

(1992) 07 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No's. 4898 of 1984 and 840 of 1985

National Textile Corporation (Mah. North) Ltd.

APPELLANT

Vs

Gurunath Vithal Tamase and others

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 107

Citation : (1993) 1 BomCR 305 : (1993) 2 LLJ 176

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Advocate : Meena H. Doshi Kochan, for the Appellant; R.J. Kochar, for the Respondent

Judgement

1. As both the petitions arise from the judgment and order dated July 9, 1984 passed by the learned Member of the Industrial Court, Bombay in Appeal (IC) No. 144 of 1983, they are heard together and are being disposed of by this common judgment. For the sake of convenience, the facts shall be taken from Writ Petition No. 4898 of 1984.

2. The petitioner (in Writ Petition No. 4898 of 1984) is a Government Company registered under the Companies Act, 1956. It is a subsidiary of another Government Company known as National Textile Corporation Limited and India United Mills, Dye Works, a sick textile undertaking which was formerly owned by a Company known as India United Mills Ltd., which became vested in the National Textile Corporation Limited, the ownership of which was subsequently transferred to the petitioner u/s 6(3) of the Sick Textile Undertakings (Nationalisation) Act, 1974. The petitioner shall hereinafter be referred to as "the N.T.C." and the India United Mills Ltd., shall hereinafter be referred to as "the India United Mills". After the nationalisation of the India United Mills under the Sick Textile Undertakings (Nationalisation) Act, 1974, the ownership of the Dye Works of the said India United Mills passed on to the Central Government with effect from April 1, 1974 and thereafter to the N.T.C. by virtue of the provisions

of the said Nationalisation Act.

3. The first respondent, Gurunath Vithal Tamase, (hereinafter referred to as "the employee") was in the employment of the Dye Works of the India United Mills from April, 1963 to March 20, 1973 and was last working in the Calendar Department. He was served with a chargesheet dated March 21, 1973 by which it was alleged against him that on that day while he was going off the duty at about 7.25 a.m. and was subjected to routine search he was found in possession of a paper packet in his pocket and on being questioned he replied that it was the packet containing some medicine. It was further alleged against him that when he was taken to the office of the time keeper and the packet opened, it was found to contain 100 grams of tinopal and when he was asked to accompany the watchman to the Manager's office, he ran away out of the mills premises leaving behind him the property recovered. It was also alleged against him that he had behaved in a disorderly manner with the watch and ward staff. Accordingly he was charge-sheeted for commission of misconducts under Standing Orders 25(a), (d) and (k) and was called upon to attend the domestic enquiry.

4. According to N.T.C., the employee did not give any written explanation to the charge-sheet and a domestic enquiry was held into the charge-sheet on April 2, 1973 by the Manager when the employee was given full opportunity to defend himself. Further case of the N.T.C. was that as a result of the enquiry, the employee was found guilty of the charges leveled against him and after considering his past record and other circumstances, he was dismissed from service by an order of dismissal dated April 2, 1973. The employee thereafter addressed a letter of approach u/s 42(4) of the Bombay Industrial Relations Act, 1946 on June 20, 1973 and requested for reinstatement with full back wages. As he did not obtain any redress, the employee moved the First Labour Court, Bombay by application (LCB) No. 523 of 1973 on August 7, 1973 praying for reinstatement with full back wages and continuity of service on the grounds that charges levelled against him were false; that he was not afforded a reasonable opportunity of defending himself at the domestic enquiry; that he was victimised by the Assistant Jamadar by name Bishan Datta and, therefore, the order of dismissal passed against him was illegal, improper, unjust, capricious and mala fide thus amounting to victimisation and unfair labour practice.

5. The India United Mills appeared before the Labour Court and contested the application of the employee. It was the case of the India United Mills that the employee had been dismissed for misconducts under Standing Order Nos. 25(a), (d) and (k) which were proved against him as a result of the domestic enquiry and that full opportunity was given to him to defend himself but on being found guilty and on considering the nature of misconduct and other relevant circumstances he was dismissed legally and properly.

6. While the application of the employee was pending hearing and final disposal before the First Labour Court, Bombay, the Sick Textile Undertakings

(Nationalisation) Act, 1974 came into force from April 1, 1974 and the N.T.C. became the owner of Dye Works which formerly belonged to the India United Mills. Therefore, the N.T.C. appeared before the First Labour Court and raised a preliminary contention that the Dye Works which belonged to the India United Mills and became vested in the N.T.C. with effect from April 1, 1974 and that under the provisions of Sick Textile Undertakings (Nationalisation) Act, 1974 no liability other than the liabilities specified in Section 5(2) in relation to the said Dye Works in respect of any period prior to April 1, 1974, was enforceable against them. Then N.T.C. further contended that under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974, no award, decree or order of any Court or authority could be passed after April 1, 1994 and enforced against them in respect of any claim, or liability which arose before April 1, 1974.

7. The First Labour Court, Bombay heard the parties on the preliminary objection raised by the N.T.C. and by an order dated September 6, 1976 took the view that it had no jurisdiction to entertain the application of the employees in view of the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 inasmuch as the liability or claim which was sought to be enforced could not be enforced against N.T.C. as it pertained to a period prior to April 1, 1974. Being aggrieved, the employee filed Appeal (IC) No. 115 of 1976 in the Industrial Court at Bombay and the said Court by its order dated April 12, 1977 partly allowed the appeal and confirmed the order passed by the First Labour Court dismissing the application of the employee against the N.T.C. The Industrial Court, however, took the view that the employee was entitled to pursue his remedies against the India United Mills and thus remanded the application of the employee to the Labour Court with a direction that the employee was free to continue his application only against India United Mills. Being dissatisfied with the order dated April 12, 1977 passed by the Industrial Court in Appeal (IC) No. 115 of 1976, the employee filed Miscellaneous Petition No. 596 of 1979 in this Court which was disposed of by a Single Judge (S. K. Desai, J.) who by his order dated August 11, 1982 took the view that the N.T.C. would continue to be liable in respect of the liability of the erstwhile owner of the sick textile undertaking prior to April 1, 1974 and remanded the application of the employee to the Labour Court for being tried against both the N.T.C. and the India United Mills. The N.T.C. challenged the finding recorded by this Court, as above, in the Supreme Court by a SLP No. 11098 of 1982. The said petition was admitted on November 29, 1982 but no stay was granted to the pending proceedings.

8. After the remand, the First Labour Court, Bombay recorded evidence and after hearing both sides by an order dated November 1, 1983 held that the domestic enquiry conducted against the employee was fair and proper and that the findings recorded against him were not perverse.

The Labour Court, however, took the view that the punishment of dismissal passed against the employee was shockingly disproportionate and set the same aside. As regards the relief, the Labour Court took the view that the N.T.C. could

not be called upon to reinstate the employee and held that the services of the employee with the India United Mills were upto April 1, 1974 on which day he must be deemed to have been retrenched. The Labour Court also held that the employee was entitled to two-thirds of his back wages for the period April 5, 1973 to March 31, 1974 and the employee would be entitled to claim his retrenchment compensation and other legal dues from the Commissioner for Payment u/s 17 of the Sick Textile Undertakings (Taking Over if management) Act. Being aggrieved by the order of November 1, 1983 so made by the Labour Court, Bombay the employee filed Appeal (IC) No. 144 of 1983 in the Industrial Court at Bombay. The Industrial Court by its impugned judgment and order held that the N.T.C. was not entitled to challenge the finding of the Labour Court that the punishment awarded to the employee was shockingly disproportionate because they had not filed an appeal challenging such finding arrived at by the Labour Court. The Industrial Court further held that the employee was entitled to reinstatement in service even for the period subsequent to March 31, 1974 and accordingly allowed the appeal with the following speaking order :

"Appeal is allowed.

The order passed by the learned Labour Judge is modified as follows :

The penalty of dismissal awarded to the appellant is set aside and the respondents are directed to reinstate him in service with continuity of services.

Respondent No. 1 is directed to pay back wages to the appellant at the rate of two thirds of the last drawn wages for the period from April 5, 1973 to March 31, 1974.

Respondent No. 2 is directed to pay back wages to the appellant at the rate of two thirds of last drawn wages for the period from April 1, 1974 till the date of reinstatement. No order as to costs."

It may be mentioned here that the appellant referred to in the above order is the employee and the first respondent is the United Mills whereas the second respondent is the N.T.C.

9. Being aggrieved, the N.T.C. filed Writ Petition No. 4898 of 1984 and the employee filed Writ Petition No. 840 of 1985. Whereas the N.T.C. challenged the full judgment and order passed by the Industrial Court, the employee challenged the said order to the extent of depriving him of the full back wages and normal relief and with a prayer that the N.T.C. be directed to reinstate him with full back wages and continuity of services and to pay him all other consequential benefits with effect from April 5, 1973.

10. Now, although the Labour Court and the Industrial Court came to the conclusion that a misconduct of committing theft of 100 grams of tinopal was proved against the employee, I am of the view that the evidence adduced by the India United Mills against the employee at the domestic enquiry which was brought on the record in this writ petition (Annexure-B) was too scanty,

unsatisfactory and insufficient to come to such a conclusion. Thus, Bisandatta Lalmani deposed that on the employee being searched a paper packet containing 100 grams of tinopal was found in his inside shirt pocket and when he was asked as to what it contained the employee replied that it contained some medicine for his stomach ailment. It is important to note that neither the evidence of this witness nor of the other three witnesses show that from the paper packet recovered from the person of the employee tinopal was taken out and weighed which turned out to be 100 grams. No document, such as a panchanama in this respect was produced at the domestic enquiry, and, therefore, the question as to how this witness stated that the tinopal recovered from the employee was 100 grams. The other three witnesses Govindprasad Ramsundar, S. R. Pradhan and A. R. Marsurkar gave evidence in similar tenor stating that when the employee was asked to open the packet he was insisting that the same was medicine and ran away. This parrot like story put-up by the four witnesses of the India United Mills was accepted by the enquiry officer without giving proper opportunity to the employee to prove that he was innocent of the charge levelled against him. Thus the employee was put the following questions by the enquiry officer which, in my opinion, would not afford a reasonable opportunity to the employee to defend himself. The questions and answers were :

"Q. Why did you not take the charge-sheet given to you immediately ?

A. I did not take it because I was sick.

Q. If you have not committed the offence, why did you bring outside persons to me for your defence ?

A. I did not bring any outside persons for defence. I brought them for understanding the charge-sheet.

Q. If you have not committed the offence, then why did you accept the charge-sheet ?

A. I do not understand anything.

Q. Then why did you take the charge-sheet later on ?

A. I took the charge-sheet because otherwise I would not be taken on work".

The questions put to the employee would not elicit information about the defence of the employee that he was not guilty of the charge levelled against him of committing theft of 100 grams of tinopal.

11. Be that as it may, I am not inclined to interfere with the finding of fact arrived at by the Labour Court and Industrial Court that the employee was found guilty of committing theft of 100 grams of tinopal and accepting such a finding of fact as correct. I am further of the opinion that for such a charge the punishment of dismissal inflicted on the employee was shockingly disproportionate as held by both the Labour Court and the Industrial Court. Admittedly, the quantity of tinopal committed theft of by the employee was worth Re. 1/- and in my

considered judgment for such a misconduct committed by the employee, he should not be visited with a sentence of economic death by dismissing him from service. He could have been definitely visited with some sort of minor punishment so as to make him feel the pinch of misconduct committed by him. It is unfortunate that a Public Sector Corporation like the N.T.C. should fight this legal battle upto the Apex Court for a charge of misconduct of committing theft of property worth a Re. 1/- for the last nearly twenty years and put the entire family and social life of the employee out of gear and destroy him financially and socially. The ends of justice would have been served if the employee was given lighter punishment so as to make him feel, as stated above, that what he had done was not proper. It is really unfortunate that such a counsel did not prevail upon the N.T.C. The observations made by Chief Justice. M. P. Thakkar of Gujarat High Court (as he then was), presiding over a Division Bench in case of R.M. Parmar Vs. Gujarat Electricity Board, , as under are most relevant to be quoted here. (p. 265)

"Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by a store-keeper from the stores in his charge, for instance, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may, yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be dishonourable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the rich."

12. The Industrial Court was, therefore, right in directing the employee to be reinstated with continuity of services. He was, however, not correct in deducting one-third of the back wages of the employee as and by way of punishment for a trivial act of theft of property worth Re. 1/- which could not have been taken notice of by any reasonable man even u/s 95 of Indian Penal Code. Therefore, the order of the Industrial Court depriving the employee of his one-third back wages was not proper and the same shall have to be quashed and set aside. I would have thought of inflicting some minor punishment on the employee but, in my opinion, keeping him out of the employment for nearly twenty years and making him suffer the torture, agony and hardship of fighting litigation after litigation was punishment more than sufficient for the offence that he had committed. Therefore, I am at this stage not inclined to inflict any punishment on him.

13. The question is, what should be relief to the employee ? I am told at the Bar that the employee has retired effective from July 1, 1991 on superannuation on

reaching the age of 60 although under the Standing Orders he could have worked upto the age of 63 if was found physically fit. Therefore, the relief of reinstatement now becomes infructuous. Hence the order of the Industrial Court is modified as under :

(a) The India United Mills Ltd., is directed to pay full back wages to the employee for the period from April 5, 1973 to March 31, 1974 with all consequential benefits as if the employee was in their services during the said period.

(b) The National Textile Corporation is directed to pay full back wages to the employee for the period from April 1, 1974 till June 30, 1991 with all consequential benefits as if the employee was in their services for the said period.

(c) Rule in Writ Petition No. 840 of 1985 is made absolute in the terms aforesaid with no order as to costs.

(d) Rule in Writ Petition No. 4898 of 1984 stands discharged.

(e) Writ Petition No. 4898 of 1984 stands rejected with costs of Rs. 5,000/- by the National Textile Corporation to the employee, Gurunath Vithal Tamase.

14. The National Textile Corporation and the India United Mills Ltd., are further directed to work out the amount of back wages accrued in favour of the employee and make payment to him on or before August 31, 1992 failing which they shall be liable to pay interest to the employee at the rate of 18 per cent. per annum effective from September 1, 1992 on the amount due and payable to the employee.

15. However, as the payment to be made to the employee is in reality the payment of arrears of back wages and other monetary benefits, the employee would be entitled to have the same spread over the entire relevant period of the financial/assessment years for which the said payment relates. The employee will be, therefore, at liberty to make an application accordingly to the Income Tax Officer having jurisdiction in the matter for such relief u/s 89 of the Income Tax Act. The concerned Income Tax Officer shall grant to the employee relief accordingly within thirty days of the receipt of the said application. On such relief being granted, the N.T.C. and the India United Mills Ltd., shall then pay over to the employee the amount earlier retained by them towards Income Tax. Accordingly the N.T.C. and the India United Mills as directed to pay to the petitioner initially the total amount (less reasonable amount towards income tax) latest by August 31, 1992 and thereafter the retained amount towards Income Tax within two weeks of the employee intimating to the N.T.C. and the India United Mills Ltd. the relief granted to him u/s 89 of the Income Tax Act.