

(2002) 02 BOM CK 0090

In the Bombay High Court

Case No : Writ Petition No's. 5717 and 6537 of 1995

Pradip Khimaji Chawda since deceased by his L.Rs. and
Others

APPELLANT

Vs

Mahatma Gandhi Memorial Hospital and Another

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 4 BomCR 148

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.N. Deshpande, for the Appellant; S.S. Pathak, for the Respondent

Judgement

Nishita Mhatre, J.—By these cross petitions, the Award of the Labour Court is challenged whereby 40 months, wages were directed to be paid to the workman, who is the petitioner in Writ Petition No. 5717 of 1995 and respondent No. 1 in Writ Petition No. 6537 of 1995. These are the cross petitions by the workman and the employer, who is the respondent No. 1 in Writ Petition No. 5717 of 1995 and the petitioner in Writ Petition No. 6537 of 1995.

2. The workman was employed as a Sweeper with the respondent-employer w.e.f. 1-7-1978. A charge-sheet was issued on 24-9-1987 for misconduct of misbehaving on the premises of the respondent under intoxication and for talking arrogantly with the night supervisor. Not being satisfied with the explanation given by the workman, the respondent-employer (hereinafter referred to as "the hospital") held an enquiry on 1-2-1988. The workman was issued an order of termination stating that his services were no more required by the hospital with effect from the next date. One month's wages in lieu of notice were to be paid to him. Being aggrieved by this order, the workman approached the machinery under the Industrial Disputes Act and a reference was made for adjudication of the dispute. The Labour Court held that the enquiry conducted by the hospital against the workman was not fair and proper and, therefore, the hospital was

given an opportunity to prove the charge against the workman.

3. This obviously means the charge against the workman was confined to the charge-sheet dated 24-9-1987 wherein the allegation was that the workman was intoxicated and had shouted in the hospital premises and had misbehaved with the staff supervisor. Evidence was thereafter led by the hospital of the Matron, who was working at the relevant period in the hospital, the Head of the Security Department, Sister-in-charge and one of the Staff nurses. However, the two night supervisors with whom the workman had allegedly misbehaved by talking arrogantly under intoxication have not been examined before the Labour Court. The Labour Court on the basis of the evidence recorded came to the conclusion that the misconduct as contained in the charge-sheet dated 24-9-1987 was not proved. The Labour Court held, however, that in view of the past service record of the workman, he is not entitled to reinstatement with continuity of service and full back wages and instead directed the hospital to pay 40 months wages to the workman. Taking exception to this Award, the workman and the hospital challenged the same by filing the present writ petition. The workman has unfortunately passed away during the pendency of these writ petitions and his legal representatives are now parties before me.

4. Mr. Deshpande, learned Counsel appearing on behalf of the legal representatives of the workman, submits that the order of termination issued to the workman was of illegal retrenchment and, therefore, there was no question for the Court to consider as to whether any misconduct had been proved or any other relief than reinstatement could be granted. He relies on the judgment in the case of Mohan Lal v. Management, Bharat Electronics Ltd., reported in 1981 L.I.C. 806. He further submits that the termination order has to be considered as it stands and the hospital cannot be given an opportunity to explain the reasons for the termination when none exist in the order issued to the petitioner. For this proposition, he relies on the judgments in the case of Rallis India Ltd. v. M. Narasimha Rao & another, reported in 1987(II) L.L.N. 1016 and the case of The Management of the Statesman Ltd. v. The Lt. Governor & others, reported in 1987(II) C.L.R. 326. He further submits that since the Labour Court came to the conclusion that the misconduct was not proved, the only relief which could have been granted was by way of reinstatement with continuity of service and full back-wages. In support of this submission, he relies on the judgment of this Court in the case of Vinayak Bhagwan Shetye Vs. M/s Kismet Pvt. Ltd. and another, .

6. The learned Counsel urges that it would not be reasonable for the Labour Court to frame a charge when none existed when the order of termination was issued. He places reliance on the judgment of this Court in the case of The Vegetable Vitamin Foods Co. (P) Ltd. v. C.S. Yadav, Presiding Officer, 10th Labour Court and others, reported in 1988(I) C.L.R. 271. He submits that when a workman is deprived of his livelihood, the evidence must answer a more stringent test. Based on this, he submits that the workman was entitled to be

reinstated with continuity of service and full back-wages. In any event, he submits that as the workman has passed away during the pendency of the writ petitions and no question of reinstatement would arise and the only issue would be of back-wages.

7. Mr. Pathak, learned Counsel for the hospital, urges with great vehemence that the conduct of the workman did not warrant any leniency and, therefore, there is no question of reinstating such a person. He submits that the complaints received from patients as well as the staff were such that any reasonable employer would not retain such a person in service. He urges that the Labour Court having taken this view was incorrect and has misdirected itself by granting 40 months' wages to such a workman. He submits that there was ample evidence on record by way of complaints to show that the workman had committed misconduct and, therefore, even the leniency shown by the Labour Court by granting him 40 months' wages was uncalled for. He submits that in any event, the Labour Court has moulded the relief and there was no question of reinstating such workman.

7. I have heard the learned Counsel at great length. The order of termination does not disclose the reasons for termination. The only reason mentioned is that the services are no longer required by the hospital. The Labour Court has found that the real reason for termination of the services of the workman was on account of the alleged misconduct contained in the charge-sheet dated 24-9-1987 and the enquiry held pursuant thereto. On the basis of the evidence led before it, the Labour Court was of the view that the hospital had failed to prove the misconduct alleged in the charge-sheet against the workman. Having come to this conclusion, the Labour Court ought not to have considered the question of moulding the relief and granting some other relief than that of reinstatement with continuity of service and back-wages. The hospital may have a genuine grievance against the workman but it was necessary to prove the same before the Labour Court. The Labour Court could not suo motu consider the complaints of some patients without them having been proved or without giving any hearing to the workman in that respect. The Labour Court was obviously considering as to whether reinstatement should be given to the workman in the hospital when the allegation is that he misbehaved with the night supervisor as well as the staff and the patients within the hospital premises. However, this exercise could have been undertaken by the Labour Court after the workman was given any notice of the misconduct alleged against him. Not having done so, it is not proper for the Labour Court to take into consideration the past service record when the misconduct alleged against him in the charge-sheet dated 24-9-1987 for which the enquiry was conducted before the Labour Court was not proved.

8. The judgment cited by Mr. Pathak in the case of O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & another, reported in 1994 S.C.C. 244 in support of his submission that the conduct of the workman did not merit reinstatement. The next judgment cited by Mr. Pathak is the case of U.P.S.R.T.C.

v. Bhagwati Prasad Pathak, reported in 2000(2) L.L.N. 413. The Apex Court held that in the facts and circumstances of that case that the workman could not be reinstated as he had attained the age of superannuation and had already retired as an Assistant Cashier and that reinstatement would adversely affect the confidence of others in the establishment and, therefore, awarded lesser amount of back-wages than that awarded by the Labour Court. In the case of Breach Candy Hospital and Research Centre v. Shri Babulal B. Pardeshi & another, reported in 2001(III) C.L.R. 456, this Court has taken a view that the misconduct which had been proved against the workman in that case was serious involving an assault on a co-workman which had taken place in the hospital premises and, therefore, such a person could not be reinstated especially when the misconduct was proved. This Court has also held that a case of assault or behaviour that is subversive of discipline in a hospital does not stand on the same footing as an occasional or isolated instance of a breach of discipline on the shop floor of a factory. On this basis, the employer contends that there could be no reinstatement and, therefore, payment of back-wages is of no consequence.

9. In the present case as already stated above, the Labour Court has come to the conclusion that the misconduct has not been proved. I see no reason to differ with the findings of the Labour Court on this aspect. The Labour Court ought to have set aside the order of termination and granted reinstatement. As this has not been done, the Award of the Labour Court to that extent must be set aside. The workman must be deemed to have been reinstated with continuity of service and full back wages.

10. In the present case, the workman has expired on 10-12-1998 and therefore, the question of reinstatement does not arise. However, the legal heirs of the workman having been brought on record, would be entitled to full back-wages. The 40 months' wages which has already been awarded by the Labour Court shall be adjusted against this amount. This Court, while admitting the petitions, had directed the hospital to deposit the awarded amount in the trial Court and that the same should be invested in fixed deposits with a Nationalised Bank initially for a period of three years which had to be renewed every time for one year.

11. In the circumstances of the case, the legal heirs of the workman are entitled to withdraw this amount from the Labour Court and the hospital shall pay the balance amount to them. Writ petitions are disposed of in the aforesaid terms.

12. Issuance of certified copy of this order is expedited.