

(1996) 03 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 390 of 1996

Managing Director, Bharat Containers Pvt. Ltd.

APPELLANT

Vs

Arvind Waman Unhavana and Others

RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 74 FLR 2083

Hon'ble Judges : J.K. Chandrashekhara Das, J;G.R. Majithia, J

Bench : Division Bench

Judgement

Majithia, J.—Rule. With the consent of the parties" Counsel Rule made returnable forthwith. Mrs. Nishita Mhatre waives service for Respondent No. 1. Respondent No. 2 is only a proforma party. His order is challenged in this writ petition.

2. The petitioner, M/s. Bharat Containers Pvt. Ltd., has challenged the Award dated July 17, 1995 passed by Industrial Court, Bombay, published in Maharashtra Government Gazette Part I-L, dated January 25, 1996, in this petition under Article 226 of the Constitution of India.

3. Respondent No. 1 workman was discharged from service for remaining absent from duty without leave for a period of 22 days in the year 1987. A domestic enquiry was conducted and thereafter the punishment of discharge from service was imposed.

4. On a request made by the workman, reference was made by the Appropriate Government to the Industrial Court for adjudication of the dispute. The Industrial Court on appreciation of the evidence brought on record gave the following findings :

(i) That the workman had 23 days of earned leave to his credit on the date the order of discharge dated November 9, 1987 was passed.

(ii) The Petitioner-Company did not give any reason as to why it did not show

any intention to adjust the leave against the period for which the workman allegedly remained absent from duty.

(iii) The workman's past record of service was taken into consideration while passing the order of discharge from service but the management did not give any opportunity to explain his past conduct before imposing the punishment.

(iv) The punishment awarded is shockingly disproportionate to the allegation made against him and in this behalf the Industrial Court observed thus :

"The misconduct against him as alleged by the employer was restrained to remaining absent from duty without obtaining prior sanction of the leave. It is significant to note that the employee in this case has put in a total service of 25 years and 7 months on the date of discharge order, dated 9th November, 1987. He was directly or indirectly concerned with many other litigations pending in between the parties. He is stated to have been victimized for his such activities or taking interest in union activities. His leave record show that the management could have awarded other lighter punishment like suspending him for 4 days and/or withholding his increments etc. If at all the decision of severe punishment of dismissal from service was required to be taken, the cogent and sufficient reasons were required to be given. Nothing has been stated of such a kind even before this Court so as to uphold order of discharge of the Complainant. No doubt Mr. Pawaskar has urged that by act of habitual absence of the complainant indiscipline has been exhibited. But the Complainant did not remain absent continuously for 21 days but, intermittently during the long span of 8/9 months, he remained absent for 22 days. Complainant was not going to be benefited in any manner by remaining absent without sanction. The management also did not take immediate steps asking him for his explanation etc. The complainant has presumably took it for granted that his absence has not been taken seriously by the management. Had timely action been taken for his such absence in the first month itself, the petition of committing the same could have been avoided. Non-taking of timely action in fact indicate that management was also in search of creating grounds and records against the workman and allowed him to commit same kind of misconduct of remaining absent without obtaining sanction of the leave. Assuming for the sake of argument that there was no victimisation or mala fide intention on the part of the employer, still, the fact remains as to whether the order of dismissal or discharge is disproportionate sentence having regard to the nature of misconduct alleged."

On these premises the Industrial Court directed reinstatement of the complainant with all the consequential benefits.

5. Learned Counsel for the petitioner stated that the action has been taken under the Standing Order 26 for the misconduct attributed to him. The management was justified in imposing the punishment. We are not impressed with the submission made by the learned Counsel. This aspect of the matter has been dealt with in detail by the Industrial Court and we confirm the findings given by

him and culled out supra.

6. This petition came up for admission on March 4, 1996 and we directed the petitioner to pay all the arrears of wages to the workman as determined and directed by the Industrial Court. The payment was to be made before the next date of hearing which was fixed on March 11, 1996. This order was not complied with.

7. Today when the case was taken up for hearing, learned Counsel for the petitioner submitted that the petitioner intends to challenge the order dated March 4, 1996 and we should stay the hearing of the petition. We are not impressed with the submission made. There is no order from the Apex Court staying further proceedings. The workmen is permitted to take appropriate steps before the appropriate authority for enforcing the Award under challenge. We have no doubt that the authority concerned will act with promptitude so that the workman is not made to suffer for an indefinite period.

8. For the reasons stated above, the writ petition fails and is dismissed. Rule is discharged accordingly. No order as to costs.