

(2003) 01 BOM CK 0113

In the Bombay High Court

Case No : O.O.C.J.A. No. 1166 of 2002 in Writ Petition No. 1257 of 2001

Rajaram S. Kanerkar and Others

APPELLANT

Vs

Morarjee Gokuldas Spinning and Weaving Co. Ltd.

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Citation : (2003) 2 LLJ 1134

Hon'ble Judges : S.J. Vazifdar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : N.M. Ganguli, for the Appellant; S.M. Naik, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Ganguli for the Appellants. Mr. Naik appears for the Respondents.
2. This appeal is seeking to challenge the order dated June 20, 2001 dismissing the writ petition filed by the Appellants-employees. The Appellants along with many other employees totalling to 159 had filed a Reference before the Industrial Court praying that they be reinstated with the consequential reliefs. These employees made a grievance that they had not been taken back on duty after a general strike in the Cotton Textile Industry commenced from January 18, 1982. In the Reference, a settlement was arrived at and all the employees from amongst these employees except 19, accepted 51% back wages in full settlement of their claim. The other 19 employees chose to proceed with the Reference. The present Appeal is filed by the 13 employees from amongst these 19 employees. It was their case that the settlement should not be for 51%, but it should be for 65%. It is not disputed that they have also received 51% amount.
3. When the Reference proceeded, the learned Member of the Industrial Court did give a finding that the employees had not proved that they had reported for work on or before May 31, 1983. It was the cut off date for reporting for the work. The learned member of the Industrial Court held that the employer had terminated the services of the employees since they had remained absent from

work and had failed to report for work by the cut off date viz-., May 31, 1983 inspite of various Notices issued. He, in terms, at the end of paragraph 15 of his Award, held that these employees are not entitled for reinstatement with full back wages.

4. In view of the aforesaid settlement with the other employees, in the operative part of the Award, the learned Member of the Industrial Court directed that the employer should pay the back wages at the rate of 51% to these remaining employees and it is the case of the employer that they have been paid that amount accordingly which is not in dispute.

5. It is this order of the Industrial Court which was challenged before the learned single Judge. The learned single Judge relied upon an unreported decision of a Division Bench of this Court in Appeal No. 774 of 1995 S.K. Kanerkar v. Century Mills dated February 17, 2000. In that matter, the Division Bench (Per B.N. sriKRISHNA, J., as he then was) had recorded that the general notices and the show cause notices had been despatched to the employees concerned for participating in the strike which had been declared to be illegal. The Court had further recorded that several public appeals were issued informing the workers that the strike called by the Maharashtra Girni Kamgar Union had been declared to be illegal and the workers should join on duty. The learned single Judge has observed that the fact situation in the present case was similar to the one before the Division Bench and, therefore, in view of those notices, the workers concerned knew that they had to report for duty before the deadline. They did not report and, therefore, there was a participation in the illegal strike and continued absence and hence, the finding that they were not entitled to be reinstated with full back wages was left undisturbed.

6. Mr. Ganguli, learned counsel appearing for the Appellants, submitted that in the order of the Division Bench in Kanerkar's (supra) a distinction was made from another judgment in the case of Changunabai Chanoo Palkar Vs. Khatau Makanji Mills Ltd. and others, wherein the charge-sheet was not served and the inquiry was not been an the employee was directed to be reinstated. As against that, in Kanerkar's case (supra) Notices were served on the employees. In the instant case, there was a specific dispute before the Industrial Court for reinstatement of the employees who had participated in the illegal strike. Mr. Ganguli submitted that in the present case, it was not proved that charge-sheets were served. Fact, however, remains that in Kanerkar's case (supra) as also in the present case, Notices were issued to the employees to return to duty and they did not. There is no dispute on that aspect. Therefore, it was held that the employees were not entitled to reinstatement with full back wages. Besides, a settlement was arrived at before the Industrial Court between the Management and the workman. There is no dispute that such a settlement was arrived at and 51% back wages were agreed to be received in full settlement. In fact, it is not disputed that except the 19 employees, all other employees did accept the settlement and received the amount. From amongst these 19 employees, the

present 13 Appellants-employees also received their amounts at the rate of 51%. It was, however, their contention that the settlement was for 65% and not for 51%, which is rejected by the learned single Judge. Nothing was produced to disbelieve the settlement with the Management at the rate of 51%. In a case like this, therefore, the only appropriate order was that the 13 employees be also paid the agreed amount and which the learned single judge has directed in the operative part of his order.

7. Mr. Ganguli submitted that the fairness of the settlement was not tested in the Industrial Court. This issue was not raised as such in the Industrial Court that the settlement of 51% was not a fair or justified settlement. The Industrial Court cannot be, therefore, faulted for not deciding it. The learned single Judge has, therefore, declined to interfere in the Award passed by the Industrial Court. We are in full agreement with the learned single Judge. The appeal is, therefore, dismissed.