

(1987) 10 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No's. 760 and 2510 of 1984

Ramesh Ramchandra Gawad

APPELLANT

Vs

Mahindra and Mahindra Ltd.

RESPONDENT

Date of Decision : 15-10-1987

Acts Referred:

Citation : (1993) 3 LLJ 698

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : Nishita Mhatre and G.S. Kalsekar, for the Appellant; P.K. Rele and A.M. Vernekar for R1 and R2, for the Respondent

Final Decision : Partly Allowed

Judgement

H.H. Kantharia, J.—The petitioner in writ petition No. 760 of 1984 (hereinafter referred to as "the workman") was in the employment of the first respondent therein (hereinafter referred to as "the Company") as a mazdoor. He was a permanent workman. According to him, he was unwell and, therefore, proceeded on leave from 18th March, 1979 to 24th March, 1979 for which he had sent two medical certificates to the Company but unfortunately he was arrested by the police at his native place on 24th March, 1979 as a suspect in a murder case. He was in jail during pendency of the murder trial and was ultimately acquitted by the Sessions Court on 9th January, 1980. Thereafter he approached the Company with a request to allow him to resume duty. He also showed a certified copy of the judgment of the Sessions Court acquitting him of the murder charge. However, the Company sent him a letter on 27th March, 1980 that his name was struck off from the muster roll of the Company as he was treated having abandoned his services. Thereafter, an industrial dispute was raised which was referred to the second respondent presiding over the Sixth Labour Court at Bombay for adjudication in the matter of reinstatement with continuity of service and full back wages.

2.The Reference was resisted by the Company on the grounds that they did not

know that the workman was in jail from 24th March, 1979 to 9th January, 1980. They also denied having received any medical certificate from the workman. They, however, admitted that they received one medical certificate dated 17th March 1979 on 30th March, 1979. They contended that the workman had absented from work from 18th March, 1979 and the company sent a letter to him on 21st March, 1979 asking him to report for duty immediately but the workman did not and, therefore, they sent another letter dated 29 March, 1979 informing him that his name was struck off from the muster-roll as he had abandoned the services. The company admitted that the workman did make a representation on 10th March, 1980 for his reinstatement but on 27th March, 1980 he was informed that his request could not be granted. According to the Company, no employer could wait indefinitely for a workman to resume duty particularly when there was no communication from the workman regarding his absence. The Company mainly contended that the workman remained absent without permission and his name was correctly struck off from the muster-roll as he had abandoned the services.

3. On appreciation of the evidence adduced before him the learned Labour Judge came to the conclusion that the workman had not voluntarily abandoned the service and that the termination of the service was illegal, improper and unjustified. He was, therefore, entitled to reinstatement with continuity of service but not back wages because in the opinion of the learned Labour Judge the Company cannot be saddled with backwages for no fault of theirs. He accordingly by his award dated 30th November, 1983 directed the Company to reinstate the workman with continuity of service and rejected the claim of the workman for back wages, in Reference (IDA) No. 633 of 1981.

4. The workman challenges the said award to the extent of denying full back wages to him in writ petition No. 760 of 1984; whereas the Company challenges the same award of granting reinstatement to the workman in writ petition No. 2510 of 1984. Both the petitions are under Article 226 of the Constitution of India. As they arise out of common facts and the same Award, they are being disposed of by this common judgment.

5. On perusal of the impugned award and on hearing the learned Counsel appearing on either side, I am of the opinion that the Award made by the learned Labour Judge granting reinstatement to the workman is in accordance with law and does not suffer from any error apparent on the face of record so as to be interfered with. The facts of the case are unfortunate for which the workman cannot be blamed. Whether or not he had proceeded on leave from 18th March, 1979, the fact remains that he was under arrest by the police from 24th March, 1979 for an alleged offence of murder. It is also not in dispute that he was acquitted by the Sessions Court on 9th January, 1980. It is again not in dispute that he had represented to the Company soon after his acquittal that he be taken back on work. According to him, he had approached the Company in the month of January, 1980 and according to the Company it was in March, 1980. Accepting

the case of the Company to be true that the workman had approached them on 27th March, 1980 for being taken back on work, I see no reason why the Company should have been unkind to him for not allowing him to resume duty. Unfortunately the workman was in jail till January 1980. When he came out he straight went to the Company with a certified copy of the judgment of the Sessions Court that he was acquitted of the murder charge. I agree with the submission of Mr. Rele, learned Counsel appearing on behalf of the Company, that an employer cannot indefinitely wait for a workman to resume duty and finding the workman absent for long time, the Company was justified in striking off his name from the muster-roll. To that extent I do not blame the Company at all. But after the workman approached the Company either in the month of January or in the month of March, 1980 that he was in jail and that he was acquitted there was no good reason for the Company not to allow him to resume duty. It would be quite unfair to the workman to say that he had abandoned services or that he had remained absent without sufficient cause. Therefore, it would be reasonable to expect the Company to have allowed the workman to resume duty from 27th March, 1980 when he had made an approach in that behalf. I, therefore, find no infirmity in the impugned Award made by the learned Labour Judge granting reinstatement to the workman.

6. Now the question remains about the back wages. The learned Labour Judge refused full backwages to the workman on the ground that for no fault of the Company it should not be saddled with the back wages. It is no doubt true that from 18th March, 1979 till 27th March, 1980 the Company cannot be blamed at all and it would be perfectly justified in denying back wages to the workman for that period. It was not the fault of the company that the workman remained absent for which they should be burdened with the back wages. But after 27th March, 1980, as stated above, there were no good grounds for the Company to have refused resumption of duty by the workman. Therefore, from 27th March 1980 till the workman was reinstated and I am told at the Bar that he was reinstated on 23rd March 1984 in pursuance of the Award made by the learned Labour judge, the workman would be entitled to full back wages. Therefore, the impugned award to the extent of denying so much of the back wages to the workman is bad in law. To that extent, the Award will have to be set aside.

7. In the result, writ petition No.760 of 1984 is partly made absolute. The Company is directed to pay full back wages to the workman from 27th March, 1980 to 22nd March, 1984. Writ Petition No. 2510 of 1984 fails and the same is dismissed. Rule in that writ petition is accordingly discharged. However, in the facts and circumstances of the case I make no order as to costs in both the writ petitions.

8. The Company is directed to make payment to the workman within four weeks from today.