

(2010) 12 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 3340 of 1999

President, Best Workers' Union and Another

APPELLANT

Vs

General Manager and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78

Citation : (2011) 128 FLR 1080

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Karnik, for the Appellant; R.N. Shah a/w Priya B. instructed by M.V. Kini and Co., for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petition has been filed by a Union representing some of the workers employed in the respondent No. 1 undertaking and the workman whose services were dismissed by respondent No. 1. For the sake of convenience, the petitioner No. 2 would be referred to as the "employee" and respondent No. 1 undertaking will be referred to as the "Undertaking".

The employee joined service with the undertaking as a Conductor on 22.2.1977. He was initially employed as a badli worker. Thereafter he was made permanent in service. It appears that on 7.7.1995, a report was submitted to the undertaking by the Leave Clerk that the employee had been absent from 7.3.1995 for 15 consecutive days. A charge-sheet was issued to the employee under Standing Order 20(f) on 31.7.1995. It was alleged that the employee had remained absent without leave for more than 15 consecutive days. An enquiry was held against the workman and he was dismissed from service on 27.10.1995 as the charges levelled against him had been proved. The workman, therefore, approached the undertaking in accordance with the provisions of the Bombay Industrial Relations Act on 6.5.1996. Since no reply was received by the employee, he preferred an application before the Labour Court u/s 78 of the

Bombay Industrial Relations Act (for short, hereinafter referred to as "BIR Act") being Application (BIR) No. 84 of 1996. In his application the employee contended that he had been dismissed from service after holding an enquiry which was not fair and legal and proper. According to him, the findings of enquiry officer were perverse. He pleaded that he was unwell and, therefore, could not attend his duties. He annexed a medical certificate to the statement of claim.

The undertaking filed a written statement contending that the enquiry had been held by observing the principles of natural justice and that the employee had been dismissed only after all the necessary precautions had been taken to hold a fair enquiry. It was further pleaded that enquiries with the medical department of the Undertaking had revealed that the workman had not sought any medication from the Department nor was he referred to any public hospital during the time of his absence. However, the department informed the concerned authority that the workman had submitted a medical certificate for the period from 3.3.1995 to 6.3.1995. Thereafter the workman went on sick leave and did not attend the dispensary run by the Undertaking. It was then contended that the past service record of the workman was considered and it was found that since the misconduct of absence without leave had been proved there were no mitigating factors to continue the employee in service.

2. The Labour Court by its order dated 30.6.1997 held that the enquiry conducted against the employee was fair and proper. It further held that the conclusions drawn by the Trying Officer about the guilt of the employee were justified and not perverse. The misconduct was thus proved. However, the Labour Court held that the employee was entitled to reinstatement with continuity of service but without backwages. A further punishment of stoppage of two increments for two years w.e.f. 27.10.1995 was also imposed on the employee. The Labour Court has considered the past service record of the employee while imposing this punishment. The Court took note of the fact that the employee had not attended duty after he went on sick leave on 7.3.1995.

3. Aggrieved by the order passed by the Labour Court the Undertaking preferred an appeal being Appeal (Industrial Court) No. 156 of 1997. The appeal has been allowed and the findings of the Labour Court on the punishment to be imposed are reversed. Hence, the present petition.

4. The Industrial Court has concurred with the findings of the Labour Court that adequate opportunity was granted to the employee to defend himself at the enquiry. It has considered the fact that the employee was absent from 7.5.1995 to 27.10.1995 i.e. for five months consecutively without any intimation whatsoever to the Undertaking. In these circumstances, the Industrial Court in my opinion, has rightly held that the misconduct has been proved. In fact, the Industrial Court has concurred with the findings of the Labour Court on this issue. In my opinion, the Industrial Court after considering the past service record of the employee has correctly found that there were no mitigating factors to permit the employee to continue in service.

5. In my view, there is no need to interfere with the impugned order. An affidavit has been filed by the Undertaking in reply to the petition. The past service record of the employee has been disclosed. The Labour Court has set out the past service record of the employee in its order. It is as follows: 1 From 1.9.1993 to 2.9.1993 remained absent without taking any type of leave. On 4.9.1993 fined Rs. 5/- under S.O. 22 (a). 2 On 12.2.1994 remained absent without taking any type of leave. On 9.3.1994 fined Rs. 5/- under S.O. 22(a). 3 Remained absent from July, 1993 to June, 1994. On 23.12.1994 he was reduced in grade by one step for two years under S.O. 20(f). 4 Remained for more than 15 consecutive days during the period from 18.8.1994 to 11.12.1994. Reduced in grade by two steps for two years on 31.1.1995.

6. Moreover, he was found negligent in the collection of tax, for which he was charge-sheeted. Thus, the past service record of the employee does not in any manner indicate that the employee deserves to be reinstated. The punishment of dismissal is commensurate with the misconduct committed by the employee. In the case of Tata Engineering and Locomotive Company Ltd. Vs. Suhas Madhukar Mulay and Another, , a similar question arose where a workman was absent for several months. The past service record of the workman was highlighted and it was found that the punishment of dismissal was commensurate with the misconduct proved against him and that the service record of the employee did not warrant a lenient view. In the present case, the employee has stated before the Trying Officer i.e. the enquiry officer that he was not present on duty because his "mental condition was not proper". No medical certificate was produced by the employee to establish this fact. Therefore, both the Courts in my opinion had rightly disbelieved the contention of the employee that he was unwell. Considering the service record of the employee, in my opinion, there is no need to interfere with the order passed by the Industrial Court in the appeal.

The petition is accordingly dismissed. Rule discharged. No costs.