

(2007) 09 BOM CK 0146

In the Bombay High Court

Case No : Writ Petition No. 2877 of 2000

Motivala and Natekar

APPELLANT

Vs

Shantaram N. Wadekar and Another

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2008) 1 BomCR 825 : (2008) 117 FLR 46 : (2008) 2 MhLj 830

Hon'ble Judges : Mhatre Nishita, J

Bench : Single Bench

Advocate : K.S. Bapat, for the Appellant; A.G. Toraskar, for the Respondent

Final Decision : Allowed

Judgement

Mhatre Nishita, J.—The petition challenges the award of the Labour Court dated 20.9.1999. By this award the Labour Court has directed the workman to be reinstated with continuity of service with 50% back wages w.e.f. 31.7.1982.

2. The main contention of the petitioner is that the Labour Court has misdirected itself while interfering with the punishment imposed by the petitioner on the respondent workman when it had concluded that the findings of the Enquiry Officer are not perverse. According to the petitioner, the Labour Court has reassessed the evidence on record and concluded that the misconduct has not been proved in the manner that the petitioner contend and, therefore, found that the punishment was too severe.

3. The 1st respondent workman was employed as a Pattern Maker in 1968 with the petitioner Company. According to the petitioner, the workman remained absent from duty on several occasions for which he was warned by the petitioner. There was no improvement in the record of the workman and petitioner found that the workman had started his own business which was similar to that of the petitioner's. He had diverted business from the petitioner to himself. The petitioner engaged a detective agency to investigate the matter and a report was

submitted on 9.10.1981 indicating that the workman was engaged in private business. In fact, a visiting card of the respondent No. 1 showing that he was engaged in such a business was also produced by the detective agency. On 23.10.1980 the petitioner informed the E.S.I. Corporation that fake medical certificates were being submitted to them by the workman. The petitioner found that the workman had remained absent for 60 days in 1980, 163 days in 1981 and in January, 1982 he was absent for 10 days. Several memos were issued to the workman directing him to act in a disciplined manner while on duty. As the workman failed to report for duty, on 8.2.1982 a charge-sheet was issued to the workman. There were three charges levelled against the workman. The first charge was that, he had habitually remained absent from duty causing the Company's work to suffer; the second charge was that, his absence indicated that he was no longer useful for the Company's work; and the third charge was that, he was attending his private business of pattern making while he remained absent from duty with the petitioner. An enquiry was instituted against the workman in which he participated. The workman did not appoint a defence representative but defended himself at the enquiry. On the basis of the evidence on record, the Enquiry Officer found that the workman was absent for 66 days in 1979, 153 days in 1980, 63 days in 1981 and 10 days in January, 1982. The Enquiry Officer also held that the workman was running his own business of pattern making and that the certificates issued by the E.S.I. Panel doctor could not be believed. The workman was discharged from service on 30.7.1982.

4. The workman secured a reference for adjudication of his demand for reinstatement with continuity of service and full back wages with the petitioner. The reference was registered as reference (IDA) No. 274 of 1983.

5. Pleadings were filed by both the parties. Evidence was led by them in respect of the fairness of the enquiry. The Labour Court held that the enquiry conducted by the petitioner against the workman was fair and proper. The Labour Court came to the conclusion that the findings recorded by the Enquiry Officer that the workman remained habitually absent was correct. The Labour Court observed that findings of the Enquiry Officer were based on evidence and material on record and, therefore, were not perverse. The Labour Court accepted the fact that the workman, by remaining absent, had neglected his duty. The Labour Court, however, then proceeded to consider the question of punishment to be imposed on the respondent workman.

6. The Labour Court discussed the evidence on record before the Enquiry Officer as regards the leave availed by the workman. The Labour Court concluded that the absence was not for the number of days, which the Enquiry Officer had stated, i.e., 66 days in 1979, 152 days in 1980 and 163 days in 1981 and 10 days in January, 1982. Instead, the Labour Court concluded that the workman was absent for 17 days in four years and, therefore, it could not be said that he was habitually absent from work for which the punishment of dismissal or discharge should be imposed. The Labour Court then directed the workman to be reinstated

in service with continuity and 50% of back wages.

7. The learned Advocate for the petitioner has assailed the award on two counts: (i) that, after concluding that the findings recorded by the Enquiry Officer were not perverse, the Labour Court could not conclude that the absence was only for 17 days and then interfere with the punishment; and (ii) that the Labour Court has not considered the third charge levelled against the workman, namely, that of indulging in his private business of pattern making which is similar to the petitioner's business, during his period of absence from duty.

The learned Advocate for the respondent No. 1 submits that the Labour Court has exercised its powers u/s 11-A of the Industrial Disputes Act by concluding that the punishment of discharge was too harsh for the absence of 17 days. He submits that the workman has been denied employment since 1982 and has suffered sufficiently. The Labour Court, according to the learned Advocate, has rightly taken all these factors into consideration and held that the workman is entitled to reinstatement with continuity of service and 50% back wages. He submits that the deprivation of 50% of the back wages is in itself a punishment which is commensurate with the misconduct allegedly proved against the workman. He relies on the judgment in the case of Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, .

8. On perusal of the award of the Labour Court, I find that the submissions of the learned Advocate for the petitioner need to be accepted. The Labour Court, after concluding that there is no perversity in the findings recorded by the Enquiry Officer, could not re-appreciate the findings again for the purposes of deciding the punishment to be imposed. The Labour Court could have interfered with the punishment, accepting the findings recorded by the Enquiry Officer, if it was inclined to do so. The Labour Court has completely erred in arriving at the conclusion that the absence of the respondent workman from work was only for a period of 17 days, contrary to the findings recorded by the Enquiry Officer which it held were not perverse.

9. Apart from this, the Labour Court has (A erred in not considering the third charge mentioned in the charge-sheet dated 8.2.1982, namely, that the workman was remaining absent from work in order to carry out his private business of pattern making. There is no reference at all to this charge which the Enquiry Officer has held to be proved. The Labour Court has ignored this charge completely in its award. Therefore, the reference will have to be remanded to the Labour Court to decide this issue.

10. The petition is thus allowed.

11. The reference is remanded to the Labour. The findings of the Labour Court with regard to the perversity of the enquiry report in respect of the first two charges in the charge-sheet dated 8.2.1982 are accepted. The Labour Court will decide whether the findings in respect of third charge in the charge-sheet dated

8.2.1982 of the Enquiry Officer are perverse. The Labour Court will then decide whether the punishment inflicted on the respondent No. 1 workman is shockingly disproportionate or harsh. The Labour Court will thereafter consider whether back wages should be awarded in the event it concludes that the workman is entitled to be reinstated in service. The award of the Labour Court is set aside to the extent indicated above. The award in respect of the findings of the Enquiry Officer on first two charges is maintained. The Labour Court will dispose of the reference within six months from today considering the age of the respondent No. 1 workman and the fact that the dismissal has occurred in 1982.

12. The petitioner may withdraw the amount that has been deposited in this Court together with the accrued interest.