

(1997) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2797 of 1987

Madhukar Murari Pawaskar

APPELLANT

Vs

Hindustan Spinning and Weaving Mills Ltd. and others

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 30, 78, 79

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 11

Citation : (1998) 1 BomCR 688

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : K.S. Bapat, for the Appellant; S.K. Talsania, V.B. Trivedi and S.R. Tilokchandani, instructed by Manilal Kher Ambalal and Co., for the Respondent

Judgement

S.S. Nijjar, J.—The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India praying for the issuance of writ of certiorari quashing the order dated 31-1-1986 passed by the second respondent in Application (L.C.B.) No. 1327 of 1980 and the order passed by the third respondent dated 15th September, 1986 in Appeal (I.C.) No. 14 of 1986.

2. The petitioner was working in the Folding Department of the Opponent Mill. In 1973 he met with an accident and had lost his four fingers and the thumb of his right hand. He was, therefore, given lighter work of piece checker. He was served with a charge sheet dated 31st July, 1980 alleging that he had assaulted one Shri Rajaram. He gave his explanation on 2nd August, 1980 stating that he was sick from 25th July, 1980 till 31st July, 1980 and was confined to bed. He had not entered the premises of the Mill on 31st July, 1980. A domestic enquiry was held and he was dismissed from service by an order dated 27th September, 1980. Before the Enquiry Officer the petitioner had made an application dated 14th August, 1980 for permission that the enquiry should be held in Marathi and that he should be permitted to be represented by an Advocate or any other person of his choice. The request was refused. The Enquiry Officer gave his findings on

11th September, 1980. He served an approach notice dated 8th October, 1980 on the first respondent. Thereafter the petitioner filed Application (LCB) No. 1327 of 1980 on 11th November, 1980. The petitioner stated that the enquiry had been conducted in violation of the principles of natural justice. The first respondent appeared before the Labour Court and filed written statement dated 7-1-1981. The allegations made by the petitioner was denied. The petitioner examined himself in support of the case. The first respondent examined Dr. Pradip P. Patkar. The Labour Court by its order dated 15th July, 1983 dismissed the application. The petitioner filed an appeal against the said order before the Industrial Court. The Industrial Court by its judgement and order dated 18-2-1985 allowed the appeal and set aside the findings of the Labour Court. The Industrial Court held that the enquiry was not fair and proper. The matter was remanded back to the Labour Court. The Industrial Court also permitted the first respondent to lead evidence and justify the action. After the remand the first respondent examined Rajaram R. Prajapati, Manohar Murari Sawant, Shataram Gopal Shirke, Ganesh Narayan Narrerkar and Sikander Gulab Kulkarni. The petitioner examined one Vishwanath Yeshwanath Kadam. Again after hearing the parties and recording the evidence the Labour Court by its judgement and order dated 31-1-86 dismissed the application.

3. Aggrieved against this judgement and order the petitioner filed appeal in the Industrial Court being Appeal (IC) No. 14 of 1986. Again after appraising the evidence and after hearing the parties the appeal was dismissed on 15th September, 1986. Against both the aforesaid orders the present writ petition has been filed.

4. I have heard the Counsel for the parties at length. The Labour Court after appreciating the evidence has held that in view of the remand order it was not necessary to decide whether the enquiry was proper and fair. The Labour Court addressed itself to the question whether the opponent justifies its action and whether the punishment is shockingly disproportionate with regard to the charges proved against the applicant. It has been held that it is quite clear from the evidence of the witnesses that the applicant had gone to the mill on 31st July, 1980. The assault by the petitioner on Rajaram was held to be proved. Thus it was proved that the petitioner had committed misconduct as mentioned in Standing Order 21(k). However, the Labour Court came to the conclusion that the punishment is not proportionate to the misconduct as nothing has been argued regarding propriety or the proportion of the punishment. It is also held that the applicant has not been gainfully employed. The application was dismissed. The Industrial Court by its order dated 15th September, 1986 has upheld the order of the Labour Court. The appeal filed by the petitioner was dismissed.

5. Counsel for the petitioner has submitted that both the Labour Court and the Industrial Court have erred in law in not reinstating the petitioner. The misconduct was not such as to deserve the extreme penalty of dismissal from

service. Counsel has submitted that when exercising power under Articles 226 and 227 of the Constitution of India this Court has the power to order reinstatement. The courts below having failed to exercise their power u/s 11-A it would be appropriate to order the reinstatement of the petitioner on the principles which are contained in section 11-A of the Industrial Disputes Act. Counsel has relied on a Division Bench judgement of this Court in the case of Oriental Containers Ltd. Bombay Vs. Engineering Workers Association and Others, . In that case it has been clearly held that this Court has the power to do what the tribunal has the discretion to do. Consequently the workmen in that case were ordered to be reinstated with continuity of service and full back wages.

6. Counsel for the respondent has, however, brought to my notice a Division Bench judgement of this Court in the case of Municipal Corporation of Greater Bombay v. S.E. Phadtare & others, 1994 (1) C.L.R. 301 . A perusal of paragraph 16 of this judgement shows that the Counsel there had submitted that in any event, the provisions of section 11-A of the Industrial Disputes Act should be applied and the punishment imposed should be suitably reduced. This argument was, however, rejected with the observation that "it is not possible to accept this contention. In the first instance, the provisions of section 11-A of the Industrial Disputes Act are not applicable in respect of proceedings conducted by the Labour Court under sections 78 and 79 of the Bombay Industrial Relations Act." The Division Bench in the case of Oriental Containers (supra) was decided on the interpretation of section 11-A of the Industrial Disputes Act and the power of this Court under Article 226 of the Constitution of India. Therein the Division Bench had noticed the observations of the Supreme Court made in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . In that case it was held:

".....that Article 226, however, restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand. What the tribunal may, in its discretion, do, the High Court too, under Article 226, can, if facts compel, do."

The aforesaid observations are, however, of little assistance to the petitioner as the matter is squarely concluded that there is no provision in the Bombay Industrial Relations Act, like the provisions contained in section 11-A of the Industrial Disputes Act. Having examined the matter from all angles it appears that the petitioner has suffered sufficiently for the misconduct. It is in evidence that the petitioner is a handicapped person having lost 4 fingers and the thumb way back in the year 1973. Both the Labour Court as also the Industrial Court have failed to give any cogent reasons on the question as to whether or not the punishment is disproportionate to the misconduct. Under the Industrial Disputes Act this Court on the basis of the decision given in Oriental Container's case would have been justified in quashing the impugned judgements and orders and

ordering reinstatement of the petitioner. However, the Division Bench judgement in the case of Municipal Corporation of Gr. Bombay, which is given with regard to sections 78 and 79 of the Bombay Industrial Relations Act, 1946, is binding. Thus although the Court may be sympathetic to the plight of the petitioner yet no relief can be given.

7. For the reasons stated above the writ petition is dismissed. Rule is discharged. There shall be no order as to costs.

8. Petition dismissed.