

(1996) 02 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1799 of 1993 with Writ Petition No. 1167 of 1995

Richardson and Cruddas (1972) Ltd.

APPELLANT

Vs

Association of Engineering Workers and ors

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (1996) 5 BomCR 664 : (1996) 73 FLR 1582 : (1998) 3 LLJ 54 :
(1996) 1 MhLj 1005

Hon'ble Judges : G.R. Majithia, J; Devkant Trivedi, J

Bench : Division Bench

Judgement

1. These two petitions are disposed of by this judgment as common questions of law and facts arise for determination therein.

2. Ronald P. Franks, hereinafter "the workman" is a national player in football. He was employed as a coolie by M/s. Richardson & Cruddas (1972) Ltd. (petitioners in writ petition No. 1167 of 1995), hereinafter "the employer". The employee was a bit irregular in attending his duties and was habitually a latecomer. The employer by letter dated November 28, 1984 charge-sheeted him on the allegations of habitual absenteeism. The workman's advocate replied to the charge-sheet by letter dated November 30, 1984. In the reply he stated that he deliberately did not commit breach of any rules and regulations of the company applicable to him and prayed for dropping of the charge-sheet against him. The employer was not satisfied with the reply of the workman. A domestic inquiry was ordered. The employee pleaded guilty before the inquiry Officer. The Inquiry Officer, after recording the evidence and keeping in view the admission of guilt by the workman submitted his report to the employer. The employer, after receipt of the inquiry report, dismissed the workman from the service with effect from February 13, 1985.

3. The first respondent raised a dispute for reinstatement of the workman by letter dated February 16, 1985. The employer did not consider the demand. The

Union requested the Commissioner of Labour to intervene in the matter. The conciliation proceedings did not fructify. The Commissioner of Labour referred the dispute pertaining to demand of the union for reinstatement of the workman with full backwages and continuity of service with effect from February 13, 1985 to the Labour Court u/s 10 of the Industrial Disputes Act (hereinafter, "the Act").

4. The Labour Court issued the notice to the employer and the Union. The Union filed a statement of claim. The employer filed written statement. The Labour Court framed the following issues :-

(i) Does the Union prove that the enquiry held against the workman Ronald P. Frank is illegal, improper and unfair?

(ii) Whether the workman is to be reinstated with continuity of service and full back wages with effect from 13.2.1985?

(iii) What award?

under issue No. 1 the Labour Court held that the inquiry was neither illegal nor improper or unfair. Under issue No. 2 it was held that the workman was entitled to reinstatement with continuity in service and 50% backwages and passed the Award on 15.4.1993 accordingly.

5. Both the employer and the Union are aggrieved against this award. The employer is aggrieved against the award in so far as it has allowed reinstatement of the workman with the continuity of service and 50% back wages with effect from February 13, 1985; whereas the workman is aggrieved against the award in so far as his demand for full backwages was declined. The Labour Court on evidence held that the charge leveled against the workman is of minor nature and the explanation furnished by him shows that he is not deliberately committing breach of rules of the company. It further held that whenever the workman was absent from duty he gave medical certificate along with the application to the company. Accordingly the Labour Court held that submission of the medical certificate by the workman during the period he remained ill removes the gravity of the misconduct. After so holding the Labour Court held that the punishment awarded to the workman for the misconduct is shockingly disproportionate. There is no serious misconduct committed by the workman and the punishment of dismissal from service is shockingly disproportionate for the simple misconduct of absenteeism. The Labour Court after considering the rulings quoted on the quantum of punishment observed thus :-

"Taking into account this fact wherein the Tribunal has no exercise the power and for misconduct of simple nature the punishment is definitely disproportionate. Therefore, I will have to set aside the extreme punishment of dismissal of the workman and also taking into account the past service record of the workman, and also taking into consideration he was a football player for the company and the company at present stopped sending the football players at the national level, they went to dismiss this workman as they had withdrawn the team of

football player and they do not want to keep this man in the company they must have taken this decision to remove him from service. Moreover, the punishment awarded to the workman is shockingly disproportionate for the simple misconduct of absenteeism for which the proper explanation was given by the workman. Hence I set aside the punishment of dismissal and instead of dismissal he should have been given reinstatement with 50% backwages which could meet the ends of justice."

The Labour Court accordingly passed the Award.

6. Writ petition No. 1167 of 1995 filed by the employer came up for admission on September 21, 1993.

The learned Judge issued rule and refused the interim relief prayed for by the petitioner. The learned Judge in paragraph 6 of his order observed thus :-

"Apart from the above, the standing orders show that there are several acts and omissions which constitute misconduct, some of which are really very serious such as taking or giving a bribe of any illegal gratification; engaging in trade, business or occupation within the premises of the establishment outside the scope of his duties; drunkenness, riotous, disorderly or indecent behaviour or assault or threat of assault on the premises of the establishment, gambling within the premises of establishment or smoking in the premises of the establishment where smoking is prohibited. The punishments which can be imposed range from warning, censuring, suspension to dismissal. The maximum penalty of dismissal resulted in the economic death of an ordinary workman like a coolie in the present case. Prima facie, therefore, I have no doubt in my mind that the punishment of dismissal, which is a very harsh penalty, was shockingly disproportionate to the alleged misconduct. The fact that the poor workman who was a coolie loses about Rs. 1,50,000/- is itself a sufficient punishment to him. Under the circumstances, I find no reason to grant interim relief. Hence interim relief is refused. However, I wish to make it clear that these are my tentative conclusions at the admission stage and I have already expedited the hearing.

7. Reading of this order indicates that the learned Single Judge felt that the punishment of dismissal was very harsh and was shockingly disproportionate to the alleged misconduct. He held that the workman loses about Rs. 1,50,000/- by way of backwages and this itself is a punishment.

8. The learned counsel for the petitioner submits that the domestic inquiry conducted by the employer had been found to be fair and proper. The punishment imposed by the employer ought not to have been reduced by the Labour Court. Section 11A of the Industrial Disputes Act empowers the Labour Court to set aside the order of dismissal or discharge passed against the workman and order reinstatement. A bare reading of this section indicates that the Labour Court can reduce the punishment if it finds that the same was shockingly disproportionate to the misconduct attributed to the workman. This is

what precisely done by the Labour Court. We find that the Labour Court had been judicious in its approach in the matter of quantum of punishment to be imposed in the present case on the workman.

9. Writ Petition No. 1167 of 1995 was filed by the workman against the Award on April 18, 1995 and it came up for admission on July 3, 1995. It is true that there is no limitation prescribed under the rules to file the writ petition. The question of delay in filing the writ petition would be taken into consideration by this Court while exercising writ jurisdiction.

10. The Labour Court has found that the charge levied by the management stood proved and the employee has also admitted the guilt. The inquiry was held to be fair. However, the Labour Court found that the misconduct alleged did not warrant punishment of dismissal from service, and in these circumstances he ordered reinstatement with continuity in service and 50% backwages. The workman has been given punishment for the misconduct attributed to him. He has been reinstated in service with 50% backwages. He has lost 50% of the backwages and that this punishment is commensurate with the accusation levied against the workman. The learned counsel for the workman invited our attention to the judgment reported in Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha 1980 LIC 1004, to contend that the normal rule is that while reinstating the workman in service he should be given full backwages and in the given case where the full backwages are not to be allowed, the circumstances necessitating the departure must be established by the employer. The submission of the learned counsel is not well founded. The Labour Court has not found that the charge levied against the workman was not established. He found that the charge has been established. But he interfered with the order of the employer only on the quantum of punishment. The Labour Court found that the punishment of dismissal from service in the case was shockingly disproportionate to the charge levied against the workman and it was under these circumstances that he ordered reinstatement with continuity in service and 50% backwages. Disallowing of 50% backwages appears to be the punishment imposed by the Labour Court which it thought under the circumstances would meet the end of justice. The Labour Court disallowed 50% of the backwages by way of punishment and we do not think that the imposition of this punishment is not warranted on the proved facts of the case.

11. The conclusion arrived at by the Labour Court are legal and valid and calls for no interference. Accordingly both the writ petitions fail and the rule issued in both the writ petitions stands discharged.