
(2013) 03 BOM CK 0227
In the Bombay High Court
Case No : Writ Petition No. 6 of 2004

Ramdas Borkar

APPELLANT

Vs

M/s. Goa Shipyard Ltd. and Another

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2014) 2 ABR 650

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Judgement

F.M. Reis, J.—Heard Shri A.F. Diniz, learned Counsel appearing for the petitioner and Shri M.S. Bandodkar, learned Counsel appearing for the respondent No. 1. The above petition challenges the order 24/04/2003 and award dated 1/07/2003 passed 3 by the Industrial Tribunal at Panaji inter alia [holding that the action of the employer/the respondent No. 1 herein in terminating the service of their workman/petitioner herein with effect from 16/02/1984 is legal and justified.

2. Shri A.F. Diniz, learned Counsel appearing for the petitioner has assailed the impugned order on three counts. It is his first contention that the first order dated 24/04/2003 being the findings on the preliminary issues No. 1, 2 & 3 stand vitiated as according to him the inquiry which was conducted by the respondent No. 1 is in breach of the principles of natural justice. It is further the contention of the learned Counsel that the petitioner was not even offered liberty of engaging an authorized representative to defend the proceedings before the Inquiry Officer and, as such, he was not given an adequate opportunity to defend his case. The learned Counsel further pointed out that even in such proceedings the representative of the Respondent No. 1 was one Mr. Puti Gaonkar, who was also charge sheeted in the incident which was an offshoot of the incident wherein the petitioner was also charge sheeted. The learned Counsel further pointed out that the Inquiry Officer had recorded the deposition in English language when according to him the deposition was in Konkani language which was not known to the Inquiry Officer. The learned Counsel further pointed out that the said Mr. Puti

Gaonkar had in fact acted on behalf of the respondent No. 1. The learned Counsel, as such, submits that this exercise on the part of the respondent No. 1 and Inquiry Officer vitiates the inquiry before the Inquiry Officer. The next contention of the learned Counsel appearing for the petitioner is that with regard to the same incident there were charge-sheets also filed against the said Puti Gaonkar and Sailesh Borkar, who had also assaulted the petitioner in the scuffle. The learned Counsel further pointed out that the charge-sheet against the said persons was also for assault and that the Inquiry Officer though found that they were guilty of such offences nevertheless the punishment inflicted on them was only of a warning. The learned Counsel further pointed out that in fact the petitioner was seriously injured and had to be immediately hospitalized on account of the assault. The learned Counsel further pointed out that as far as the petitioner is concerned, the punishment awarded was of dismissal/termination of his services whereas on the contrary said Mr. Puti Gaonkar is concerned a lenient view has been taken and the proceedings have been disposed of by only a warning. The next contention of the learned Counsel appearing for the petitioner is that the punishment which has been inflicted is shockingly disproportionate to the alleged misconduct of the petitioner. The learned Counsel further pointed out that there was union rivalry at the establishment which resulted in unfortunate incident and, as such, according to him inflicting punishment of dismissal has grossly affected and prejudiced the petitioner. The learned Counsel further pointed out that considering the other workers who had also assaulted the petitioner, were given a lenient view the question of inflicting the punishment of dismissal to the petitioner is not at all justified. The learned Counsel has taken me through the impugned award and pointed out that the learned Tribunal has not at all considered the said aspect by considering the well settled principles of law for considering such dispute and has erroneously come to the conclusion that the action taken by the respondent No. 1 is legal and justified. The learned Counsel further pointed out that the petitioner has been left only to fight a legal battle against the Respondent from the year 1984 on account of some flimsy charges levelled by the respondent No. 1 and, as such, the question of justifying the punishment awarded on the petitioner is wholly untenable. The learned Counsel has taken me through the impugned award as well as the material on record and pointed out that the inquiry proceedings itself are vitiated and the award is not at all legal. The learned Counsel further pointed out that considering that the petitioner had already attained the age of superannuation at least the respondent No. 1 would have considered to give compensation to the petitioner. The learned Counsel further pointed out that charge-sheet issued by the appellate authority against the petitioner has severely jeopardized the right of appeal of the petitioner as per the Rules. The learned Counsel as such submits that the impugned award deserves to be quashed and set aside.

3. On the other hand, Shri M.S. Bandodkar, learned Counsel appearing for the respondent No. 1 has supported the impugned award. The learned Counsel pointed out that the Tribunal on appreciating the evidence on record has come to

the conclusion that the inquiry conducted by the respondent is fair and legal. The learned Counsel further pointed out that the Inquiry Officer was in fact examined before the Tribunal and he had categorically stated that he also understood Konkani language. The learned Counsel further pointed out that in fact the petitioner did not even raise such grievance before the Inquiry Officer. The learned Counsel further pointed out that the inquiry which has been conducted was in keeping with the well settled principles of natural justice and, as such, the question of raising such contention would not arise. The learned Counsel further pointed out that the petitioner did not even seek for appointment of an authorized representative to defend his case before the Inquiry Officer and, as such, the question of raising such contention before this Court is totally misplaced. The learned Counsel further pointed out that there is no illegality committed by the respondent No. 1 in the inquiry conducted with regard to the petitioner herein. The learned Counsel further pointed out that as far as the charge-sheet against the petitioner is concerned the previous records of the petitioner were not satisfactory and, as such, inflicting punishment of dismissal is justified. The learned Counsel further points out that the records as far as the other co-workers are concerned are satisfactory and as such submits that the respondents were justified to take a lenient view. The learned Counsel further pointed out that the petitioner in fact first assaulted one John Menezes who was a superior of the petitioner. The learned Counsel further pointed out that as the conduct of the other coworkers, was satisfactory the respondents were justified to take a lenient view as far as the co-workers are concerned. The learned Counsel has thereafter taken me through the impugned award and pointed out that the Tribunal has rightly appreciated the material on record and has come to the conclusion that the punishment inflicted on the petitioner is justifiable. The learned Counsel also submits that it is well settled by the Apex Court that this Court in a petition under Article 227 of the Constitution of India is not entitled to re-appreciate the material on record. The learned Counsel, as such, submits that considering the findings in the inquiry and the impugned award of the Tribunal this Court cannot re-appreciate the material to take a contrary view. The learned Counsel, as such, submits that the question of interfering in the findings of the Tribunal with regard to the misconduct committed by the petitioner is not at all permissible. With regard to the contention of Shri A.F. Diniz, learned Counsel appearing for the petitioner that punishment inflicted on the petitioner is grossly disproportionate to the alleged misconduct of the petitioner, Shri Bandodkar, learned Counsel pointed out that considering that the petitioner has been found to have assaulted a coworker in the establishment the question of interfering in the impugned award on that count would not arise. The learned Counsel further pointed out that the Tribunal has also considered that such dismissal has been awarded to the petitioner on account of his unsatisfactory past record. The learned Counsel further pointed out that it is not open for this Court under Article 227 of the Constitution of India to re-appreciate the said reasons and take a contrary view. The learned Counsel as such submits that there is no case made out for interference in the impugned award and as such above petition be

rejected.

4. After hearing concluded, an opportunity was given to the party to try and settle the matter by paying some adequate compensation to the petitioner. Considering that the matter is pending for a long time though some proposals were exchanged between the parties nothing concrete arrived at between the parties. Hence, the matter was taken for disposal on merits.

5. With regard to the findings of the Tribunal whilst disposing of the preliminary issues No. 1, 2 & 3, I find that the Tribunal has appreciated the material on record and has come to the conclusion that the inquiry conducted by the Inquiry Officer was fair, legal and proper. In such circumstances, it is well settled that this Court in exercise under Article 227 of the Constitution of India cannot re-appreciate the material on record to come to any such contrary findings. The Tribunal has found that as far as the contention of the petitioner that no authorised representative was permitted to represent the petitioner that no request on that count was made by the petitioner. With regard to the next contention that the Inquiry Officer was not conversant with the language spoken by the witness the Tribunal has found that in fact the Inquiry Officer in his deposition has stated that he was understanding such language.

6. Apart from that, the petitioner has not been in a position to establish any prejudice on account of the alleged breaches committed by the inquiry officer whilst conducting such proceedings. Before the Industrial Tribunal, it is not in dispute that the petitioner was represented by Shri Subhash Naik and, as such, ample opportunities were given to the petitioner to cross-examine the witnesses examined by the Respondent No. 1. The petitioner was also given an opportunity to adduce other evidence or material in support of his contentions. The Tribunal also noted that the petitioner in his statement of claim has never pleaded that the inquiry conducted against him is not fair and proper nor had challenged the fairness of such inquiry. In such circumstances, the Tribunal found that the fairness of the conduct of such inquiry cannot be challenged by the Petitioner. The learned Tribunal also noted that considering the material adduced on record, there is evidence to suggest that the Petitioner also knew English language nor had the petitioner brought to the notice of the inquiry officer that he was not aware of the nature of the proceedings. Dealing with the contention of the petitioner that Shri John Menezes and Putt Gaonkar had conducted the inquiry on behalf of the management, the learned Tribunal found that the charge-sheet was issued to the workmen based on the complaint made by Shri John Menezes, that on 26.02.1983, he was geared and assaulted by the workmen and others. The Tribunal also noted that the witnesses of the management which included said Shri John Menezes was also cross examined by the petitioner and that the petitioner was cross examined only by John Menezes while the witnesses of the workmen were cross examined by Puti Gaonkar. The learned Tribunal as such found that in case the petitioner had any objection to the said Puti Gaonkar intervening in the proceedings, he ought to have raised such contentions at the

relevant time. On the basis of the appreciation of the material on record, the learned Tribunal came to the conclusion that the inquiry conducted against the petitioner is fair, proper and impartial and the petitioner was given full opportunity to defend himself. The contention of the petitioner that the findings given by the inquiry officer were perverse, have also been rejected by the Tribunal. The evidence adduced by the parties has been minutely scrutinised by the Tribunal to come to such conclusion. Considering the said finding of the Tribunal which cannot be said to be in excess of jurisdiction, I find that the question of this Court re-appreciating the evidence on record to come to contrary conclusions is not justified. In view of the above, I find that there is no case made out by the petitioner nor any perversity disclosed in the findings of the Tribunal whilst disposing of the finding Nos. 1, 2 and 3 by Order dated 24.04.2003.

7. Dealing with the second part of the Award passed by the Tribunal dated 01.07.2003 to consider the said aspect, it would be relevant to note the case put forward by the petitioner in the statement of claim. It is his contention that in the year 1965, the services of the petitioner were taken over by the Respondent No. 1 who was initially employed as a labourer and subsequently gradually he was promoted from one grade to another and, at the time when his services were terminated in the year 1984, he was working as a gas cutter in a highly skilled scale grade. It is further his case that the petitioner along with some other workers resigned from the union because they were not happy with the functioning of the said union and subsequently in December, 1982, they formed an union known as Goa Shipyard Workers Union, which was registered with the Registrar of Trade Union. The petitioner was elected as the Vice President of the said union and the respondent No. 1 was informed about the formation of the said union and that since December, 1982, two unions started functioning in the establishment of respondent No. 1 namely Goa Shipyard Employees Union and the Goa Shipyard Workers Union. It is further his contention that on 26.02.1983 at about 7.30 a.m., the workmen reported for duty at the repairs division at the handling hand and the handling hand sent him for gas cutting job at the outer jetty. It is further his case that at 8.10 a.m., the office bearer of the rival union with the other workers came to the place where the petitioner was working and they were led by Mr. Puti Gaonkar, the General Secretary of the said union and the petitioner was questioned about his loyalty to the union. At that stage, the petitioner claims that he was assaulted and as a result therein, he fell down unconscious. The respondent No. 1, however, denied the said allegations. It is their case that the employees union was working smoothly and the workers had no grievance whatsoever. It is further their case that one outside union wanted an entry into the yard and, therefore, the office bearer of the said union with the help of some workers formed a union known as Goa Shipyard Workers Union, which was a minority union. It is further the case of the Respondent No. 1 that the Petitioner along with other workers gheraoed Mr. John Menezes, near the machinery shop while he was proceeding towards the jetty for his job and, at

that time, the petitioner gave two punches on him and Anthony Dias gave two blows on the said John Menezes. It is also admitted by the Respondent No. 1 that a complaint was lodged on 28.02.1983 about the incident of assault on the petitioner by Shri Puti Gaonkar and others and that a complaint was also lodged by Shri Baby James and others.

8. From the foregoing facts, it cannot be disputed that there were rivalry on account of two union formed by the workers employed by the respondent No. 1. No doubt, the petitioner was belonging to a minority union whereas the remaining workers had formed an employees union. On the background of these facts, the punishment awarded to the petitioner would have to be assessed. The allegations as far as the petitioner is concerned is that he had given two punches on said John Menezes whereas the allegations against the said Shri Puti Gaonkar and others was that they had assaulted the petitioner and in fact it is not in dispute that the petitioner had to be admitted to the hospital in an unconscious state. The learned Tribunal found that the material does not suggest that the punishment inflicted was justified due to the petitioner's conduct and his past record. As already stated herein above, it is not in dispute that there were two charge-sheet filed one against the petitioner and the other against the said Shri Puti Gaonkar and others in connection with the same incident. In fact, the Petitioner is stated to have suffered grievous injuries which resulted in his hospitalisation. On perusal of the charge-sheets against the said John Menezes and Putu Gaonkar, similar charges were levelled of assault. This incident has to be considered in the background of the fact that there was rivalry in the union of workers working for the respondent No. 1. The respondent No. 1 also stated that the petitioner belonged to an union which was in the minority. The past record referred to by respondent No. 1 were with regard to the charge-sheets dated 31.05.1967, 03.01.1971 and 03.01.1981. The first charge-sheet was in connection with the fact that the petitioner was found sleeping at midnight while on duty. The next charge was that the petitioner attempted to assault a Security/Hawaldar when he was stopped for taking a helmet which was given to them for use and the third charge-sheet was that he left work and was going around the yard along with other workmen. Considering the said allegations for which the petitioner had already been warned, by itself cannot justify the punishment of terminating the services on account of the incident which is the subject matter of the present proceedings.

9. With the assistance of the learned Counsel, I have also gone through the charge-sheet filed against the other co-workers and it is not in dispute that as far as other co-workers are concerned, a lenient view was taken with regard to the same incident. Though Shri Bandodkar, learned Counsel appearing for the respondent No. 1 pointed out that there were allegations of gherao against the petitioner, I find that such allegations were in the context of a union rivalry between the petitioner's union and that of the other co-workers. In such circumstances, I find that the punishment inflicted on the petitioner is, prima facie, shockingly disproportionate to the misconduct established against the

petitioner. The past record referred to by the Tribunal to justify a severe punishment to the petitioner viz a viz the punishment to other workers, would not by itself establish that the punishment inflicted on the petitioner of terminating the services is just and proper. Hence, the Tribunal was not justified to hold that the punishment inflicted to the petitioner was not shockingly disproportionate to the misconduct merely because of the past records pointed by the respondent No. 1. It is now well settled that the Courts normally would not interfere with a decision unless it is illogical and suffers from procedural impropriety and was shocking to the conscience of the Court in the sense it is in defiance of logic and normal standards. It is also to be noted that the petitioner was apparently working with the establishment even before 1965 and had been promoted in the normal course, which shows that there were no adverse remarks as far as the petitioner is concerned with regard to his work duties.

10. It is pointed out by Shri Diniz, learned Counsel appearing for the petitioner, that it is now well settled that the Court can even award compensation in lieu of reinstatement or other benefits. This aspect would have to be considered by the Tribunal on its own merits in accordance with law. As stated herein above, though the parties were negotiating to arrive at some amount of compensation, nevertheless, the parties could not come to any definite conclusion which forced the final disposal of the above Petition.

11. Considering the facts and circumstances of the case, I find that the punishment inflicted on the petitioner of dismissal is unsustainable and deserves to be quashed and set aside. The judgments relied upon by Shri Bandodkar, learned Counsel appearing for the respondent No. 1, with that regard are totally distinguishable. In the present case, the workers who were working in the rival union and involved in the said incident, have been inflicted a lenient punishment of warning whereas the petitioner has been given the punishment of termination of service. In such circumstances, I find that the punishment inflicted on the petitioner is shockingly disproportionate to the misconduct attributed to the petitioner. In view of the above, the Award passed by the Tribunal dated 01.07.2003 to that extent deserves to be quashed and set aside and the Tribunal should proceed to hear the parties afresh with regard to the punishment to be awarded to the petitioner on the ground of the misconduct.

12. The judgments relied upon by Shri Bandodkar, learned Counsel appearing for the Respondent No. 1, reported in *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, , *U.P. State Bridge Corporation Limited Vs. Maharashtra General Kamgar Union*, and *Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another*, , need not be considered considering the view taken by me in the above judgment. In view of the above, I pass the following:

ORDER

(i) The impugned award dated 1/07/2003 to the extent it confirms the punishment of termination of the services of the petitioner on account of the

misconduct is quashed and set aside.

(ii) The Tribunal is directed to decide the punishment to be awarded to the petitioner on account of the misconduct proved by the respondents after hearing the parties in accordance with law.

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of.

(v) The parties are directed to appear before the Tribunal on 25/04/2013 at 10.30 a.m.