

(2001) 11 BOM CK 0032

In the Bombay High Court

Case No : C.A.J. L.P.A No. 71 of 2000 in Writ Petition No. 61 of 2000

Podar Mills (Process House)

APPELLANT

Vs

Kamlakar Ganpat Sawant

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2002) 92 FLR 1004 : (2002) 2 LLJ 191

Hon'ble Judges : R.M. Lodha, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Rajesh Gehani, for V.P. Vaidya, for the Appellant;

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—This Letters Patent Appeal impugns the order of the learned single Judge which modifies the orders of the Labour Court and the Industrial Court by awarding the Respondent Workman reinstatement with continuity of service and 25% back wages. The Respondent was employed with the Appellant Mill from March 19, 1973 as a Maintenance Fitter. On March 31, 1993 a police complaint was lodged against the Respondent as it was found that he had stolen brass piece weighing one and half kilograms and had concealed it in his lunch box while leaving the Mill premises. A charge-sheet was issued to the Respondent workman on April 5, 1993 alleging that he had committed misconduct under Certified Standing Order 21(d) as applicable to him. A domestic inquiry was held against the Respondent and the Inquiry Officer found the Respondent guilty of misconduct and, therefore, the services of the Respondent were terminated on October 14, 1994 by way of dismissal.

2. Being aggrieved by this dismissal order, the Respondent filed a Complaint u/s 28 read with Items 1(a), (b), (c), (d), (f) and (g) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court. The Labour Court on the basis of the inquiry report came to the

conclusion that the inquiry held against the Respondent was fair and proper and agreed with the finding of the inquiry Officer that the misconduct against the Respondent had been duly proved. However, the Labour Court took a lenient view of the matter and directed the Appellant to reinstate the Respondent with continuity of service and 50% back wages. Being aggrieved by the order of the Labour Court, the Appellant preferred Revision Application u/s 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court dismissed the Revision Application and confirmed the order of the Labour Court. The Appellant, therefore, filed Writ Petition No. 61 of 1999 impugning the orders of both the Courts below. The learned single Judge by his order dated January 20, 2000 took the view that the Labour Court and the Industrial Court were correct in their assessment that the offence had been proved and that the punishment of dismissal imposed on the Respondent was disproportionate. However, the learned single Judge interfered with the quantum of back wages payable to the Respondent workman and reduced it to 25%. Being aggrieved by this, the Appellant Mill has preferred the present Letters Patent Appeal.

3. The order of the Labour Court shows that the inquiry held against the Respondent was fair and in accordance with the principles of natural justice. The offence which is alleged against the Respondent has been proved beyond reasonable doubt. However, the Labour Court held that there was legal victimisation and, therefore, the punishment imposed on the Respondent workman of dismissal was shockingly harsh and disproportionate. The Labour Court was of the view that there was no factual victimisation but this was a case of legal victimisation and hence interfered with the punishment imposed.

4. We have heard Mr. Gehani, learned advocate for the Appellant. The Respondent workman, though served, did not appear before us. Mr. Gehani took strong exception to the impugned orders and submitted that allowing the Respondent workman to continue in service despite the fact that misconduct was proved against him would mean that the Respondent was being rewarded for having committed theft. He urged that the judgments of the Apex Court in Janatha Bazaar Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakara Sangha Etc., and U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370, clearly indicate that when the misconduct proved against the workman is in the nature of breach of trust, misappropriation, etc. no sympathy should be shown to the workman by reinstating him.

5. It appears to us that the Labour Court, Industrial Court and the learned single Judge have seriously erred in reinstating the Respondent-workman. The offence of theft having been established and proved beyond doubt, there is no question of victimisation of the workman. Victimisation is a serious charge which must be proved against the employer before any interference is made with the punishment imposed by the employer. The leniency shown by the Courts below

as well as the learned single Judge seems to be misplaced. The Respondent workman was working as a Fitter in the Maintenance Department and would necessarily be dealing with pieces of metal. To allow him to continue in this job would be a travesty of justice. We are, therefore, of the view that the impugned order of the learned single Judge is required to be set aside. Similarly, the orders of the Labour Court and the Industrial Court are set aside and the order of dismissal passed by the Appellant employer against the Respondent workman is confirmed.

6. In the circumstances. Letters Patent Appeal is allowed and the impugned orders are set aside. No order as to costs.