

(2001) 11 BOM CK 0051
In the Bombay High Court
Case No : C.A.J. W.P. No. 2632 of 1995

Ratnakar Samuel Gaikwad

APPELLANT

Vs

J.G. Glass Industries Ltd. and Another

RESPONDENT

Date of Decision : 30-11-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 1 ALLMR 986 : (2002) 93 FLR 347 : (2002) 4 LLJ 63

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Judgement

Nishita Mhatre, J.—By this petition, the petitioner challenges the award of the Labour Court wherein a reference for reinstatement with full back wages and continuity of service has been rejected.

2. A few facts of the case are as follows:

The petitioner was in service of Respondent No. 1 for about 14 years and claims to be an active trade unionist of the Pune Workers' Union. It is the case of the petitioner that he was ill on October 26, 1979 and, therefore, could not report for duty from that date till October 30, 1981. On October 31, 1981 after recovering from his sickness, the petitioner reported for duty with a fitness certificate. According to the petitioner, he was not permitted to resume his work. A show-cause notice was issued to him on November 19, 1981. A list of dates was mentioned ranging from January, 1981 to October, 1981 on which he had remained absent from work without prior sanction. The explanation given by the petitioner to the show-cause notice was not accepted by respondent No. 1 and an enquiry was instituted against the petitioner on the basis of the charge-sheet dated January 2, 1982. On completion of the enquiry, the petitioner was dismissed from service on November 6, 1982.

3. Being aggrieved by the said dismissal, the petitioner raised an industrial dispute. A reference was made for adjudication before the Labour Court, Pune.

The Labour Court held that the enquiry was vitiated as the principles of natural justice were not complied with. The Labour Court, therefore, permitted the parties to lead evidence and on the basis of the evidence led before it, it came to the conclusion that the punishment of dismissal was warranted as the petitioner was habitually remaining absent from work. The Labour Court, however, after considering the past service record of the petitioner, was of the view that there was no mitigating circumstance due to which the punishment of dismissal should not have been enforced on the petitioner. Being aggrieved by the award of the Labour Court, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

4. Mr. Bapat, learned counsel for the petitioner, urged that the award of the Labour Court was not based on the evidence recorded before it as the findings were contradictory to the findings in the testimony of the witnesses. He urged that the finding of the Labour Court that the petitioner was guilty of misconduct of remaining absent for 165 days is incorrect as there was nothing on record to show that the petitioner had in fact remained absent without sanctioned leave for said period. He then submitted that while exercising the jurisdiction u/s 11-A of the Industrial Disputes Act, the Labour Court ought to have given the petitioner an opportunity to be heard whilst considering his past service record. He submitted that not having done so, the Labour Court had committed a serious breach of the principles of natural justice. He further submitted that the dismissal order is based on not only the misconduct alleged in the charge-sheet but also on the past service record and the respondents ought to have given the petitioner an opportunity to explain the past service record before taking the same into consideration. He bases his contention on the judgment in the case of *The Management of Madras Fertilisers Ltd., Manali, Madras Vs. The Presiding Officer, Additional Labour Court, Madras, Kuppuswami (Died) and M. Kannammal, .*

5. Mr. Nargolkar, learned counsel for the respondents, has submitted that there was no provision under the Standing Orders or u/s 11-A to give a show-cause notice to the workman while considering the past service record, before passing an order of dismissal. He urged that the past service record is considered to find out whether there was any extenuating circumstance in favour of the workman in order to impose a lesser punishment than that of dismissal. He further submits that the offences committed in the past are not the only reasons why the petitioner has been dismissed. He further submitted that the respondents could take into consideration this record even if the memos/minor punishments were imposed with respect to difference in the acts of misconduct from the ones contained in the charge-sheet.

6. In my view, the Labour Court had considered the evidence which were placed on record by the parties through their witnesses and has come to the conclusion that the punishment of dismissal was not harsh and shockingly disproportionate. It would be travesty of justice to saddle the employer with the service of

workman who has been remaining absent habitually and has been issued 35 memos from the time of appointment till his services were terminated. Therefore, the contention of Mr. Bapat that the Labour Court had erred in exercise of its jurisdiction u/s 11-A of the Industrial Disputes Act cannot be accepted.

7. Mr. Bapat's submission that a second show-cause notice ought to have been issued to the petitioner on the basis of the judgment in Madras Fertilisers Ltd. 's case (supra) also cannot be accepted. The case before Madras High Court was one in which the employer had dismissed the workman, after holding a domestic enquiry. While issuing the dismissal order the employer had considered the gravity and seriousness of the charges proved as also the adverse previous record. The learned Judges of the Madras High Court were of the opinion that the past record was considered by the management for imposing the punishment of dismissal. The learned Judges, therefore, have held in the facts and circumstances of that case that the workman should have been put on notice as the dismissal was based not only on the proved misconduct but also the past service record. As the management had not given such a notice to the workman, the resultant action was nullified being in breach of the principles of natural justice.

8. In the present case, it was only after the respondents had decided to impose the punishment of dismissal that the earlier record of the petitioner was considered in order to check whether any leniency could be shown and whether a lesser punishment could be imposed. The respondents considered the past service record to determine whether there were any extenuating circumstances due to which a lesser punishment than that of dismissal could be imposed. Not having given the petitioner an opportunity to show cause in such circumstances would not, in my view, vitiate the order of dismissal. Moreover, the enquiry was set aside and the Labour Court had permitted parties to adduce evidence afresh before it. The record of the memos issued were produced and proved before it. While exercising its discretion and jurisdiction u/s 11-A of the Industrial Disputes Act, the Labour Court has thought it fit not to interfere with the punishment imposed by the respondents.

9. In fact, I called upon the learned counsel for the petitioner to show to this Court any mitigating factors in favour of the petitioner so as to take a different view of the matter and impose a lesser punishment. Besides, stating that the petitioner had completed 14 years in service, Mr. Bapat was unable to show any cogent reasons or justification for me to take a different view in the matter.

10. I am, therefore, inclined to agree with the award of the Labour Court. In view of this, Rule is discharged with no order as to costs.