
(2012) 08 BOM CK 0187
In the Bombay High Court
Case No : Writ Petition No. 7395 of 2012

M/s. Bata India Ltd.

APPELLANT

Vs

Mr. P.R. Ramchandra and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2013) 1 ALLMR 561 : (2012) 6 BomCR 284 : (2012) 135 FLR 701 : (2013) LLR 80

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : R.V. Paranjpe, for the Appellant; V.P. Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Heard finally at admission stage.

The Petitioner/employer has challenged the order dated 14 June 2012 passed by the Industrial Court, Thane and thereby an Application filed by the original complainant (non-applicant) has been allowed and directed the employer/Petitioner to lead evidence and permitted the complainant to lead evidence in rebuttal. Admittedly, the complainant's witness is in the witness-box. The evidence is going on. However, undisputed position on record is that all these 151 employees/complainants have been dismissed without due enquiry and on the ground of the alleged misconduct. The Apex Court in Amar Chakravarty and Others Vs. Maruti Suzuki India Ltd., has considered such situation in the following words :

12 Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act

tantamounting to misconduct.

16 In our opinion, the decisions in *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, and *Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar*, relied upon by the learned counsel for the respondent have no bearing on the issue at hand inasmuch as the said decisions deal with the onus of proof in relation to proving 240 days of continuous service and entitlement to back wages respectively, for which the claims were made by the workmen, which is not the case here. In the present case, as stated above, the assertion to the effect that it was not practical to hold a domestic enquiry to prove the misconduct of the workman was by the employer and therefore, the assertion has to be proved by the employer and not by the workman.

17 In the present case, the services of the appellant workmen having been terminated on the ground of misconduct, without holding a domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the appellant workmen to adduce evidence in rebuttal.

It is clearly laid down, that the services of the workmen having been terminated on the ground of misconduct, without holding domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the appellant/workmen to adduce evidence in rebuttal. Even otherwise, as many as 151 employees have been terminated without holding domestic enquiry on the ground of alleged misconduct, therefore, merely because their witness is in the witness-box that itself is not sufficient reason not to give them fair opportunity. In such situation and as even recorded by the Hon"ble Supreme Court that it will be difficult for the complainants/workmen to lead evidence to support their case that their termination was illegal. The undisputed position of no domestic enquiry, but the alleged ground of misconduct which, as per the Petitioner/ employer, compel them to take this action, in my view, goes to the root and unless they prove their case, the formality of leading evidence first by the complainants/employees, in such situation, is of no use. It will be difficult for them to prove and effectively lead evidence to support their case.

2. Therefore, taking overall view of the matter, I see there is no reason to interfere with the order passed. The Petition is dismissed. There shall be no order as to costs.