

(2014) 04 BOM CK 0039
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 83/2014

Ramesh Samarbahadur Singh

APPELLANT

Vs

Century Textile and Industries Ltd.

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) LLR 795

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : M.D. Nagle, i/b., T.G. Vartak, Advocate for the Appellant; S.P. Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—By this petition, the Petitioner challenges the orders passed by the Labour Court, Mumbai and the Industrial Court, Mumbai holding that the punishment imposed on the Petitioner of dismissal from service is not disproportionate. The Petitioner was working with the Respondent since 29 November 1995. A charge-sheet came to be issued to the Petitioner that on 5 October 2003 in 2nd shift, the Incharge offered him different work upon which the Petitioner refused and threatened the Incharge that he will have to face consequences. It was alleged that when the Incharge left the Company at 6.00 p.m. and was proceeding towards the bus stop to go home, the Petitioner approached him, abused him and assaulted him with a bamboo stick causing injuries and a fracture. The Petitioner then looked around for big stone to assault. Meanwhile, the Incharge fled towards the mill premises. The Incharge had to be given medical aid. Charges framed against the Petitioner were for rioting and disorderly behaviour.

2. An enquiry was instituted against the Petitioner in which he was found guilty and punishment of dismissal from service was proposed. The Petitioner filed a Complaint (ULP) No. 129 of 2005 in the 2nd Labour Court, Mumbai. The Labour Court heard the matter on the fairness of the enquiry and perversity of the

findings. By its order dated 6 October 2008, the Labour Court held that the enquiry was fair and proper but the findings were perverse. Against this order, both the Petitioner and Respondent filed revision applications. The Industrial Court remanded the matter back to the Labour Court. Thereupon, the Labour Court heard the proceedings again on the point of fairness of enquiry and perversity of findings and by order dated 4 July 2009 came to the conclusion that the enquiry was fair and proper and the findings were not perverse. The Labour Court thereafter proceeded to consider the complaint and framed an issue as to whether punishment of dismissal imposed upon him by the Management was disproportionate. The Labour Court held that the issue as to whether the enquiry was fair and proper was already settled. Thereafter, the Labour Court by its order dated 1 April 2013 held that the punishment of dismissal is not disproportionate. This order was challenged by the Petitioner by way of revision in the Industrial Court. The Industrial Court considered seriousness of the charges established against the Petitioner and held that the order of the Labour Court was correct and accordingly dismissed the revision application by impugned order dated 1 February 2014.

3. The learned counsel for the Petitioner submitted that the charges are not established against the Petitioner. He submitted that the fact that the Petitioner was victimized was not considered by the Courts below. He also submitted that a charge is under 21(k) of the Standing Orders which means that an action should have been taken in the premises during working hours at the premises.

4. As far as the submission that incident not taking place during the working hours in the mill premises is concerned, it cannot be accepted. The assault carried out by the Petitioner was extension of the threatening of the Superior within the premises and only because he could not carry out the assault in the premises, the Petitioner waited till the Superior stepped out of the premises, and then carried out the assault. There is a direct causal relationship between the misconduct and the duty. Even otherwise, the standing order under 21(k) speaks of actions of subversive of discipline. Once an employee carries out an assault on his Superior because of which he had to be given medical aid, it cannot be said that punishment imposed was disproportionate. No error can be found in the view taken by the Courts below. As far as the case of not considering victimisation is concerned, the charges proved against the Petitioner cannot be ignored on mere submission that He was victimized. Such acts cannot be countenanced,, especially when equitable jurisdiction is sought to be invoked. As regards the submission that charge has not been proved against the Petitioner, the Petitioner has not challenged the finding that the enquiry recorded by the Labour Court was fair and proper and the Labour Court has rightly refused to reopen the issue. No error can be found in the impugned order. The petition is accordingly rejected.