
(2001) 07 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 2282 of 1999

N.R.C. Limited

APPELLANT

Vs

N.R.C. Employees" Union

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 11A, 17B

Citation : (2002) 104 BOMLR 755

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—The workman, the termination of whose services, gives rise to these proceedings, was employed on 4th October, 1982 by the Petitioner. The workman was assigned to the Purchase Department at the time of termination, and was a Stenographer. A charge-sheet was issued on 7th December, 1993 in which a disciplinary enquiry was proposed to be held on the charge of habitual absence. The allegations in the charge-sheet were : (i) from the month of May, 1993, the workman had remained absent unauthorisedly without sanction of leave on 13 occasions consisting of 14 full days and 4 half days; (ii) the workman had remained unauthorisedly absent on days prefixed or suffixed to holidays and even the days of unauthorised absence for half a day were on Monday morning as a result of which the work of the employer was adversely affected; (iii) the workman was continuously absent for one week between 11th and 15th October, 1993 on the ground of an alleged illness and the medical certificate which was produced was not reliable; (iv) between. 28th May, and 22nd July, 1993 the workman was absent and the aforesaid period would have to be treated as absence without leave since the workman had no sick leave outstanding; and (v) between May, 1993 and November, 1993 the workman had remained absent from duty for 52 days. Consequently it was alleged that the workman had committed misconduct of (i) habitual absence

without leave and (ii) gross negligence.

2. A disciplinary enquiry was convened in the course of which the workman participated and led evidence. On behalf of the Petitioner, the days on which the workman remained absent were established in the evidence of Mrs. Chitra Gandre who deposed on behalf of the employer. The muster roll which supported the statement of absence was produced during the course of the enquiry. The Enquiry Officer came to the conclusion that the workman had remained frequently absent as a result of which, her services could not be utilized fully. The workman was looking after supply of laboratory chemicals and due to her absence, the work of the Department was liable to suffer. In the circumstances, the Enquiry Officer concluded that, (a) the workman had not applied leave on six occasions and for three full days on 18.6.1993, 4.9.1993 and 22.11.1993 and three half days on 13.8.1993, 8.11.1993 and 30.11.1993. This was accepted by the workman. The workman sought to advance the plea that her leave card was not available. This explanation was rejected by the Enquiry Officer; (b) the workman claimed that leave had been applied for on three occasions for 5 full days on 20.5.1993, 21.5.1993, 10.8.1993, 13.9.1993 and 14.9.1993 but leave was not sanctioned by the Petitioner. The Enquiry Officer noticed that the question as to whether the leave should or should not be granted was in the discretion of the employer and the workman had admitted that the application for leave had been made late; (c) the charge in regard to unauthorised absence of 36 days from 28.5.1993 to 2.7.1993 was, however, held not to be proved since the Enquiry Officer came to the conclusion that the workman had taken care to inform the employer about her sickness on that occasion; and (d) as regards absence from 11.10.1993 to 14.10.1993, the Enquiry Officer noted that the Medical Certificate was "absurd" because it was issued by a Doctor on 20th October, 1993 who stated that he had examined the workman on 20th October, 1993 and in his opinion, the workman would be fit to resume on duty on 16th October, 1993. The Enquiry Officer came to the conclusion that in the present case, there was no leave to the credit of the workman and this was not a case of occasional absence without leave on one or two occasions, but of a frequent and habitual absence. In a short span of 6 to 7 months, the workman remained absence without sanction of leave on 12 occasions and for 13 full days and 4 half days. This was in addition to the absence on medical grounds for 36 days. In regard to the charge of gross negligence, a chart showing the days on which the workman remained absent was produced before the Enquiry Officer who accepted the evidence produced on behalf of the employer to the effect that the workman had deliberately planned days of unauthorised absence so as to take advantage of preceding or succeeding holidays. In these circumstances, the workman was held guilty of a misconduct of habitual absence without leave and without sufficient ground as well as of gross negligence.

3. The report of the Enquiry Officer was furnished to the workman so as allow an opportunity to the workman to object to the findings. No reply was submitted by the workman. An order of dismissal came to be passed on 23rd February, 1994 in

which it was stated that the misconduct which had been established was of a serious nature affecting the discipline of the establishment. Apart from the misconduct which was proved, a reference was made to the past record of the workman which was unsatisfactory. In that regard, the order of dismissal contained the following reference to the adverse past record:

There are on record innumerable telegrams, letters, advises, cautions and warnings about your habitual absenteeism. You were informed in writing on more than one occasion that your conduct about irregular attendance and scant respect to the leave rules of the Company was obnoxious and was setting a bad example to other staff members but you showed absolutely no improvement. Because of your unsatisfactory record about attendance, you were not permitted to cross the Efficiency Bar in your scale in January, 1989 and also in 1990. You were also charge-sheeted on two occasions for remaining absent for more than 10 consecutive days and were suspended once from duties after due inquiry as punishment. But all the above were of no avail. Because of your unsatisfactory record, you were frequently transferred from one Department to other and ultimately even though you are a Stenographer in the higher grade with higher emoluments, your services had to be utilised mostly for clerical work. Because of your habitual absenteeism, apart from utilising fully your privilege leave, casual leave and sick leave, you remained absent on leave without pay for large number of days every year and your utility to the office was considerably reduced.

Upon the dismissal of the workman from service, a reference was made by the appropriate Government to adjudication u/s 10 of the Industrial Disputes Act, 1947. The Labour Court by its Part-I Award dated 18th December, 1998 came to the conclusion that the enquiry which had been held was fair and proper. Thereafter, by its Part-II Award dated 18th December, 1998, the Labour Court came to the conclusion that the findings which had been arrived at did not suffer from error; that the misconduct had been duly proved and the conclusions of the Enquiry Officer were not perverse. The following extracts from the judgment of the Labour Court will throw light upon the conclusion which was arrived at in the Part-II Award:

In the enquiry muster roll was produced and that has been admitted by the Enquiry Officer In the cross-examination. The witness examined in the enquiry Mrs. Chitra Gandre has stated that the workman Mrs. Helen D'Souza has not applied for leave and before proceeding on leave she did not apply for leave on many occasions and therefore she was marked as unauthorisedly absent. She had remained absent on one occasion i.e. 20 to 21 and 28 to 31st May, 1993, one occasion on 1st June to 10th June, 1993, one occasion on 1st and 2nd July, three occasions in August 1993, three occasions in Oct., 93 and three occasions in November, 1993. The workman had not intimated from 20th May, 1993 till 2nd July, 1993 to the department. The workman has not produced medical certificate for her absence from 28.5.93 till 7.7.93. The workman did not follow leave rules during the period from May, 1993 to November, 1993. She had gone for leave

without sanctioning the leave....

In my opinion, the Enquiry Officer had correctly assessed the material produced in the enquiry proceedings and rightly come to the conclusion that the workman Helen had committed the misconduct as per the charge-sheet dated 7.12.1993. The workman had failed to show from the enquiry that she had not remained absent unauthorisedly without sanctioning leave. The Enquiry Officer had given his findings on the basis of the admission of the workman Helen D'Souza in the enquiry and on the basis of evidence of management witness Mrs. Chitra Gandre and Srinivasan.

The workman had on many occasions remained absent without making application for leave. Sometimes she had sought the benefits of leave on the medical ground and as per rule she ought to have submit the medical certificate and fitness certificate after reporting for duties. This she had not submitted and this has been admitted by her evidence.

After the Part-II Award was delivered, the Labour Court by its Part-III Award dated 29th May, 1999 determined the question as to whether the punishment which had been imposed was shockingly disproportionate. Here again, in order to obviate any comment upon the ultimate decision of the Labour Court, it would be appropriate to extract the findings of the Labour Court as they stand:

The workman Helen D'Souza had remained absent on 13 occasions consisting of 14 full days and four half days between the period from May, 1993 to December, 1993. Due to absenteeism of workman the work of company was adversely affected. The Enquiry Officer by his report and findings had held the workman guilty for the charges of absenteeism and negligence. The workman remained absent from duties unauthorised on many occasion. She was reporting late for some time. In the past also she had been punished by way of suspension for misconduct of absenteeism. The past service record of workman is not good. She had been given warnings on many occasions. It appears that workman was in the habit of remaining absent unauthorisedly without bothering (sic) company's work. This is very bad. It is understandable that workman had remained absent from duty for sufficient and bona fide reason but such thing was not seen in case of workman Helen D'Souza.

Having said this, the Labour Court interfered with the punishment which had been imposed by the employer for the following reasons:

The workman deserves for punishment and that would be depriving of back wages. I am taking very sympathetic view in awarding relief of reinstatement and continuity of service only with a view that the workman should get opportunity to serve again and her bread and living means continue. In fact while working she had forgotten to be punctual and sincere. Hence after the company shall not tolerate the absenteeism of workman and undertaking shall be taken from her that she would not repeat such misconduct again. In fact management already had considered her unauthorised absenteeism leniently, but

she did not improve much. She should not think now again that the Court will come to her help if she repeats misconducts. Due to absenteeism and coming late of workman definitely the work of company would have suffered adversely and there would have been pressure on other workers. Therefore dismissal order is illegal, improper and void and workman is granted relief of reinstatement, continuity of service on giving undertaking.

(emphasis supplied)

The Labour Court granted reinstatement without backwages. The findings of the Labour Court, therefore, apart from the fact that the misconduct was proved would amply demonstrate that (i) the workman had remained absent from duty for no sufficient or bonafide reasons; (ii) the workman "had forgotten to be punctual and sincere"; (iii) despite the fact that the management had considered her unauthorised absenteeism leniently; there was no improvement; (iv) the habitual absence of the workman would adversely affect the working of the Company; and (v) that the past record of the workman was not good. The Labour Court, however, interfered with the punishment which had been imposed on the ground that it had taken a sympathetic view only with a view to ensure that the workman should get an opportunity to serve again and protect her livelihood. There was no extenuating circumstance found either in the nature of the misconduct or the past record of the workman.

4. There can be no doubt about the principle of law that u/s 11A of the Industrial Disputes Act, 1947, the Industrial Court or the Labour Court as the case may be, is vested with a wholesome discretion to determine as to whether the findings which have been arrived at in the course of a disciplinary enquiry are sustainable and on the question as to whether the quantum of punishment that has been awarded by the employer is proper even assuming that the charge of misconduct is proved. But like all discretion which is vested in a body which is conferred with judicial power, the discretion u/s 11A has to be exercised judiciously having regard to the facts and circumstances of each case. The exercise of discretion cannot be justified with reference to a desire to do equity de hors the circumstances of the particular case at hand, the nature of the misconduct which has been established, and the past record of the workman. The relevant facts and circumstances of each case have to be evaluated by the Labour Court or as the case may be, the Industrial Court. The findings of the Labour Court in this case have been extracted verbatim and these findings would leave no manner of doubt that the discretion which has been exercised by the Labour Court has not been exercised judiciously and on the basis of considerations germane to the jurisdiction of the Court u/s 11A of the Act. In these circumstances, the exercise of discretion is liable to be interfered with even within the parameters of the jurisdiction which is conferred on this Court under Article 226 of the Constitution.

5. The present petition came to be admitted on 20th October, 1999 when an Interim order staying the operation of the award of the Labour Court came to be passed subject to the provisions of Section 17B of the Industrial Disputes Act,

1947. Subsequently, on 25th January, 2000 an interim order was passed by the learned Single Judge by which the Petitioner was directed to pay to the workman the last drawn wages at the rate of Rs. 8000/- per month with effect from 8th September, 1999. The wages for the period between 8th September, 1999 and 31st January, 2000 were directed to be paid on or before 10th February, 2000. There is no dispute between the parties that the interim order dated 25th January, 2000 has been fully complied with. The learned Counsel for the Petitioner stated that an amount of Rs. 1.75 lakhs was paid to the workman during the pendency of these proceedings in pursuance of the interim order. The workman is stated to have expired during the pendency of these proceedings. Consequently, the only question which survives in the present case relates to the entitlement of the workman to the award of backwages from the date of the Part-III award (29th May, 1999) until the date of death. It must also be noted that the workman had challenged the correctness of the Part-I, Part II as well as of that part of the Part-III award insofar as it denied backwages to the workman before this Court in Writ Petition No. 2657 of 1999. The writ petition came to be dismissed by an order passed by the learned Single Judge. The order of dismissal was upheld in appeal by the Division Bench and was confirmed thereafter by the Supreme Court.

6. Mr. Ganguli, the learned Counsel appearing on behalf of the workman submitted that (i) A distinction has to be made between cases such as of serious assault and absenteeism and if the punishment of dismissal from service is awarded in the case of absenteeism the employer would not be making any distinction between absenteeism and other grievous misconduct such as assault; (ii) The facts of the present case did not warrant the imposition of the punishment of dismissal; (iii) The past record of the present case was never put to the workman; (iv) The jurisdiction u/s 11A has been judiciously exercised; and (v) That in the jurisdiction under Article 226 of the Constitution, this Court ought not to interfere, in this case. There is absolutely no merit in any of the aforesaid submissions. Insofar as the first two submissions are concerned, there can be no double about the proposition that the penalty which is sought to be imposed upon the employee must bear a relationship with the nature of the misconduct. There may be certain cases of misconduct such as assault where even a single act of misconduct may be sufficient to constitute a reason for the imposition of the penalty of dismissal, where the surrounding circumstances in relation to which the misconduct was committed justify the imposition of that penalty. Equally it has to be borne in mind that the present case is not a case of an isolated act of absenteeism on the part of the workman. The absenteeism was frequent and habitual, over a prolonged period. The past record of the workman was unsatisfactory. In the circumstances, I do not find any substance in either the first or the second submission which has been urged on behalf of the workman. Insofar as the question as to whether the past record was put to the workman before the order of termination was passed, is concerned it is common ground that the said submission has not been urged at any earlier stage of the

proceedings. It must also be noted that the challenge by the workman to the Part-I, Part-II as well as the final award has failed right upto the Supreme Court. But, even on merits, I am of the view that the employer has sufficiently complied with the requirement of fair procedure. The report of the Enquiry was made available to the workman, in compliance with the law laid down by the Supreme Court in Managing Director, ECIL, Hyderabad v. V. B. Karunakar 1993 (II) C.L.R. 1129 : 1993 (67) F.L.R. 1230. Model Standing Order 32(6) provides that in awarding punishment, the management shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. The employer was, therefore, entitled to look at the past record of the workman. In fairness, it is conceded by the learned Counsel appearing on behalf of the workman that he is unable to point out that any part of the reference to the past record of the workman in the order of dismissal is incorrect or erroneous. In the facts and circumstances of the present case, therefore, I am of the view that the exercise of discretion by the Labour Court u/s 11A of the Industrial Disputes Act, 1947 was not judicious and proper. The Labour Court has erred in interfering with the punishment of dismissal imposed by Petitioner.

7. On behalf of the Petitioner it is stated that the terminal dues of the deceased workman shall be paid forthwith within a period of one week from today. Mr. Ganguli appearing on behalf of the workman states that he is authorised by the heirs of the deceased workman who are present in the Court to state that the dues may be paid to Ms. Laura D'Souza. Directions in the aforesaid terms are accordingly issued.

8. The petition is accordingly made absolute in terms of prayer Clause (a). There shall be no order as to costs.