

(1995) 07 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 2674 of 1991

Nagare P.D.

APPELLANT

Vs

Skf Bearings India Ltd. and Another

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1997) 3 LLJ 571

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; L.M. Nerlekar, for the Respondent

Judgement

1. This Writ Petition under Article 227 of the Constitution of India is directed against the Awards dated November 16, 1990 and January 24, 1991 made by the 2nd Labour Court, Pune, in reference (IDA) No. 409 of 1988 under the provisions of Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The relevant facts : The Petitioner was employed as a Packer in the employment of the 1st Respondent in its factory from 1977. On June 16, 1987, while working, he suffered an employment injury which caused him some disability and made it difficult for him to use his hand. On January 22, 1988, after about one year, he was called upon to work on the Rivet Insertion Machine No. 424. While he was working on the said machine, he did not run the machine at the normal speed, but continued to run the same at a slow speed. He also broke the punch and the nozzles on the said machine and did not obey the instructions given to him by his official superiors in regard to the running of the said machine. The Petitioner was served with a charge-sheet dated January 25, 1988 in which it was alleged that he had purposely run the Rivet machine at slow speed and deliberately broke the punch and nozzles of the machine in order to disturb the setting of the machine and that he had deliberately flouted the instructions given to him by the superiors for running of the said machine. The

Petitioner gave his written explanation on January 30, 1988, in which he admitted that while he was working on the Rivet machine, the punch and nozzles had broken. His explanation, however, was that after the employment injury sustained by him in 1986, he had been continuously working in the Departments of Assembly Inspection, Packing, Stamping, Washing, Special Line, etc. and was not given work on the machine, that on January 22, 1988, after a lapse of almost two years, he was called upon to work on a machine and being long out of practice, he found it difficult to operate the machine. Consequently, the machine was run slowly in the beginning and also resulted in the punch and nozzle being broken. He denied that he had intentionally broken the nozzle and the punch or that he had deliberately refused to follow instructions given to him by his official superiors. A further charge-sheet dated February 16, 1988 was also given to the Petitioner in which it was alleged that on January 22, 1988, at about 10.05 hours, he was found near the punching clock of Turning Department, though as an employee working in the Bearing Assembly Department, he was required to punch the clock provided in the Bearing Assembly Department. It was also alleged that his Manager, M. G. Chavan, had instructed him to go back to Bearing Assembly Department, but the Petitioner disobeyed the instructions and punched his clock card in the punching clock provided in the Turning Department and went out. That charge-sheet against the Petitioner also alleged several misconducts under the Certified Standing Order and he was called upon to face the domestic inquiry. By a separate finding given by the Inquiry Officer, the Petitioner was found guilty of the following misconducts :

- (1) purposely running the machine at a slow speed;
- (2) deliberately breaking the punch and the nozzles in order to disturb the setting of the said machine;
- (3) refusing to obey instructions of his superiors in regard to running of the said machine; and
- (4) disobeying the instructions of the Manager in punching out for lunch at the Turning Department punching clock instead of at the Bearing Assembly Department punching clock on January 22, 1988.

By an order dated May 2, 1988, the Petitioner was dismissed from service after considering the findings against him in the two inquiries as well as his unsatisfactory past record consisting of two advisory memos, four warnings and one suspension order, for previous misconducts.

3. The Petitioner raised an industrial dispute for reinstatement in service with continuity and back wages which came to be processed under the statutory machinery and resulted in Reference (IDA) No. 409 of 1988 being made to the 2nd Labour Court, Pune. By a Part-I Award dated November 16, 1990, the Labour Court found that the inquiries held into the two chargesheets dated January 25, 1988 and February 16, 1988 were legal, fair and proper and that the findings recorded by the Inquiry Officer in both the inquiries were proper and not

perverse. The Labour Court thereafter posted the Reference for further hearing on the merits for justifiability of the punishment and for deciding the relief, if any, due to the workman. By the Part-II Award dated January 24, 1991, the Labour Court found that there were no circumstances which required interference with the order of dismissal passed against the Petitioner workman and that, in the facts and circumstances of the case, the order of dismissal was legal, proper and justified. In this view of the matter, the Labour Court by its Part II Award dated January 24, 1991 rejected the Reference and denied relief to the Petitioner. Hence this Writ Petition.

4. Mr. R. J. Kochar, learned Advocate appearing for the Petitioner, stated at the outset that, subsequent to the first dismissal from service, the Petitioner qualified himself for enrolling as an Advocate and that, since or about the year 1974, he has been practising as an Advocate in the Courts in Pune. In these circumstances, the relief of reinstatement is not pressed.

5. Mr. R. J. Kochar urges that the Part-I Award given by the Labour Court upholding the validity of the domestic inquiries conducted into two charge-sheets dated January 25, 1988 and February 16, 1988 is erroneous. It is not possible to accept this contention. The Labour Court has carefully applied its mind to the evidence on record and I find that there was hardly any circumstance shown to the satisfaction of the Labour Court as to why the inquiry was illegal, improper or invalid. From the evidence on record, the Labour Court concluded that the Petitioner had been given charge-sheets clearly setting forth the misconducts alleged against him and was afforded full opportunity of defence at a properly conducted domestic inquiries. The Labour Court has also rejected the contention that the findings recorded by the Inquiry Officer in the two domestic inquiries were perverse, after considering the material on record in the inquiries and the conclusions recorded by the Inquiry Officer. I am not impressed by this contention and I see no reason to take the view that the Labour Court has erred in this regard. The challenge to the Part-I Award must, therefore, fail.

6. Turning next to the Part-II Award, I find that the Labour Court has taken into consideration the fact that the Petitioner was held guilty of deliberately tampering with the Rivet Machine, by running it at slow speed contrary to specific instructions given to him by his official superiors, and of deliberately breaking the punch and the nozzles of the said machine in order to disturb its setting. He was also found guilty of having deliberately flouting instructions given to him with regard to punching out through the punching clock provided in his own department and not through the punching clock provided in the Bearing Assembly Department. The cumulative effect of the misconducts found against the Petitioner is quite serious, and, when taken in conjunction with his extremely unsatisfactory past record, the Labour Court found it difficult to say that the order of dismissal was unwarranted or unjustified in the circumstances of the case. I am inclined to agree with the thinking of the Labour Court as I find nothing improper in the quantum of punishment imposed on the Petitioner, in the

facts and circumstances of the case. Consequently, the challenge to the Part-II Award also must fail.

7. Though, on the above findings the Petitioner would have been entitled to no relief at all, considering that the Petitioner had suffered an injury to his hand, whether it proved a boon in disguise to him, time only can tell ! I had suggested to the learned Advocate appearing for the 1st Respondent, that some ex-gratia amount should be paid to him. After taking instructions, Mr. Nerlekar, learned Advocate appearing for the 1st Respondent, states that the 1st Respondent is prepared not only to stand by the offer made by it at the time of admission, for payment of Rupees One lakh as ex-gratia amount, but even better it by offering a further sum of Rs. 20,000/-. In my view, the offer of Rs. 1,20,000/- (Rupees One lakh twenty thousand only) as ex-gratia payment to the Petitioner is more than adequate, in the circumstances of the case, and does more justice to him. No further relief of any nature is due to him in my judgment.

8. In the result, the Writ Petition is dismissed and Rule discharged without any order as to costs. If the Petitioner is inclined to accept the ex gratia amount of Rs. 1,20,000/- (Rupees one lakh and twenty thousand only), he may collect the same from the 1st Respondent, within a period of six weeks from today, failing which it will be considered that the Petitioner is not interested in the 1st Respondent's offer and the offer shall abate.

9. Issuance of certified copy of this judgment is expedited.