

(2002) 07 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 6139 of 1995

Maharashtra General Kamgar Union

APPELLANT

Vs

G.L. Hotels Ltd. and Another

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 6 BomCR 790 : (2003) 96 FLR 910 : (2002) 4 MhLj 388

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : N.M. Ganguli and K.G. Poojari, for the Appellant; Kuldeep Singh, instructed by R.V. Paranjape, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The Maharashtra General Kamgar Union is the Petitioner aggrieved by the impugned award dated 6th June 1994 in Reference IDA No. 221 of 1980 made by the Deputy Commissioner of Labour (Conciliation) Bombay u/s 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of a demand of reinstatement of six workmen with full backwages and continuity of service.

2. It appears that initially the petitioner union had espoused, the cause of six workmen who were dismissed from employment by the respondent company for alleged various multiple acts of misconduct levelled against them. It appears that during the pendency of the litigation before the Labour Court and this Court, out of six workmen five workmen have settled their claim. In the present petition, we are concerned only with one workman i.e. C.D. Jose.

3. The petitioner union filed its statement of claim before the Labour Court justifying its demand for reinstatement with full backwages and continuity of service challenging the propriety and legality of the dismissal orders passed by the respondent company. The petitioner union had also challenged the propriety and fairness of the enquiry held by the respondent company against the said six

workmen who were dismissed after the domestic enquiry. The respondent employer appeared before the Labour Court and filed its written statement to contest the reference and prayed that the reference should be rejected and no reliefs should be granted to any of the workmen. The respondent company, inter alia, pleaded that the said six workmen were guilty of serious charges of several misconduct on the premises of their four star hotel and they were punished by way of dismissal after holding fair and proper domestic enquiry where they were given full opportunity of hearing and wherein all the principles of natural justice were complied with by the respondent company. It was, therefore, prayed that reference should be rejected.

4. On the basis of the pleadings and evidence the Labour Court by its award dated 10th May 1985, held on the preliminary issue of fairness and propriety of the enquiry, that the enquiry held by the respondent company was fair and proper. The Labour Court proceeded with the reference on the point of punishment. By his award Part II dated 6th June 1994 the Labour Court held that the workmen Mahadev Kotian, CD. Jose, Ramnath Mahendrakar were entitled to be reinstated with continuity of service from 10-10-1979 with 1/3rd backwages and all monetary benefits for the entire period from 10th October 1979 till reinstatement. It appears that after the said award, except the present workman Shri C.D. Jose, the other workmen have settled their dispute on monetary basis with the respondent company. The Labour Court appears to have held that the misconduct levelled against the workmen were proved but the punishment of dismissal was harsh and, therefore, he interfered with the punishment of dismissal by setting aside the same and directing the respondent company to reinstate the aforesaid workmen with continuity of service but with 1/3rd backwages

5. Shri Ganguli, the learned Counsel for the petitioner union has assailed the present award of denial of 2/3rd backwages on the ground that the Labour Court had inflicted punishment of denying of 2/3rd backwages which according to the learned Counsel, the Labour Court could not do as it had no powers to inflict such punishment on the workman. Shri Ganguli has relied upon the following two judgments of the Supreme Court:--

- i) Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, ;
- ii) 1980 L. I.C. 1004 Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Ors.

According to Shri Ganguli, the law laid down by the Supreme Court is that once the order of dismissal by way of punishment is set aside as illegal and improper, the normal rule of full backwages should follow. According to Shri Ganguli, the Labour Court has inflicted the punishment of denial of 2/3rd backwages and such punishment cannot be inflicted on the workman. The workman should have been granted full backwages as the order of dismissal was set aside by the Labour Court. Shri Ganguli further submitted that the denial of backwages by way of

punishment cannot be a mode of punishment and it is not prescribed under the standing orders or under any industrial law. According to him, if the employer cannot inflict such punishment much less the Labour Court can evolve such kind of punishment. Shri Ganguli, therefore, prays that the workman Shri Jose should be granted full backwages for the intervening period.

6. It is an admitted position that the said workman was reinstated by the respondent company on 8th August 1996 and therefore, now what remains is the question of grant of full backwages to him. It is further an admitted position that the respondent company has also paid 1/3rd backwages in accordance with the said award. What now remains is the claim of the workman that he should be paid the balance of 2/3rd backwages. He has, therefore, filed the present petition for the said relief. At this stage, I may mention that the grievance of Shri Ganguli that though the respondent management has paid him 1/3rd backwages, it had not correctly computed the said amount. Shri Singh, however, denies the said allegations. I am not concerned with the computation part of the 1/3rd backwages.

7. Shri Singh, the learned Counsel for the respondent company has pointed out that the respondent company was not satisfied with the impugned award of the Labour Court granting reinstatement with 1/3rd backwages to the workman and it had, therefore, filed a petition before this Court being Writ Petition No. 459 of 1995. The said writ petition was decided by this Court (K.G. Shah, J) on 15-2-1995 after hearing both the parties. By its order, this Court had confirmed the award of the Labour Court and refused to interfere with the same. The said petition filed by the respondent company was rejected by this Court. It appears that soon thereafter, the concerned workman Shri Jose was reinstated while the other workmen had monetarily settled with the respondent company. According to Shri Singh, the impugned award has merged with the order passed by this Court (K. G. Shah, J) and, therefore, this Court cannot sit in appeal over the order passed by the learned Single Judge and cannot against subject the award to the scrutiny. Shri Singh has submitted that the learned Single Judge had considered the question of punishment and the question of the grant of reinstatement with 1/3rd backwages and had confirmed the said award. Shri Singh has further pointed out that the Labour Court has exercised its jurisdiction u/s 11A of the I.D. Act and has granted reinstatement with a condition of grant of 1/3rd backwages. According to Shri Singh, the Labour Court was fully justified granting the said relief u/s 11A of the I. D. Act. There is absolutely no error of law committed by the Labour Court and therefore, this Court under Articles 226 and 227 of the Constitution of India should not interfere with such exercise of the discretionary jurisdiction u/s 11A of the I. D. Act. Shri Singh, has further submitted that the case of Jitendra Singh Rathor (supra) instead of helping Shri Ganguli helps him. Shri Singh has, therefore, prayed for dismissal of the writ petition.

8. In its 50 pages award part II, the Labour Court has taken pains to examine in

detail all the aspects of the dispute. He appears to have gone into the question of proof of the misconduct on the record of the enquiry. He has also tried to find out whether the findings were flowing from the record of the domestic enquiry. It appears that the efforts of the learned Labour Court were to find out whether the exercise of jurisdiction of Section 11A would be justified or not. I have carefully gone through the entire award. It is clear from the award that the learned Judge has come to a definite conclusion that the misconduct levelled against the workman were duly proved. In para 45 of his award, the learned Judge has observed as under :--

"In general, however, the evidence led by the management goes to prove that the charge Nos. 1 to 4 i.e. resorting to illegal and unjustified strike, inciting and instigating others to participate in the strike, etc. are proved. This is so because in there is oral evidence as well as the order of the Industrial Court, Bombay. The acts like shouting slogans, blocking by leaving the duty places, abusing and forcing the others to strike, also amounts to disorderly behaviour and the act subversive of discipline and good behavior "

It further appears that the learned Judge was fully satisfied that there was sufficient material to hold all the three workmen guilty of the charges levelled against them. In para 46 of the order the learned Judge has concluded as under :--

"So far as the allegation of victimization because of unions are concerned, I am not inclined to accept the same inasmuch as firstly, the misconducts are duly proved and secondly the allegations of victimization are not supported by cogent evidence."

It is, therefore, clear that the learned Judge has found that the acts of misconducts were duly proved against the workmen and that there was no substance in the charge of victimization as the same was not supported by any cogent evidence. The learned Judge has further found that the Industrial Court had already declared the strike resorted to by all the workmen as illegal. The learned Judge has also recorded that the charge sheeted workmen had used abusive and defamatory words which were brought on record of the enquiry. It appears that the language could not be reduced in writing and was kept in envelopes by the enquiry officer. The learned Judge has repeated that there was sufficient evidence to bring home the guilt of the workmen.

9. The learned Judge has considered the serious acts of misconducts duly proved by the respondent company before fair and proper enquiry in compliance with the principles of natural justice. However, the learned Judge felt that the workmen had not indulged in violation of serious acts of misconducts justifying the extreme penalty of dismissal. The learned Judge has also taken in account clean past record of the workmen. He has also considered the fact that there was a trade union agitation and, therefore, large number of workmen were involved. Considering all the facts and circumstances and the fact that the entire agitation

which arose was out of transfer of Shri Rajan Karkera, the active unionist himself had settled the dispute monetarily with the respondent company and had disappeared from the scene, the learned Judge, therefore, thought it fit to interfere with the order of dismissal as out of proportion and harsh. The learned Judge also appears to have considered the evidence adduced on behalf of the respondent company in respect of gainful employment of the workman. He has further held that there was no evidence of gainful employment of these three workmen.

10. Taking an overall and total view of the matter, the learned Judge has set aside the orders of dismissal and granted reinstatement with 1/3rd backwages. The learned Judge has observed as under :--

"Considering the act or acts and the deeds on the part of the workmen concerned, the past record and the background of the case, I have already observed that the punishment of dismissal is unrecognisable and harsh. The workmen in my opinion, are entitled to reinstatement with continuity of service. This could also enable them to reform into disciplined and loyal employees. However, for proved misconducts, they are liable to be punished, considering the nature of the charge, penalty in form of refusal of substantial amounts of backwages would be just and proper. Even otherwise, the period since their dismissal is 15 years and grant of full backwages would be tantamount to giving premium to the erring workers and also a considerable heavy financial burden on the employer. The ends of justice therefore, would be met if the workmen are refused 2/3rd of the total amount of backwages as well as the monetary benefits that follow reinstatement."

11. I do not find any illegality in the said order of the Labour Court. The Labour Court has rightly exercised its jurisdiction u/s 11A of the I. D. Act by putting a term of 1/3rd backwages for granting reinstatement. The authorities under the Act are fully empowered to consider the order of discharge or dismissal and hold whether the same was justified and they have jurisdiction to set aside the same and direct reinstatement by putting such terms and conditions as such authorities may deem fit. A very large discretion is conferred on the Labour Court and the industrial tribunal u/s 11A of the Act. The Labour Court can come to a conclusion that the enquiry was fair and proper and that even the misconduct was proved but the order of dismissal or discharge was not justified. In that case, the same can be set aside and the order of reinstatement can be passed on such terms and conditions which in the given circumstances, the Labour Court/tribunal deems fit. There is no restriction or fetter on the exercise of such jurisdiction. It is not that after holding the order of dismissal or discharge as not justified the Labour Court must grant full backwages. The Labour Court/tribunal has wide discretion even to deny the backwages or a part thereof considering the facts and circumstances of each industrial dispute.

12. The Labour Court has also clearly reflected in para 57 as under :--

"I have gone through all the judgment cited by the parties as per the list given and I have heard the learned Counsel. Taking a total view of the material on record including the evidence adduced before this Court, I find that the misconducts are proved but taking into consideration the circumstances mentioned above, the punishment is out of proportion and therefore, the punishment of dismissal deserves and is accordingly hereby set aside.

As held earlier above, the workmen would be entitled to reinstatement and the ends of justice would be met if they are allowed to receive 1/3rd of the backwages and all other monetary benefits and facilities that follow reinstatement, for the entire period."

As my learned brother K.G. Shah, J. I am also in full agreement with the impugned award of the Labour Court. I do not find any reason to interfere with the said award. The Labour Court has rightly considered to put certain terms and conditions for grant of relief of reinstatement. It can be interpreted as punishment but it is the jurisdiction or the discretion of the Labour Court to put certain terms and conditions, if a workman is to be reinstated. The Labour Court is also empowered to award any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. It is, therefore, clear that the Labour Court is given absolute discretion to pass appropriate orders considering the totality of the facts and circumstances before it. There is nothing in the said Section 11A that the Labour Court is not empowered to mould the relief including the question of punishment. The Labour Court can inflict a lesser punishment also. The Labour Court can reduce the punishment of dismissal and can inflict a punishment of lesser gravity which can also be denial of backwages as a term or condition on reinstatement. I am afraid, the judgment of Jitendra Singh Rathor (supra) does not lay down the law that u/s 11A of the Act, the Labour Court and tribunal has no jurisdiction to deny backwages by way of punishment. What is clearly observed in the said judgment is that the High Court under Article 227 cannot substitute its findings recorded by the Labour Court. In that case, the Labour Court had granted reinstatement with 50% backwages, the labour had denied 50% backwages by way of penalty. The Supreme Court has not observed that the Labour Court had no jurisdiction u/s 11A to deny 50% backwages by way of punishment. What was not approved by the Supreme Court in the said judgment was that the High Court under Article 227 of the Constitution of India had substituted its own findings and had denied the relief of reinstatement to the workman which was granted by the Labour Court. The High Court had substituted the entire award by granting some monetary compensation to the workman. The workman was aggrieved by the said order of the High Court and, therefore, he approached the Supreme Court with that grievance i.e. the High Court had no jurisdiction to substitute the findings of the lower Court by its own findings. The Supreme Court has nowhere said in the said judgment that the Labour Court/tribunal had no powers or jurisdiction u/s 11A of the Act to deny any part of wages by way of a term or condition as stated in the said section.

13. There is absolutely no quarrel with the proposition as laid down in the other judgment of Gujarat Steel (Supra) that the order of dismissal or discharge is set aside and reinstatement is granted normal backwages to follow. It does not state that the Labour Court or tribunal has no power to put any condition or term for grant of relief of reinstatement. That would be too broad a proposition of law which I do not think the Supreme Court has laid down. The Section 11A conferred very wide discretion on the Labour Court and tribunal to put such terms and conditions while granting order of reinstatement,

14. In the circumstances, I do not find any fault with the order of the Labour Court. There is no substance in the petition. The same is dismissed. Rule is discharged.