
(1995) 03 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 2874 of 1989

Prakash Mahadev Nigampurkar

APPELLANT

Vs

Premier Automobile Ltd., Pune and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 71 FLR 191 : (1996) 3 LLJ 540

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

Bench : Single Bench

Judgement

1. This Writ Petition under Articles 226 and 227 of the Constitution of India challenges an Award dated 6th February, 1989 made by the Presiding Officer, First Labour Court, Pune, in Reference (IDA) No. 127 of 1981 (new No. Reference 98 of 1982) under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The Petitioner was employed in the Machine Tool Division of a company known as "Cooper Engineering Ltd." at Pune as a Machine Operator on last drawn wages of Rs. 600/- per month. The Petitioner was served with a charge-sheet dated May 24, 1980 by which three charges were levelled against him. The first charge pertained to an incident, which was alleged to have taken place on May 11, 1980, during which the Petitioner was alleged to have unlawfully gathered the Machine Operators around him, causing their to stop work as a protest against calling of the second shift lathe operators to work in the first shift. It was also alleged in the first charge-sheet that the Petitioner had, at 11.30 a.m. on the same day, instigated his co-workmen to an illegal tool down strike. The second charge was that on May 20, 1980 the Petitioner had collected a group of about 100 to 125 workmen and led them to the Office of Assistant General Manager (Personnel) and, when instructed not to come in a group. But to send a small number of representatives for redressal of grievance, if any, the Petitioner was alleged to have resorted to vituperative arguments and use of abusive, indecent

language against the Management. It was also alleged that, at 4.15 p.m. on the same day, the Petitioner had taken the same group of workmen to the office of the General Manager, where also, he had argued in arrogant manner and used abusive and indecent language by taking a prominent part in the incident. The third charge against the Petitioner was that, on May 21, 1980, he had coerced the bus driver carrying the workmen of the employer's establishment to take the bus to the Swargate Policy Station and, after detaining the bus there for considerable time, the Petitioner had forced the driver of the bus to take the bus to a place near Mangala Talkies, after which it was permitted to proceed. A lengthy inquiry was held into the charges levelled against the petitioner. Finally, by an Order dated November 28, 1980, the Petitioner was informed that the Inquiry Officer had found him guilty of the third charge levelled against him by the charge-sheet dated May 24, 1980, that the Competent Authority concurred with the finding of the Inquiry Officer and, as the charge proved against the Petitioner was of a grave and serious nature warranting dismissal from service, it was decided that he should be dismissed from service of the Company. Consequently, the Petitioner was dismissed from service with effect from November 28, 1980. The Petitioner raised an Industrial dispute for his reinstatement in service with continuity and full back wages and the said dispute was referred to the Labour Court vide Reference (IDA) No. 127 of 1981.

3. It is important to notice here that the charge-sheet and the dismissal order were both issued by Cooper Engineering Ltd., which was the owner of the Chinchwad Machine Tool Division, where the Petitioner was employed. Consequently, the industrial dispute raised was between Cooper Engineering Ltd. and the Petitioner and it was, therefore, Cooper Engineering Ltd. which was the party to the order of reference.

4. Pursuant to an Order of this High Court dated January 28, 1981 made in Company Petition No. 178 of 1979 connected with Company Application No. 41 of 1979, Cooper Engineering Ltd, was amalgamated with another company, known as "Walchandnagar Industries Ltd." Under clause 9 of the Scheme of Amalgamation sanctioned by the High Court, the transferee company (i.e., Walchandnagar Industries Ltd.) was to take over all such employees of Cooper Engineering Ltd. as were willing to join the transferee company, as far as possible on the same terms and conditions, but not less favourable to them, without any break or interruption of service. By a Memorandum of Understanding dated August 17, 1987, arrived at between Walchandnagar Industries Ltd. and the First Respondent, the First Respondent took over the Machine Tool Division of Walchandnagar Industries Ltd. situated at Chinchwad, as a going concern, with effect from August 22, 1987. Clause 1(B) (e) of the Memorandum of Understanding dated August 17, 1987 reads as under :

"1(B) The business carried on at the said Undertaking consists, inter alia, of :-

(e) As incidental to the transfer of the said Undertaking, all the rights, title, benefits, advantages, duties and liabilities under the various agreements,

arrangements and understanding pertaining/relating to or connected with the said business and/or the said Undertaking (hereinafter referred to as "the said Agreements").

Clause 2 reads as under :-

"2. As incidental to the transfer of the said Undertaking, the Transferee (the Premier Automobiles Limited) shall take over all the employees referable to the said Undertaking without any break or interruption of service and on existing terms and conditions and will also take over Transferor's (Walchandnagar Industries Limited) liabilities towards gratuity payable to them as on the appointed date".

Clause 4 reads as under :-

"4. Notwithstanding anything herein contained to the contrary it is hereby expressly agreed and understood by and between the parties that the Transferor shall be deemed to have transferred and the Transferee shall be deemed to have purchased the business carried on at the said Undertaking as a going concern, on and with effect from "the Appointed Date".

5. Walchandnagar Industries Ltd. appeared before the Labour Court, pursuant to a notice issued to them and filed a Written Statement dated January 28, 1982.

6. After recording evidence and hearing the parties, the Labour Court made an Award dated July 10, 1985, on the preliminary issue whether the inquiry held against the petitioner was against the provisions of the Certified Standing Orders and whether the finding of the Inquiry Officer were perverse. By its Award dated July 10, 1985, the Labour Court held that the inquiry held against the Petitioner was in accordance with the provisions of the Certified Standing Orders and the principles of natural justice. However, after analysing the evidence on record in the inquiry, the Labour Court took the view that the evidence did not indicate that the Petitioner had disobeyed any reasonable order of his superior, nor did it indicate that he had instigated any other employee to disobey any reasonable order of the superiors and that there was no evidence to show that the Petitioner had disobeyed any lawful and reasonable order and had committed a misconduct within the meaning of Certified Standing Order 22(1), nor was there evidence to show that he had committed any act subversive to discipline or good behaviour in the establishment. The Labour Court, therefore, was of the view that the findings of the Inquiry Officer holding the Petitioner guilty of the third charge was perverse. The employer, thereafter, made an Application (Exhibit 22) to the Labour Court requesting that it be permitted to lead evidence to prove the misconduct against the Petitioner. Although it was clear from the Order of Dismissal dated November 28, 1980 and the Written Statement of the employer, that it was only the third charge pertaining to the incident of May 21, 1980 which was the foundation of the dismissal order, the Labour Court took a view to the contrary and held that the employer was entitled to lead evidence to prove all the misconducts mentioned in the charge-sheet dated May 24, 1980. By an order

dated May 20, 1986 the Labour Court permitted the employer to lead evidence to prove the misconduct mentioned in the charge-sheet dated May 24, 1980. The Petitioner challenged the Order of the Labour Court dated May 20, 1986 before this Court vide Writ Petition No. 4945 of 1986. When the said Writ Petition came up for hearing before the Division Bench of this Court (Sawant and Kotwal, JJ.), the Division Bench summarily rejected the Writ Petition with the order :-

"The Petition is premature and hence rejected. The petitioner can raise all objections before the Labour Court and the Labour Court shall give its findings on all those objections."

7. After the above stated order of this Court, the employer led evidence before the Labour Court only on the first charge pertaining to the incident of May 11, 1980 and the second charge relating to the incident of May 20, 1980 and did not lead any evidence on the charge pertaining to the incident of May 21, 1980. By the impugned Order dated February 6, 1989, the Labour Court held that the misconducts alleged against the workman in connection with the first charge dated May 11, 1980 and the second charge pertaining to the incident of May 20, 1980 were proved, rejected the reference and denied relief on the said findings. Hence, this Writ Petition.

8. Though it is not clear from the impugned Award of the Labour Court dated February 6, 1989, whether such an argument was addressed to the Labour Court, Mr. Kochar, learned Advocate-appearing for the petitioner, vehemently contended that it was so and the Labour Court had travelled much beyond the Order of Dismissal passed by the employer. He rightly pointed out that, in the Order of Dismissal dated November 28, 1980, it was only the third charge pertaining to the incident of May 21, 1980 which was held proved and made the foundation of the dismissal. From a reading of the Order of Dismissal, it appears that charges 1 and 2 levelled against the petitioner were, for some unfathomable reason, not pressed into service, for passing the dismissal order though they had been specifically levelled against the petitioner by the charge-sheet dated May 24, 1980. Mr. Kochar is, therefore, right to the extent of contending that, after having held that the Inquiry, Officer's finding on charge No. 3 which was the only charge held proved against the Petitioner) was perverse, the Labour Court had no jurisdiction to record evidence on any issue other than the merits of charge No. 3 levelled against the Petitioner by the charge-sheet dated May 24, 1980. This was precisely the objection raised in the Petitioner's earlier Writ Petition No. 4945 of 1986. Unfortunately for the Petitioner, the Division Bench summarily rejected the said Writ Petition at that stage as premature, though, fortunately for the Petitioner, his rights to raise all objections were kept intact. The objection was that the Labour Court could not have permitted evidence on any charge other than the charge, which was the subject-matter and the foundation of the Dismissal Order dated November 28, 1980. Even if evidence was recorded, the Labour Court could not have considered such evidence in support of the order of Dismissal dated November 28, 1980. In my considered judgment the contention

has force and needs to be upheld. It was not permissible for the Labour Court to go into any allegation or charge other than the one which forms the bedrock and foundation of the Dismissal Order dated November 28, 1980. It cannot be gainsaid that, by the charge-sheet, though the employer had preferred three charges against the petitioner, the final order of dismissal clearly indicated that it was only charge No. 3 which was held proved against the Petitioner and formed the foundation of the dismissal order. It was, therefore, totally unnecessary and impermissible to consider evidence on the other charges which, even according to the employer, did not appear to have been proved against the petitioner. The Labour Court, was therefore, in error in permitting and in considering the evidence with regard to charges 1 and 2 against the Petitioner.

9. Turning to the third charges, even the impugned Award of the Labour Court makes it clear that the employer led no evidence on that charge and the charge was held not proved by the Labour Court itself. In my view the only logical sequel should have been an order of reinstatement, as there was no evidence to sustain charge No. 3. On which the Petitioner had been dismissed from service. It is unfortunate that the Labour Court extended the scope of trial before it and relied on material which was not even the subject-matter of the Order of Dismissal dated November 28, 1980 was passed against the Petitioner. I am, therefore, of the view that the impugned order needs to be interfered with. The necessary consequence would, therefore, be an order of reinstatement with full back wages and continuity of service.

10. Mr. Shah, learned Advocate appearing for the First Respondent, however, urged a contention which needs consideration. He drew my attention to the return filed on behalf of the First Respondent and urged that, even if I were to hold that the Petitioner was entitled to any relief, liability for such relief could not be enforced against the First Respondent as the first Respondent was not the employer of the Petitioner at any time, nor was party to the order of reference made by the Government. The contention has only partial merit. I am unable to accede to the argument that the First Respondent has no liability whatsoever in the matter. In fact, although all earlier proceedings were against Cooper Engineering Ltd. and the amalgamated company. Walchandnagar Industries Ltd., it was for the first time in the present Writ Petition that the First Respondent was impleaded. By that time, the Memorandum of Understanding between the First Respondent and Walchandnagar Industries Ltd., under which the Chinchwad Machine Tool Division of Walchandnagar Industries Ltd. was taken over as a going concern by the First Respondent with effect from August 17, 1987 had come into existence and became operative. I have already reproduced the three material clauses of the Memorandum of Understanding and the cumulative effect of the said clauses, in my view, would be to make the First Respondent a successor-in-interest of Walchandnagar Industries Ltd., insofar as the workmen employed in the Chinchwad Machine Tool Division were concerned.

11. Mr. Shah then argued that, even if it were possible to take the view that the

First Respondent was the successor in interest and, therefore, liable for the claims of the workmen in employment as on August 17, 1987, the Appointed Date, the First Respondent owed no liability towards the claim of the Petitioner, who was admittedly not in employment of Walchandnagar Industries Ltd. in the Machine Tool Division on August 17, 1987. He contends that, even if it be assumed that the dismissal of the petitioner by Walchandnagar Industries Ltd. was wrongful, the First Respondent cannot be visited with the consequences, nor could be made liable for the consequences. Since Walchandnagar Industries Ltd. has not been made a party before me in this Writ Petition, I think, the contention must partly succeed and partly be rejected. Once the Order or Dismissal dated November 28, 1980 passed by Cooper Engineering Ltd. (of which Walchandnagar Industries Ltd. was a successor-in-interest by virtue of the Amalgamation Order) is set aside, the legal position would be that the Petitioner would have continued in service as an employee in the Machine Tool Division of Walchandnagar Industries Ltd. as on the appointed date, i.e. on August 17, 1987. By, virtue of the Memorandum of Understanding, he would have been continued in service by the First Respondent from that date without any difficulty. The question, however, is, whether the First Respondent should be made liable for the wrongful act of, Walchandnagar Industries Ltd. and be made to pay back-wages for the period from the date of the dismissal till August 17, 1987 ? There is some merit in this contention and, since Walchandnagar Industries Ltd., is not made a party before me, it is not possible for me to give any direction to the said company in this Writ Petition with regard to the back wages from the date of dismissal to August 16, 1987. From August 17, 1987, however the First Respondent took over "all the employees referable - to the said undertaking without any break or interruption of service", on existing terms and conditions of service as provided in clause 2. In my view, the expression "referable to the said undertaking" would include within its ambit all employees who were actually in service on the Appointed Date and employees in whose cases legal proceedings were pending before competent fora for reinstatement in service. It is not in dispute that Reference (IDA) No. 127 of 1981, in which the industrial dispute raised by the Petitioner for his reinstatement, was already pending before the Labour Court on August 17, 1987. If the First Respondent wanted to avoid the liability, if any, of the adverse order in the said proceedings, it ought to have provided for such a contingency in the Memorandum of Understanding. Failing this, the First Respondent is liable for all the consequences flowing from an adverse order in the said Reference, which was pending on the date on which the First Respondent implemented the terms of the Memorandum of Understanding. I am, therefore, of the view that the First Respondent shall be answerable for implementing the order of reinstatement and for payment of back wages from August 17, 1987 onwards, but the First Respondent cannot be made liable for the back wages between the date of the dismissal and August 16, 1987.

12. In the result, the Petition is allowed. The impugned order of the Labour Court is quashed and set aside. The First Respondent is directed to reinstate the

Petitioner in service with continuity of service and pay back wages from August 17, 1987 till the date of reinstatement. The order of reinstatement and back-wages to be implemented not later than 8 weeks from today. The Petitioner is free to enforce his claim for back wages from November 19, 1980 up to August 16, 1987 against his erstwhile employer, in appropriate proceedings, before an appropriate forum as he may be advised. Rule made accordingly absolute. There shall, however, be no order as to costs.

13. Certified copy expedited.