
(1994) 01 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 105 of 1988

Mahadeo Sakharam Sasane	Vs	APPELLANT
Tata Mills Limited and Others		RESPONDENT

Date of Decision : 17-01-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79
Constitution of India, 1950 — Article 226, 227

Citation : (1994) 3 BomCR 21 : (1994) 68 FLR 795

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; S.S. Naphade and Nandini Menon, instructed by Meena H. Doshi, for the Respondent

Judgement

B.P. Saraf, J.—The petitioner, Mahadeo Sakharam Sasane, was in permanent employment of the respondent No. 1. His services came to be terminated by order dated 29th November, 1978 for alleged theft of 3/4 meter of cloth worth about Rs. 5/-. The petitioner approached the Labour Court u/s 79 read with section 78 and 42(4) of the Bombay Industrial Relations Act, 1946 ("B.I.R Act"). The Labour Court held the dismissal to be illegal and directed respondent No. 1 to reinstate the petitioner without back wages but with continuity of service for the purpose of gratuity and pension. The petitioner was aggrieved by the denial of back wages. He, therefore, appealed to the Industrial Court, Maharashtra, Bombay. The appeal was dismissed by the Industrial Court by order dated 7th October, 1987 (Exhibit "C" to the petition). The petitioner has challenged the order of the Industrial Court before this Court by the present writ petition.

2. The petitioner contends that under the facts and circumstances of the case, the Labour Court and the Industrial Court were not justified in denying the benefit of back wages while directing his reinstatement. To appreciate contention of the petitioner, it may be expedient at this stage to briefly state the material facts of this case. The petitioner was working in the cloth department of the

respondent No. 1 for a period of about 18 years. On 25th September, 1978, a chargesheet was served on him alleging that he was caught red handed by the watchman of the Mill with a piece of cloth belonging to the Mill. He was charged with commission of misconduct under Standing Order 21(d)(k). A domestic inquiry was instituted against him. A complaint was also filed with the police and he was prosecuted in the Court of the Metropolitan Magistrate, Dadar for commission of offence u/s 381 of the Indian Penal Code. He was however acquitted of the charge for commission of the said offence. It was held by the Metropolitan Magistrate in his judgment dated 30th January, 1979 that the whole case rested on the speculation of the prosecution witness No. 1. It was further observed that the prosecution did not adduce any evidence to show that the particular piece of cloth was stolen from the premises of the Mill of the respondent No.1 nor the date, time and place of theft was proved by the prosecution.

3. During the pendency of the proceedings in the Court of the Metropolitan Magistrate, domestic inquiry was conducted against the petitioner on the basis of the charge-sheet served on him. As already stated, the charge was of commission of theft of 3/4th metre of cloth by the petitioner on 7th Sept., 1978 at about 12.10 midnight. It was alleged that the said piece of cloth was found hidden inside the umbrella of the petitioner. The petitioner denied the charge. The Inquiry Officer however found him guilty of the charge of theft in respect of 3/4th metre of cloth and on the basis of the report of the Inquiry Officer, his services were terminated by the respondent No. 1. The order of termination was challenged by the petitioner before the Labour Court. The Labour Court held that the management was right in accepting the findings of the Inquiry Officer despite the finding of the Criminal Court in favour of the petitioner. The Labour Court observed that though in the past there were some warnings to the discredit of the petitioner-workman between 1971 to 1973, none of them pertained to an act of the nature alleged against him in the present case. It also took note of the fact that the stolen property was only 3/4th metre of cloth worth about Rs. 5/-. The Labour Court, therefore, found the punishment to be shockingly disproportionate and accordingly directed reinstatement of the workman with continuity of service for the purpose of gratuity and pension but without back wages.

4. Mr. Kochar, learned Counsel for the petitioner, submits that considering the totality of the facts and circumstances of the case, the Labour Court was not justified in denying back wages to the petitioner. According to the Counsel, the punishment of denial of back wages for a period of above five years, without any past record, is shockingly disproportionate. Counsel submits that the order of the Industrial Court, in so far as it pertains to the denial of back wages to the petitioner, should be set aside. In reply, the learned Counsel for the respondent No.1, submits that the respondent No.1 - Tata Mills Ltd. has been taken over by the Government of India under the Textile Undertakings (Taking over of Management) Act, 1983 and under the provisions of the said Act, the liability of the respondent is limited only to liability accrued after 18th October, 1983. The

Counsel for the petitioner does not dispute this position, particularly in view of the decision of this Court in (National Textile Corporation South Maharashtra) Ltd. v. Shramik Janata Union, (1990) 2 CLR 558: 1991(1) Bom.C.R 160 . He accepts the legal position that the respondents 1 and 2 are liable only in respect of wages from 18th October, 1983 upto the date of reinstatement.

5. In regard to the claim of the petitioner for back wages, Counsel for the respondents submits that the petitioner having been found guilty of theft of the property of the employer, he was liable to severe punishment and the fact that the theft was of 3/4th metre of cloth worth Rs.5/- is not relevant for determination of the punishment. In reply, Counsel for the petitioner submits that keeping in view the service of 13 years of the petitioner with the respondent-employer without any such past record, the insignificant nature of the alleged stolen property and the value thereof, the statement of the petitioner before the Inquiry Officer that he was not aware how the said piece of cloth came to be placed in his umbrella (which however did not find favour with him), the suffering of the petitioner as a result of criminal prosecution in the Court of the Metropolitan Magistrate and the long drawn litigation before the Labour Court and the Industrial Court by itself is more than sufficient punishment. Counsel further submits that in view of the taking over of the undertaking by the Central Government even if this Court allows relief to the petitioner of back wages, he will get back wages only for the period from 18th October, 1983 to the date of reinstatement i.e. 28th February, 1985. In any event, he will be deprived of the salary for long five years from 29th November, 1978 to 17th October, 1983.

6. The learned Counsel for the respondent, on the other hand, submits that the question of punishment having been decided by the Courts below, this Court cannot substitute its opinion in place of the opinion of the Labour Court and the Industrial Court. If this Court is not satisfied with the conclusion arrived at by the courts below, it may, at the most, set aside the order and remand the case to the Industrial Court or the Labour Court to decide it afresh in the light of its observation.

7. I have carefully considered the rival submissions. It is well-settled that ordinarily reinstatement should be followed by back wages except in cases where a departure is required. It is also equally well-settled that it is for the party objecting to the award of back wages to establish the circumstances necessitating its departure. So far as the powers of this Court in such matters are concerned, it is true that in exercise of the powers under Article 227 of the Constitution of India, this Court does not act as a Court of appeal and ordinarily does not substitute its own findings regarding punishment in place of findings arrived at by the Tribunal. In such case, the impugned orders are generally set aside and matter remitted to the Labour Court or the Tribunal concerned. But that is a matter of practice and cannot be laid down as a rule. The High Court may, in an appropriate case, to meet the ends of justice, instead of remitting to the Labour Court or the Tribunal, decide the dispute itself. This legal position is

well-settled by the decision of the Supreme Court in *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*, , where the Supreme Court, after observing that it is not for the High Court in exercise of its jurisdiction of superintendence to substitute one finding for another, made it clear that by the aforesaid observation it should not be understood to have denied that power to the High Court in every type of case. In the instant case, I find that the workman was dismissed in the year 1978. The order of reinstatement was passed in the year 1985. Though, technically he was reinstated, factually he could not work and ultimately he tendered his resignation in the year 1989. A dispute in regard to reinstatement, which is subject-matter of Writ Petition No. 1357 of 1989 has also been heard today and is being decided on merits separately. The petitioner has been given his gratuity upto the date of his retrenchment. The only surviving dispute is regarding the claim for back wages till the date of reinstatement. In such a situation, after lapse of long period of 15 years, it will defeat the ends of justice if the matter is remanded to the Court below to decide the quantum of punishment and that too on the face of the admitted position that even if back wages are ordered to be given, the petitioner can get the same only for a brief period of 14-15 months. This, in my opinion, is a fit case where I should exercise the extraordinary powers under Article 226/227 of the Constitution of India and issue suitable direction in regard to back wages in this writ petition itself instead of remanding the matter to the Court below.

8. Considering the totality of the facts and circumstances of the case, I am of the opinion that it will be just and proper in this case to direct the respondents to pay back wages to the petitioner from 18th October 1983 to 28th February, 1985. This payment may be made within three months from today. It is ordered accordingly. The order of the Labour Court shall stand modified to the above extent.

9. In the result, the writ petition is allowed to the extent indicated above. Rule is made absolute in the above terms. There shall be no order for costs.