
(1997) 04 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 1406 of 1994 and 731 of 1996

Rajkamal Transport and Another

APPELLANT

Vs

Rajendra A. Pardiwala and Another

RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1997) 4 ALLMR 294 : (1997) 4 BomCR 532 : (1997) 3 MhLj 1

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : Shobha Rajgopal and C.U. Singh, instructed by S.I. Kazi, in W.P. No. 1406 of 1994 and R.J. Kochar and Indrajeet Kaur, in W.P. No. 731 of 1996, for the Appellant; Shobha Rajgopal and C.U. Singh, instructed by S.I. Kazi in W.P. No. 731 of 1996 and R.J. Kochar and Indrajeet Kaur, in W.P. No. 1406 of 1994, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—Both the above Writ Petitions arise from the Award passed by the Labour Court in Reference (IDA) No. 643 of 1987. Writ Petition No. 1406 of 1994 has been filed by the Company whereas Writ petition No. 731 of 1996 has been filed by the workman. Accordingly, both the Writ Petitions are disposed of together by this common judgment.

2. The facts giving rise to the writ Petitions, briefly, are as follows.

3. Rajendra Pardiwala was appointed as a Peon on 1st May 1980. According to the Company, he was warned for refusing to obey orders of his superiors on several occasions in the past even prior to the issuance of the charge sheet on 27th October 1984. He was warned on 15th April 1982, and 13th October 1983 for remaining absent without leave. In 1983, according to the Company, he was also transferred within Bombay from one Office to the other. According to the Company, on 4th December 1983, he was also warned and censured for refusing to work. According to the Company, on 3rd August 1984, he was asked to go to a

Tailor of the Company to get his uniform stitched which he refused and for which he was warned on 8th August, 1984. According to the Company, on 24th August 1984, he was once again warned for refusing to give his residential address in Bombay. According to the Company, on 11th September 1984, the workman got stitched the uniform according to his own pattern. On 26th September 1984, he was asked to get the uniform stitched according to the Company's requirement/pattern which was also an instruction given to him not to follow and in the circumstances, on 27th October 1984, he was given a charge sheet/show cause notice for not wearing uniform while on duty. He was also given a chargesheet for availing leave on false pretext from 11th October 1984 upto 22nd October 1984. According to the Company, the workman had applied for leave on the ground that he was not well, whereas the Company found that during the relevant period, he was selling crackers at Mohammedali Road. The chargesheet was also given because according to the Company on 8th October 1984, the workman had refused to clean the Manager's cabin. In other words, the chargesheet refers to three separate misconducts viz. not wearing uniform while on duty, availing leave on false pretext and lastly refusing to clean the Manager's cabin. On 29th October 1984, the workman replied to the above chargesheet. He denied that he was selling crackers at Mohammedali Road. According to the reply, he was staying at Mandvi; that he was suffering from dysentery; that at Mohammedali Road, he was standing outside his friend's crackers shop when the representative of the Company / his colleague came to buy crackers and he only requested his friend to sell the crackers to his colleague. However, he denied that he was selling crackers at Mohammedali Road during the above period, as alleged by the Company. The workman also pointed out in his reply dated 29th October 1984 that no instructions were given to him about any particular pattern which he was required to follow while his uniform was being stitched and in the circumstances, he denied all the allegations in the said chargesheet. With regard to his refusal to clean the Manager's cabin, the workman specifically contended that he was earlier working in the office of the Company in Bombay near Mohammedali Road where he was working as a Peon, but in 1983, he was shifted to another office of the Company in Bombay and in the other Office of the Company, he was only assigned the work of carrying letters as a Despatch Peon and he was required to do clerical work and in the circumstances, he pointed out to the Manager that cleaning the cabin was not within the purview of his duties. By the said reply, he further pointed out that even as a Peon, he was not required to work as a sweeper. He further pointed out by the above reply that the Manager had not asked him to clean the cabin, but he had asked the workman to sweep the floor after removing the carpet on the ground which was not the work of a Peon, but of a sweeper. In the circumstances, the workman denied the allegations made in the show cause notice. The said reply and the explanation was not found satisfactory and in the circumstances, the Company decided to proceed with a Domestic Enquiry. Ultimately, on 4th March 1985, he was dismissed from service. Since an Industrial dispute was pending before the Competent Tribunal, the Company sought approval which was granted on 30th

September 1986. Thereafter, the workman sought a Reference u/s 10 of the Industrial Disputes Act, 1947. The reference was granted by the Government and the matter stood transferred to the Industrial Tribunal in November 1992. According to the claim made by the workman in the said reference, he was victimized. He has also pleaded that the Domestic Enquiry was not fair and proper. He also pleaded in the said reference that the punishment was disproportionate. By way of Part-I Award dated 1st December 1993, the Industrial Tribunal found that the enquiry was fair and proper. However, the parties filed a Purshis before the Industrial Tribunal and they did not lead any oral evidence thereafter for the purposes of proving the propriety of the Order of punishment or victimization or mala fides etc. Ultimately, on 7th January 1994, the Labour Court passed an Award being Part-II Award. The Labour Court found that the workman as guilty of misconduct. However, the Labour Court found that the punishment by way of dismissal was not warranted and in the circumstances, the Labour Court directed reinstatement with 50% back wages and continuity of service. Being aggrieved by the Part-II Award dated 7th January 1994, the above two writ petitions have been filed. On 14th February, 1995 this Court directed the employer to pay wages u/s 17-B of the Industrial Disputes Act and it is not in dispute that from 14th February 1995, the Order is implemented and the workman has been receiving wages u/s 17-B of the said Act, 1947.

4. Ms. Rajgopal, learned Counsel appearing on behalf of the Company contended that in the present case, the Labour Court erred in directing reinstatement. She contended that in the present case, the workman was not entitled to 50% back wages. She pointed out that the workman ought to have been dismissed from service. She further contended that on the basis of the charges proved, the nature of misconduct was of a serious nature and, therefore, reinstatement alongwith back wages, even to the extent of 50% , should not have been given. She further contended that in the present matter, the workman has continuously refused to carry out instructions given by his superiors and in the circumstances, the Company was entitled to draw an inference of loss of confidence. For this purpose, she has heavily relied upon the judgment in Sarabai's case (reported in 1980 1 L.L.J. 295. She further contended that in the present case, even the past service record of the workman was very bad and in the circumstances, he was not entitled to be reinstated. She further contended that in the present case, the Labour Court has found that the misconduct has been proved. She further contended that in the present case, the workman had obtained leave on false pretext and on the ground of illness, he had obtained leave, whereas, in fact, he was found selling crackers at Mohammedali Road during the relevant period. She further contended that this was a serious misconduct for which the workman was not entitled to be reinstated. She further contended that the workman was appointed as a Peon and he had no right to refuse to clean the cabin as per the directions of the Manager. In the above circumstances, she contended that the Labour Court was not entitled to interfere with the Order passed by the employers dismissing the workman from service as the workman was found

guilty of serious misconduct.

5. I do not find any merit in the above contention. In the present matter, the Labour Court has rightly come to the conclusion that the punishment of dismissal was an extreme punishment. From this point of view, I have examined the evidence on record. In the first instance, it may be mentioned that the Company has relied upon certain letters issued prior to the chargesheet and has contended that the past record of the workman was very bad, apart from the misconduct being proved. In this connection, it may be mentioned that giving of warning letters or reciting warning letters in the Order passed by the Disciplinary Authority, without giving any opportunity to the workman cannot prove that in the past, the workman was guilty of misconduct as alleged in those warning letters. It is not clear as to whether those letters were put before the workman either before the Enquiry Officer or before the Disciplinary Authority. In the circumstances, the contents of the alleged warning letters have not been proved. The truth of the contents of the said letters were required to be proved which have also not been proved. In the present matter, there is nothing to indicate that the Confidential Record of the workman was very bad. No such record has been produced. One more aspect may be mentioned. As rightly found by the Labour Court, some of the alleged past misconducts are the same which are found in the chargesheet and in the circumstances, the Labour Court is right in coming to the conclusion that instances relating to the charges cannot be once again quoted by the employer as past service record. Apart from the past service record, I find that in the present case, even the show cause notice and the chargesheet is not accurate. In the present case, the workman was charged, not for obtaining leave on false pretext. The charge was that during the period of leave, he was found selling crackers. The evidence on record clearly indicates that the workman was not selling crackers. It is true that he was suffering from dysentery .He had applied for leave for four days. He was staying near Mohammedali Road and he was standing near his friend's shop which was doing the business of selling crackers when his colleague came to purchase crackers and there is no evidence to show that the workman was selling crackers. It is one thing to say that the workman helped his colleagues to buy crackers from his friend's shop and quite different to say that he was himself selling crackers during the above period. It is true that he had obtained leave on the ground of illness. In the circumstances, there is nothing to show that he was selling crackers, as alleged by the Company. This is only to point out that in the above matter, there are large number of discrepancies, apart from proportionality of punishment. In a matter of dismissal, the Company is required to prove the charges and in such matters, the Company is required to accurately frame charges so that the workman is given a proper opportunity to meet the allegations levelled against him. Similarly, in the chargesheet, the workman has been charged for not obeying the orders of the Manager to clean the cabin. The explanation of the workman has also not been considered by the Labour Court and even by the Domestic Enquiry Officer. The explanation was firstly that in the

Office to which he was transferred in 1983, he was given clerical work and for one full year, he was asked to do clerical work and under the circumstances, the workman understood that the work of cleaning the cabin was not within the purview of the duties which he was required to carry out. Moreover, his explanation was that he was not only asked to clean the cabin, but he was asked to sweep the floor and in the circumstances, the workman was fully justified in not obeying the instructions because he was appointed as a Peon and he was not appointed as a sweeper. Moreover, he has further pointed out that even the carpet was soggy and he was required to remove the carpet and sweep the floor, which aspect of the matter has not at all been considered. These two discrepancies are pointed out only to show that in a matter of this type, it would not be fair to dismiss an employee, particularly when vital aspects of the matter have not been considered. In the above circumstances, for different reasons I confirm the Order passed by the Labour Court directing reinstatement of the workman with 50% back wages.

6. In the above matter, however, the workman has filed Writ Petition No. 731 of 1996 in which he has claimed that he was entitled to full back wages. I am not inclined to grant full back wages to the workman as I find that with regard to not wearing the uniform, the workman has flouted the instructions given by the Company. The Company is required to maintain certain discipline and if the workman flouted those instructions by not wearing the uniform, I find that certainly the Company would be entitled to take appropriate action. It is for this reason that I am not inclined to grant back wages because I find that to the extent of not wearing the uniform or not getting it stitched as per the pattern of the Company, the workman is guilty of misconduct which may not warrant dismissal, but it would certainly warrant withholding of the back wages to the extent of 50%. Taking into account the facts and circumstances of the case, I find that ends of justice have been subserved by the Labour Court directing reinstatement of the workman with 50% back wages and with continuity of service.

7. Accordingly, both the above writ petitions i.e. Writ Petition No. 1406 of 1994 and Writ Petition No. 731 of 1996 are hereby rejected. Rule, in both the above writ petitions is discharged with no order as to costs.