

(2003) 11 MAD CK 0147

In the Madras High Court

Case No : W.A. No"s. 817 and 818 of 1999

Michel Selvaraj

APPELLANT

Vs

Ashok Leyland Ltd. and Another

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 2 LLJ 50

Hon'ble Judges : V.S. Sirpurkar, J;N. Kannadasan, J

Bench : Division Bench

Advocate : S.K. Raghunathan, for the Appellant; Sanjay Mohan, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—These writ appeals are directed against the judgment passed by the learned single Judge, allowing the writ petition (W.P. No. 13626 of 1990) filed by the management and dismissing the writ petition (W.P. No. 19531 of 1990) filed by the appellant-workman. The following factual scenario will help us understand the dispute involved.

2. The first respondent-management carries on business in the manufacture of heavy duty commercial vehicles and industrial engines. The appellant herein was a daily rated semi-skilled operator on temporary basis and working from July 16, 1980. An incident occurred on August 12, 1981 when the appellant is said to have gone with a group of employees to the factory canteen, abused the canteen manager and assaulted him resulting in injuries. It is suggested that following this incident, a series of violent acts of rowdism, goondaism and arson were indulged by the group of workmen and in that a number of executive and managerial personnel were assaulted. It is suggested that an order was promulgated u/s 30(2) of the Police Act to prevent the further escalation of the incidents. A lock-out was declared which continued for three months. The appellant, on the particular day, proceeded to the shop-floor along with several

others and assaulted one V. Sarathy, Department Head since he was probably questioned as to why instigated the others to stop work. It is suggested that the said Sarathy sustained bleeding injuries. Police complaints were lodged in respect of both the incidents, i.e., assault against the canteen manager and assault against the Department Head. A criminal case, C.C. 115 of 1982 came to be registered on that basis and the appellant was also convicted for the offences under Sections 341 and 323 IPC. He was summarily dismissed from service by order dated August 18, 1981, without holding any enquiry and that was challenged by him. A reference was made by the Tamil Nadu Government and was registered before the Industrial Tribunal, Madras, as ID. No. 45 of 1983. The said reference was dismissed as withdrawn by the award, dated December 21, 1986. Thereafter, the matter was negotiated between the management and the Union, including the non-employment of the appellant at great length and ultimately, it was agreed by the management that only 20 workmen out of 78 could be taken back by way of re-employment but not this appellant. The appellant raised an industrial dispute regarding his non-employment before the Labour Court, Krishnagiri, after a lapse of nearly three years and it was registered as I.D. No. 194 of 1986. Since there was no enquiry held before passing the dismissal order, probably, the employer sought to prove the misconduct by leading evidence before the Labour Court, Coimbatore. Ultimately, that evidence was led and the Labour Court passed the award thereupon holding that though the incident was proved and though misconduct of the appellant was also proved, the extreme penalty of dismissal from service was more than adequate and that the appellant deserves sympathy and was, therefore, ordered to be reinstated by the award but, without any back wages. He was also ordered to be reinstated not in his original service but, as a fresh entrant so that the continuity of service was also lost to him. This was challenged by the management by filing the first mentioned writ petition and the workman also filed a writ petition (second mentioned) inasmuch as the Labour Court had denied back-wages to him and had also directed his reinstatement only as a fresh entrant into the service. Both the writ petitions were disposed of by the learned single Judge by the common judgment. The learned Judge dismissed outright the writ petition filed by the workman/appellant and totally allowed the writ petition filed by the first respondent-management and reaffirmed the punishment of dismissal awarded by the management by setting aside the award passed by the Labour Court. It is this judgment of the learned single Judge, which is in challenge before us.

3. Sri S.K. Raghunathan, learned counsel appearing for appellant-workman firstly took us through the findings recorded by the Labour Court in its award and very fairly admitted that the findings in so far as the misconduct was concerned were undoubtedly against the workman. He, however, pointed out that the Labour Court had painstakingly considered the question of quantum of punishment and it is only after taking into consideration the relevant circumstances and the facts proved, that the Labour Court had exercised its discretion u/s 11-A of the

Industrial Disputes Act and has chosen to award the punishment of the denial of back-wages and placement of the workman, after his reinstatement, as a fresh entrant on the rolls. Learned counsel, therefore, submits that in the exercise of the jurisdiction under Article 226, this Court, there fore, could not have substituted the punishment granted by the Labour Court and did not have actually the jurisdiction to interfere with the finding of facts. Learned counsel further contended that the Apex Court has, time and again, cautioned that once the discretion has been exercised by the Labour Court, by taking into consideration the proved facts, it was not for the High Courts to arrive at a different finding of facts particularly while exercising the jurisdiction under Article 226.

4. Sri Sanjay Mohan, learned counsel appearing on behalf of the first respondent-management, on the other hand pointed out that the Labour Court had not given any relevant reasons for setting aside the punishment of dismissal. Learned counsel pointed out that it was on the basis of the sympathy alone that the Labour Court had set aside the punishment awarded by the management. Learned counsel also argued that the only factor considered by the Labour Court was the non-employment of the appellant after the settlement was arrived at between the union and the management and that alone directed the flow of sympathy towards the appellant. Learned counsel says that this was a completely irrelevant consideration on the part of the Labour Court and, therefore, this Court was well justified in interfering and reaffirming the punishment awarded by the management for the misconduct. Learned counsel also pointed out that the past record of this workman was atrocious that immediately after he was inducted into the service, he had engaged himself in riotous and disorderly behaviour within a month from his entry; he again indulged in such misbehaviour for which he was served with a chargememo, for which he had expressed regrets and had assured good behaviour and, therefore, a lenient view was taken and only the punishment of suspension without wages was ordered and again on January 19, 1980, i.e., two months after the aforesaid incident he was awarded the punishment of suspension without wages for the period between November 20, 1980 and December 11, 1980; again there was a misconduct on his part on June 29, 1981, but he was cautioned and let off. It is only on August 12, 1991 that the ultimate height was reached by the appellant in bashing up not only the superior officers, but also assaulting the canteen manager, who had nothing to do with the management of the industry. Learned counsel points out that this record was practically ignored by the Labour Court and instead the Labour Court felt sympathetic on account of an irrelevant consideration and, therefore, that was of no consequence and, therefore, there was nothing wrong if the learned single Judge set aside the award in so far as it pertained to the punishment.

5. It is an accepted position that the appellant-workman did commit misconduct on August 12, 1981 inasmuch as he had assaulted the canteen manager and thereafter proceeded to assault the departmental head. This has obviously

happened in presence of so many other workers because it has come in the facts -that Sri Sarathy, departmental head had questioned the appellant as to why he was exhorting the other workers to stop the work. It is, therefore, obvious that all these took place in presence of the workmen. Though it has not been mentioned anywhere, during the course of arguments, learned counsel for the appellant pointed out that appellant was a Union representative also and probably because of that the management was not in his favour.

6. We, therefore, need not go into what happened on those days and we will proceed on the finding of facts recorded by the Labour Court that the concerned person did commit the misconduct on that date. The question then would be only about the quantum of punishment. In the matter of quantum of punishment, there are two reasons given by the Labour Court. Firstly, the Labour Court says that though in the subsequent negotiations out of 78 Workmen, 20 were agreed to be taken back by the management, the management did not take this appellant back and secondly, the Labour Court suggests that the misconduct was not of such potency as to invite the extreme punishment of dismissal.

7. It is undoubtedly true that the High Court, in exercise of its jurisdiction under Article 226, will not ordinarily interfere with the finding of facts and more particularly in the discretion shown by the Labour Court in the matter of award of punishment. However, it is not as if that in each and every case, High Court will remain a mute spectator to the findings recorded by the Labour Court in the awards. It is trite law that where the High Court finds that the findings of the Labour Court suffer basically from non-application of mind or from ignoring the important pieces of evidence; or where the Labour Court has shown the perversity of mind in recording the finding, the High Court will be well justified in interference. The Judgments in *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, and *Dharmapuri District Co-operative Sugar Mills Vs. The Presiding Officer, Labour Court, Vellore and another*, would go to suggest this position in law. The question is whether in this case, the Labour Court had shown any perversity of mind or had ignored certain things while awarding the punishment to the delinquent. In our opinion, the Labour Court has, in this case, actually ignored the most important circumstance that the concerned person was a union leader; secondly, the Labour Court has also ignored the very important circumstance that the acts of violence took place in the presence of the other workers and such violent acts were done by their union leader; and thirdly, there was no justification for the riotous behaviour on the part of the appellant. The Labour Court has merely gone on to record that in the subsequent negotiations, the management did not agree to take back the appellant and, therefore, he deserved a merciful treatment by the Labour Court. We do not think that such could be a proper thinking. In fact, in our opinion, what happened subsequently was totally and completely irrelevant. The refusal on the part of the management to take back the appellant could not have the effect of invoking the sympathy in

the minds of the Labour Court which sympathy, in our opinion, was misplaced and completely unwarranted. Here was a case where the appellant first thrashed the canteen manager who had nothing to do with the management of the industry and not stopping there, he had directly assaulted his superior in presence of the fellow workers. He was also convicted for that offence by the criminal Court though he was let off on the basis of Section 4(1) of the Probation of Offenders Act. In such circumstances, if these acts on the part of the union leader were not enough to contaminate or pollute the otherwise calm and congenial atmosphere in the industry, there could be no other example and the Labour Court has precisely failed to note the true impact of the acts on the part of the appellant. In our opinion, the attitude of sympathy has to be shown where the person concerned deserves the same. The appellant herein was certainly not a person who deserves such sympathy as on the very advent of his service, he had started behaving in an atrocious manner, exhibiting violent temper, etc., and on a number of occasions he was either cautioned or he had agreed to mend his ways. If, instead of mending his ways, he went on from assaulting his fellow-workmen to assault his superior officers, that too in presence of the fellow-workers, there was no question of any sympathy for him. In our opinion, therefore, the Labour Court was not justified in showing the sympathy and this is precisely what has been noted by the learned single Judge. The learned Judge, by referring to the law laid down by the Supreme Court in *New Shorrock Mills Vs. Maheshbhai T. Rao*, has observed that there was no way why the Labour Court could have directed the reinstatement particularly, where the order of dismissal was not either by way of victimisation or had no lack of bona fides.

8. Sri Raghunathan then reiterated that as per the Supreme Court decision in *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*, the learned Judge could not have substituted the punishment awarded by the Labour Court which punishment was awarded after the due consideration of the facts on record and the evidence available to the Labour Court.

9. We do not think that the case at hand would have any similarity with the ratio handed down by the Supreme Court in the aforesaid reported decision. In the first place, this is not a case where the learned Judge has substituted the punishment. All that the learned Judge has done is setting aside the finding of the Labour Court on the quantum of punishment holding very positively that the Labour Court had completely misdirected itself and written a perverse finding in so far as the quantum of punishment was concerned. On facts, we find that the case at hands is quite different. We would, however, choose to quote from this case alone *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*, :

"7. We reiterate that ordinarily it is not for the High Court in exercise of the jurisdiction of superintendence to substitute one finding for another and similarly one punishment for another. We may not be understood to have denied that power to the High Court in every type of cases. It is sufficient for our present

purpose to hold that on the facts made out, the approach of the High Court was totally uncalled for and the manner in which the compensation was assessed by vacating the order of reinstatement is erroneous both on facts and in law."

10. We need not say anything further in respect of this case to suggest that the law laid down in that case was particularly on the basis of the facts found in that case and in that case, certainly the workman had not bashed up his superior official and that too without any reason, Be that as it may, we are convinced that the learned single Judge has correctly allowed the writ petition filed by the Management and has also correctly dismissed the writ petition filed by the appellant-workman. We do not find any reason to take a different view. We concur with the learned single Judge and affirm the Judgment

11. The appeals are without merits. They are dismissed but without orders as to the costs.