
(2000) 04 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 3418 of 1995 and Writ Petition No. 1910 of 1996

M/s. Precipenium Valve Manufacturers

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F
Penal Code, 1860 (IPC) — Section 324

Citation : (2001) 3 LLJ 757

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

Bench : Single Bench

Advocate : Mr. Kuldeep Singh, instructed by S.D. Pur and Mr. N. M. Ganguli, for the Appellant; Mr. N. M. Ganguli and Mr. Kuldeep Singh, for the Respondent

Judgement

R. J. Kochar, J.—Both the above Petitions arise from a common impugned Award dated 30.12.1994 given by the Presiding Officer, 5th Labour Court, Bombay in Reference (I.D.A.) No. 294 of 1986. The parties would be referred to by me as "Employer" and "Workman". Both are aggrieved by the said Award of the Labour Court and both have filed the above mentioned Writ Petitions challenging the said Award. Both the Writ Petitions are being disposed of by me by the present Common Judgment and Order.

2. The workman was in employment of the employer company for a period of about five years as a Setter-cum-Operator and his last drawn wages were Rs. 27.35 per day. It is his case that the Order dated 21.9.1985 by which he was dismissed from employment is illegal and improper. According to him, the dismissal order is a punitive order wherein the allegation of assault on a co-workman Shri B. K. Raman on the factory premises was levelled against him and he was dismissed on that ground without any charge-sheet and without any enquiry in the alleged charge for which he was dismissed from employment. The workman challenged the legality and propriety of the impugned dismissal order on the ground that no domestic enquiry was held before he was dismissed, and

therefore, the dismissal order was in violation of the principles of natural justice and the same deserve to be quashed and set aside and that he should be granted reinstatement with full back wages and continuity of service. He had therefore raised an industrial dispute and prayed for the said relief. The State Government referred the said dispute for adjudication to the 5th Labour Court, Bombay.

3. Pursuant to the notice from the Labour Court, both, the parties completed their pleadings and filing of the documents. The case of the workman in nut-shell as stated hereinabove was that the impugned order of dismissal was illegal and improper as it was not preceded by any domestic enquiry and that he was not given an opportunity of hearing before he was punished by way of dismissal. The employer has admitted that there was no enquiry held by employer company before the impugned order of dismissal was issued. The reason for not doing so was an admission and apology in writing dated 17.8.1985 by the Workman. In view of the said apology and admission of the act alleged against him it was bona fide believed that no enquiry was necessary. Nonetheless the employer company had prayed for an opportunity to adduce necessary and relevant evidence before the Court in support of the misconduct and to justify the order of dismissal of the workman. Accordingly the employer company adduced its oral evidence and produced documents and material to substantiate its case of dismissal of the workman as legal and proper. Accordingly the employer company relied upon its oral evidence and also adduced material on record to prove that the workman had committed a serious act of misconduct of assault on his co-workman in the premises of the employer company, as alleged. The employer company examined the complainant workman who was assaulted by the workman and the Partner of the Company. The workman examined himself on the merits of the case. The evidence of the complainant-workman who was assaulted has been properly appreciated by the Labour Court. I have myself perused the evidence of the complainant-workman and I find no reason to interfere with the findings recorded by the Labour Court that the employer company had sufficiently proved the act of misconduct committed by the workman. The Labour Court has conclusively found on the basis of the evidence and material on record that a misconduct alleged against the workman was clearly established from the evidence on record. The Labour Court has in clear terms found that workman had categorically admitted that there was a quarrel between him and the complainant-workman on 28th July, 1985 and on account of which the complainant was injured on his head. It was also an admitted fact that the workman was arrested by the Police and that a criminal case was also registered against him. He was prosecuted for offence of voluntarily causing hurt u/s 324 of Indian Penal Code. It is also an admitted fact that he was finally acquitted by the Criminal Court. The fact that there was a quarrel and the fact that the complainant-workman suffered injury and he was hospitalised from 30th July, 1985 to 6th August, 1985 and that seven stitches on his head were required to be put, are not disputed at all. The assault by the workman was also

corroborated by an eye-witness, who was examined before the Court and who had categorically stated that on 30th July, 1985 the workman while on duty had assaulted the complainant on head with steel pipe, as a result of which he sustained bleeding injury on head. The Labour Court has at more than one places conclusively and firmly recorded its finding that a serious misconduct of assault on the complainant-workman by the present workman was proved conclusively. In addition to the admission of the guilt the employer company has independently proved the charge-by examining the complainant workman on oath and also an eye-witness. This finding of the Labour Court is based on evidence and material on record before him and therefore I do not find any infirmity to warrant interference under Articles 226 and 227 of the Constitution of India. I am not able to agree with Mr. Ganguli, the learned Advocate for the workman that the finding recorded by the Labour Court is baseless and perverse and that there was material inconsistency and contradiction in the evidence before the Labour Court and the evidence recorded before the Criminal Court. According to Shri Ganguli, it was a case of no material or no evidence.

4. The employer company is aggrieved by the direction of the Labour Court to award four years wages by way of compensation to the workman. The Labour Court has held that the punishment of dismissal was shockingly disproportionate though the act of misconduct committed and proved to have been committed by the workman was serious. It is surprising how the Labour Court could give these mutually contradictory conclusions. Once having conclusively held that a serious act of misconduct of assault on a co-workman on the premises of the factory was proved how the punishment of dismissal could be termed as shockingly disproportionate. The Labour Court has given only one reason for interfering with the punishment that the employer company had not considered his past record which did not contain any blemish or stigma. For the aforesaid reason the Labour Court has condemned the order of dismissal as shockingly disproportionate. There is no other reason put forward by the Labour Court to interfere with the order of punishment. According to the Labour Court it was only a solitary act of misconduct of assault on a co-workman by the present workman and, therefore, it was not proper and justifiable on the part of the employer company to have punished him by way of dismissal from employment. Mr. Singh has admitted that the past record of the workman was not bad. He has, however, submitted and rightly so, that a clean past record does not give a licence or permission to the workman to commit an assault and to get away with the same on the ground of clean and good past record. If the alleged misconduct is proved and if it is serious from its nature itself that would be enough to impose a punishment regardless of the past record of the workman. In the present case the act of misconduct as rightly held by the Labour Court, was serious enough to attract the extreme punishment of dismissal from employment. According to me, no workman can be allowed to assault his co-workman either on the factory premises or even outside the factory. Assaulting each other is no remedy to sort out the mutual grievances or complaints in respect of the work and employment.

The only remedy for an aggrieved workman against his co-workman or his superior is to lodge a proper complaint with the higher authorities in the management. No one can be allowed to take law in his hand and to sort out the differences between themselves by assaulting each other. If this course is accepted in that case there will be spread of violence in the factory itself and the entire industrial peace would be distributed. I, therefore, do not agree with the findings of the Labour Court that the punishment of dismissal was shockingly or otherwise disproportionate and, therefore, the workman should be given compensation in lieu of reinstatement. The employer company having proved beyond any doubt that the workman had committed a serious act of misconduct of assault on his co-workman on the factory premises, the employer was entitled and empowered to suitably punish such a workman. In the present case according to me, I do not find that the punishment of dismissal was in any manner not commensurate with the act of misconduct proved against him. The Labour Court is not at all justified in awarding an amount of compensation equivalent to four years wages in lieu of reinstatement. According to me, the workman was not entitled for reinstatement at all and, therefore, there is no question of awarding him a compensation in lieu of reinstatement. Before parting I may mention that Shri Ganguli, the learned Advocate for the workman has cited a Judgment of Supreme Court in the case of Scooter India Limited, Lucknow v. Labour Court, Lucknow & Ors., In view of the ratio laid down in the said judgment it is not applicable to the present case. Shri Ganguli has submitted that justice should be done with mercy. In the present case the co-workman was assaulted on the factory premises causing him head injury and seven stitches as also seven days hospitalisation. In the circumstances, the merciless workman cannot be shown any mercy.

5. In the aforesaid circumstances the award of the Labour Court to the extent that it holds that the punishment was shockingly disproportionate and awards compensation in lieu of reinstatement is quashed and set aside. The other findings of the Labour Court in respect of the fact that serious misconduct of assault by the workman on his co-workman is proved is confirmed. The petition is allowed. Rule is made absolute in terms of prayer clause (a). The Counter Petition filed by Shri Ganguli is dismissed with no order as to costs. I have already held that the workman is not entitled to reinstatement and any backwages, hence there is no question of awarding any compensation in lieu of reinstatement. The Petition filed by the workman therefore fails and Rule issued therein is discharged. No order as to costs in both the Petition.

6. The Bank guarantee furnished by the employer company is discharged.