestic enquiry it was not proved that Keshav Soma Tawde was involved in act of theft. In addition, we have on the record an order passed by the learned Additional Chief Metropolitan Magistrate, presiding over Thirty-eighth Court, Ballard Estate, Bombay. He was dealing with Case No. 35/P of 1978 at the instance of Palton Road police station in C.R. No. 436 of 1977. The three accused persons concerned in this case were, viz.,

- (1) Kashinath Narayan Ambekar.
- (2) Suryakant Waman Ambekar, and
- (3) the deceased workman Keshav Soma Tawde

who were prosecuted and tried for offence punishable under S. 380 read with S. 114 of the Indian Penal Code. The learned Additional Chief Metropolitan Magistrate held that there was no material on record to frame charges against accused Nos. 2 and 3, i.e., Suryakant Waman Ambekar and Keshav Soma Tawde, as nobody had stated that they had seen these two persons doing anything in respect of committing theft except the word of accused No. 1 Kashinath Narayan Ambekar. He, therefore, discharged the accused Suryakant Waman Ambekar and Keshav Soma Tawde and further, accused No. 1 Kashinath Narayan Ambekar pleaded guilty to the charge of theft punishable under S. 380 of the Indian Penal Code and was accordingly convicted by the learned Additional Chief Metropolitan Magistrate. All these go to show that the workman in our case was not involved in committing theft as was alleged against him. Therefore, the finding given by the enquiry officer at the domestic enquiry holding Keshav Soma Tawde guilty of committing theft was perverse and the second respondent who accepted such perverse finding committed grave error apparent on the face of the record. The second respondent, therefore, was not correct in rejecting the reference of the workman in the matter of his reinstatement with continuity of service and back-wages. The impugned award passed by the second respondent, therefore, will have to be set aside.

5. In the premises, the impugned award passed by the second respondent on 29th June 1982, in Reference (IDA) No. 279 of 1979 is quashed and set aside. The result would, therefore, be reinstatement of the workman with full back-wages and continuity of service. Unfortunately, however, during the tendency of the writ petition, the workman died on 24th October 1984. Therefore, reinstatement is out of question. However, his legal heirs and representatives, viz., petitioners 1A and 1B will be entitled to full backwages due to the deceased workman from the date of his discharge from service on 19th November 1977 till

23 October 1984. The first respondent State Peoples (Private), Ltd., Jammabhumi Bhavan, Ghoga Street, Fort, Bombay 400 001, are hereby directed to work out the entire backwages from 19th November 1977 to 23rd October 1984 and pay the entire amount to the petitioners 1A and 1B, i.e., the legal heirs and representatives of the deceased workman. If the first respondent fails in doing so by 16th October 1987, they shall be liable to pay interest at the rate of 15 per cent. on the said amount to petitioners 1A and 1B.

6. Rule is made absolute in terms aforesaid but, in the circumstances of the case, with no order as to costs.