

(2008) 04 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 1590 of 1997

R.S. Korvi

APPELLANT

Vs

Peico Electronics and Electricals Ltd. and Another

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 341, 342, 352

Citation : (2008) 6 BomCR 894 : (2008) 119 FLR 60 : (2008) 5 MhLj 75 :
(2009) 4 SLR 257

Hon'ble Judges : J.P. Devadhar, J

Bench : Single Bench

Advocate : S.M. Dharap, for the Appellant; K.S. Bapat, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—In this petition Part-I award and Part II award passed by the Labour Court, Pune on 18-1-1993 and 20-4-1995 respectively are challenged. By the Part I award, the Labour Court held that the enquiry instituted against the petitioner by the respondent No. 1 Company ("the management" for short) which culminated into dismissal of the petitioner from service was fair, legal and in accordance with the principles of natural justice. By the part II award, the Labour Court rejected the reference by holding that the charges levelled against the petitioner have been proved to the satisfaction of the Court and that the punishment imposed on the petitioner is not disproportionate to the misconduct committed by the petitioner.

2. The relevant facts are that the petitioner joined the service of the respondent No. 1 Company in September, 1966 at their Loni-Kalbhor factory. At the material time, the petitioner was working in the ECOM Loudspeakers Dept. and was also executive committee member of the Philips Employees Union. On 11-6-1983 the petitioner was suspended on the ground that she had assaulted Shri A.D. Surve, a senior personnel officer within the factory premises. On 14-6-1983 the petitioner was charge-sheeted on the ground that the petitioner had committed

misconduct covered under Standing Order 24(k) and 24(l) of the Companies Certified Standing Orders, in her reply, the petitioner refuted the charges and contended that on 11-6-1983 Shri A.D. Surve had misbehaved with her and tried to outrage her modesty and that she had filed a police complaint against Shri A.D. Surve on 11-6-1983 itself.

3. The enquiry officer appointed to enquire into the charges leveled against the petitioner fixed the first date of enquiry on 7-8-1983. On that day, the petitioner was present and after recording the preliminary statements the matter was adjourned to 19-8-1983.

4. On 19-8-1983 the petitioner claiming to be sick submitted an application along with a medical certificate through her representative and sought postponement of the enquiry proceedings. Accordingly, the enquiry was postponed to 28-8-1983.

5. On 28-8-1983 the representative of the petitioner informed the enquiry officer that the petitioner is unable to attend the enquiry in view of PMT Bus strike on that day. Hence the enquiry was postponed to 4-9-1983.

6. On 4-9-1983 the petitioner once again did not attend the enquiry. However, presuming that the letter intimating the date of enquiry fixed on 4-9-1983 might not have been received by the petitioner, the enquiry was again adjourned to 24-9-1983 and the management was directed to inform the petitioner that if on 24-9-1983 the petitioner remains absent, then, the enquiry would proceed ex parte.

7. Accordingly, two letters were addressed by the management on 5-9-1983 and 11-9-1983 stating therein that the enquiry has been fixed on 24-9-1983 and if the petitioner does not remain present on that day, then the enquiry would proceed ex parte.

8. Even on 24-9-1983 the petitioner was not present. The management representative informed the enquiry officer that both the letters addressed by the management have been returned by the postal authorities with the endorsement "not accepted". In these circumstances, the enquiry officer decided to proceed with the enquiry ex parte. Accordingly, Shri A.D. Surve Shri Y.V. Tambe and Shri V.K. Kopikar were examined as management witnesses. As the petitioner or her representative were not present, the enquiry was concluded on the same day. On 11-1-1984 the enquiry officer submitted his report stating that the charge of misconduct levelled against the petitioner have been proved. On the basis of the enquiry report, an order was passed on 25/27-1-1984 whereby the services of the petitioner were terminated.

9. The Philips Employees Union of which the petitioner was a member raised a dispute under the Industrial Disputes Act, 1947 ("1947 Act" for short) demanding reinstatement of the petitioner with full back wages. Since there was no settlement, the conciliation officer submitted a failure report on 5-5-1984 to

the State Government and thereupon the Government of Maharashtra was pleased to refer the dispute to the Labour Court at Pune for adjudication.

10. Thereupon, the Union representing the petitioner submitted its statement of claim before the Labour Court. The management submitted its written statement denying the contention of the Union. The petitioner led her evidence and on behalf of the management Shri Gopal M. Daftari who conducted the enquiry were examined. Thereafter, by the impugned Part I award dated 18-1-1993, the Labour Court held that the enquiry against the petitioner was fair, legal and in accordance with the principles of natural justice. Subsequently, by the Part II award dated 20-4-1995 the Labour Court answered the reference against the petitioner and upheld the action of the management in dismissing the petitioner from service. Challenging the above two awards, the present petition is filed.

11. Mr. S.M. Dharap, learned Counsel appearing on behalf of the petitioner submits that the Labour Court in its Part I award seriously erred in holding that the enquiry was fair and legal, because, in the present case, the enquiry was concluded virtually on the first date of enquiry on 24-9-1983 without giving any opportunity to the petitioner to lead evidence or to cross-examine the management's witnesses. On 24-9-1983 the petitioner could not remain present for want of notice and, therefore, conducting the enquiry ex parte on 24-9-1983 and concluding on the same day without giving any opportunity to the petitioner to cross examine the witnesses was grossly unfair, illegal and in breach of the principles of natural justice.

12. Mr. Dharap submitted that though the enquiry commenced on 7-8-1983 which was attended by the petitioner, nothing much transpired on that date and after recording preliminary statements, the enquiry proceedings were adjourned. On the next date i.e. on 19-8-1983 the petitioner could not attend the proceedings as she was not well and a medical certificate to that effect was furnished. Accordingly, the enquiry proceeding was adjourned to 28-8-1983. On 28-8-1983 the petitioner could not attend the enquiry as there was bus strike at Pune. Accordingly the enquiry was postponed to 4-9-1983. On 4-9-1983 the enquiry was postponed to 24-9-1983 because the enquiry officer himself was not sure as to whether the petitioner was intimated about the enquiry fixed on 4-9-1983. Thus, 24-9-1983 was virtually the first date of hearing and in the absence of any positive evidence to show that the petitioner was intimated about the hearing fixed on that day, the enquiry officer could not and ought not to have proceeded to conduct and conclude the enquiry ex parte.

13. Mr. Dharap further submitted that the letters dated 5-9-1983 and 11-9- 1983 addressed by the management regarding the enquiry fixed on 24-9-1983, were not received by the petitioner. The postal authorities appears to have endorsed on the said letters "not claimed" on the ground that the said letters were not claimed by the petitioner within 7 days of the intimation left by the postal authorities. Mr. Dharap submitted that there could be genuine reasons for the petitioner in not claiming the letters within the stipulated time. Therefore, though

the endorsements made by the postal authorities could be considered to be deemed service, the enquiry officer was not justified in proceeding ex parte and concluding the enquiry on 24-9-1983 which was virtually the first date of enquiry.

14. Mr. Dharap further submitted that even if the enquiry officer was justified in proceeding ex parte on 24-9-1983, he could have given an opportunity to the petitioner to cross-examine the witnesses by granting one adjournment. Failure to grant such adjournment and hastily concluding the enquiry on 24-9-1983 itself clearly shows that the enquiry was not fair and legal and the same was conducted in breach of the principles of natural justice.

15. Relying upon a decision of the Apex Court in the case of *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, Mr. Dharap submitted that in the present case, since the notices were returned unserved the proper course was to publish notices in the local newspapers instead of proceeding ex parte and hastily concluding the enquiry which has caused serious prejudice to the petitioner.

16. Relying upon a decision of this Court in the case of *Raptakos Brett and Co. Ltd. and Dinesh Ramachandra Kulkarni Vs. Vijay G. Pandit and Shri P.J. Shah*, Presiding Officer, 3rd Labour Court, and a decision of the Apex Court in the case of *State Bank of Patiala and Ors. v. S.K. Sharma* reported in 1996 (II) CLR 29, Mr. Dharap submitted that hastily concluding the enquiry proceedings without giving any opportunity to the petitioner to cross-examine the witnesses and without giving copies of the statements of the witnesses has caused grave prejudice to the petitioner. In these circumstances, the Labour Court ought not to have held that the enquiry was fair and proper.

17. As regards the Part II award is concerned, Mr. Dharap submitted that assuming that the enquiry was fair and proper, in the present case, the Labour Court has discussed neither the evidence on record nor the charges levelled against the petitioner. He submitted that there is total non-application of mind on the part of the Labour Court. He submitted that in any event, the punishment imposed upon the petitioner is disproportionate to the alleged misconduct and, therefore, the Part II award, even on merits, is liable to be quashed and set aside. In this connection, Mr. Dharap relied upon a decision of the Apex Court in the case of *Palghat BPL and PSP Thozhilali Union v. BPL India Ltd. and Anr.* reported in 1996 (I) CLR 368.

18. Lastly, Mr. Dharap relying upon a decision of the Apex Court in the case of *Vishaka and Ors. v. State of Rajasthan and Ors.* reported in 1997 LAB I.C. 2890 submitted that in the present case instead of booking the culprit who had tried to sexually harass the petitioner within the factory premises, the petitioner is being punished without any justification and, therefore, it is just and proper that the impugned awards be quashed and set aside.

19. Mr. K.S. Bapat, learned Counsel appearing for the management while supporting the order passed by the Labour Court submitted that in spite of repeated opportunities given, the petitioner had failed to participate in the

enquiry proceedings. In these circumstances, the enquiry officer had no alternative but to proceed with the matter ex parte. Referring to the evidence led before the Labour Court, Mr. Bapat submitted that admittedly the petitioner used to travel by the Company's bus and, therefore, even though there was bus strike on 28-8-1983 she could have attended the enquiry on 28-8-1983 by availing the company bus services. But the Petitioner chose to remain absent. Similarly, on 4-9-1983 the petitioner had remained absent even though notice fixing the date of hearing on that day was served upon the petitioner on 2-9-1983. Even on 24-9-1983 the petitioner remained absent even-though two letters were addressed in that behalf. As the petitioner had been deliberately remaining absent, the enquiry officer had no option but to conclude the enquiry ex parte and, therefore, the Labour Court was justified in holding that the enquiry was fair and proper.

20. With reference to part II award, Mr. Bapat submitted that the Labour Court after appreciating the evidence on record has rightly come to the conclusion that the charges levelled against the petitioner were established and the punishment imposed upon the petitioner who was found guilty of assaulting a senior officer of the Company was just and proper. In this connection, he relied upon the Judgment of the Apex Court in the case of Employers, Management, Colliery, Bharat Coking Coal Ltd. etc. v. Elhar Colliery Kamgar Union through Workmen reported in 2005 (I) CLR 1070, the decision of this Court in the case of Elder Pharmaceuticals Ltd. v. Krishna Vithal Bendre and Anr. reported in 2006 (III) CLR 374 and a decision of the Apex Court in the case of Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, .

21. On careful consideration of the rival submissions, I do not find any infirmity in both the Awards passed by the Labour Court. In the present case, the petitioner after attending the first date of enquiry on 7-8-1983 had consistently remained absent in all the subsequent dates. Although, on 19-8-1983 the petitioner was ill, she could have attended the enquiry on 28-8-1983 in spite of the PMT bus strike, because, admittedly the petitioner used to travel by the company's bus and not by PMT bus. It is not in dispute that the company's bus was available on 28-8-1983. In spite of the above unjustified absence, in the interest of justice the enquiry was postponed to 4-9-1983 to give a fair opportunity to the petitioner.

22. However, the petitioner once again failed to attend the enquiry on 4-9-1983 even though notice fixing the enquiry on 4-9-1983 was received by the petitioner on 2-9-1983. It is not in dispute that the intimation letter fixing the enquiry on 4-9-1983 was received by the petitioner on 2-9-1983. As the petitioner was not present, with a view to give fair opportunity to the petitioner, the enquiry was once again postponed to 24-9-1983.

23. Admittedly, the management had addressed two RPAD letters dated 5-9-1983 and 11-9-1983 stating therein that as a last chance enquiry has been

fixed on 24-9-1983 and that if the petitioner fails to attend the enquiry on that, day, the enquiry would proceed ex parte. Both the said letters were returned by the postal authorities with the endorsement "not claimed". It appears that when the postman went to deliver the letters, the petitioner was not available at the given address and, therefore, an intimation was left to the effect that the petitioner may collect the letters from the Post Office within 7 days of such intimation. As the petitioner failed to collect the letters even after 7 days, the postal authorities returned the letters with the remark "not claimed".

24. The argument that at the relevant time the petitioner may not be in town and, therefore, not accepting the letters within 7 days of intimation should not be construed as proper service is without any merit, because, firstly there is no evidence led before the Labour Court to suggest that the petitioner was factually not in town at the relevant time. Secondly, even before this Court nothing is brought on record to suggest that the petitioner was not in town at the relevant time and, therefore, could not collect the letters. Assuming that the petitioner was out of station, nothing prevented the petitioner from approaching the postal authorities or even the management thereafter. No steps were taken in that behalf. Therefore, the petitioner who has been consistently remaining absent in the enquiry proceeding is not justified in making a grievance that the enquiry was unfair. In these circumstances the finding recorded by the Labour Court that the enquiry officer was justified in proceeding ex parte and that the enquiry was fair, legal and in accordance with the principles of natural justice, cannot be faulted.

25. Reliance placed by the Counsel for the petitioner, on the decision of the Apex Court in the case of Bata Shoe Co. Ltd. (supra) is misplaced because the ratio laid down therein cannot be construed to mean that in every case where the party declines to accept the notice, then, the notice must be published in a local newspaper. In the present case, the petitioner who had attended the enquiry on 7-8-1983 failed to attend the enquiry on 28-8-1983, 4-9-1983 and 24-9-1983 without any justification. The petitioner failed to accept the two letters sent on 5-9-1983 and 11-9-1983 without any justification. Even after the enquiry was concluded on 24-9-1983 the petitioner could have approached the enquiry officer and sought an opportunity to lead evidence and to cross-examine the Management Witnesses. Even before the Labour Court, the petitioner has not chosen to lead evidence. Even before this Court, no request is made to lead evidence. Therefore, the grievance of the petitioner that the ex parte enquiry and the consequent order has caused prejudice, is nothing but an afterthought and there is no material or record to substantiate that claim.

26. Similarly, reliance placed on the decision of this Court in the case of Raptakos Brett and Co. Ltd. (supra) does not support the case of the petitioner, because, in that case in spite of the knowledge that the delinquent is unable to attend the enquiry, arbitrarily, the enquiry was proceeded with ex parte, whereas in the present case the petitioner has been remaining absent on some pretext or the

other. Moreover, as noted earlier, if the petitioner could not remain present on 24-9-1983 for any reason, then nothing prevented the petitioner in approaching the enquiry officer and explain the circumstances under which she could not attend the enquiry on 24-9-1983 and seek to lead evidence and cross examine the Management Witnesses. No such attempt has been made in the present case either before the enquiry officer or before the Labour Court or even before this Court.

27. Strong reliance was placed by Mr. Dharap on the decision of the Apex Court in the case of State Bank of Patiala (supra). In my view, the ratio laid down therein does not support the case of the petitioner. On the contrary that decision supports the case of the respondent. As held by the Apex Court in the case of State Bank of Patiala (supra), in the present case, reasonable and adequate opportunity has been given to the petitioner to participate in the enquiry. The petitioner has failed to establish any prejudice is caused by the ex parte enquiry and by not furnishing copies of the statements of witnesses. Therefore, the decision of the Labour Court in holding that the enquiry was fair, legal and in accordance with the principles of natural justice cannot be faulted.

28. Even on merits (part II award), the learned Judge of the Labour Court has clearly stated in para 3 of the Judgment that there is no reason to disbelieve the evidence led by the management which has remained uncontroverted. The learned Judge has further observed in the judgment that the petitioner has not sought permission to cross-examine the witnesses even before the Labour Court. The learned Judge has also recorded that the petitioner has not led any evidence to show as to how the evidence adduced on behalf of the management is unbelievable. In these circumstances, the argument of the petitioner that the Labour Court has not discussed the issues or the evidence on record is without any merit and is liable to be rejected.

29. It is pertinent to note that in the criminal proceedings initiated against the petitioner, the Judicial Magistrate First Class, Pune by his Judgment and order dated 8-5-2002 has held that the charges against the petitioner that she had man-handled the senior officer of the company on 11-6-1983 is proved and that the petitioner is guilty of offence punishable under Sections 341, 342 and 352 of the I.P.C. However, looking to the nature of the offence and her age, instead of imprisonment, the petitioner has been released on bond without surety of good behaviour for a period of one year. Admittedly, the petitioner has accepted the said decision. In these circumstances, the punishment meted out to the petitioner who is guilty of assaulting senior officer of the Management cannot be said to be disproportionate to the offence committed by the petitioner.

30. The argument of the petitioner based on the decision of the Apex Court in the case of Vishaka (supra) that instead of taking action against the senior officer of the company who had sought to sexually harass the petitioner on 11-6-1983, the petitioner is being punished cannot be accepted because, except the bare allegation of sexual harassment at the work place on 11-6-1983 no material is

brought on record to corroborate that allegation. Though the petitioner claims to have filed a criminal complaint against the senior officer of the company for his alleged sexual harassment at the factory premises on 11-6-1983, the petitioner has not pursued that complaint so far. The Philips Employees Union of which the petitioner was the executive committee member, has not espoused the case of the petitioner in this behalf. Moreover, in the criminal proceedings it is established that on 11-6-1983 it is the petitioner who has man-handled a senior officer of the company thereby committing grave misconduct punishable under the Indian Penal Code. In these circumstances, reliance placed on the decision of the Apex Court in the case of Vishaka (supra) is wholly misplaced and the punishment of dismissal meted out to the petitioner who is held to be guilty of committing grave misconduct on 11-6-1983 cannot be said to be disproportionate.

31. For all the aforesaid reasons, it cannot be said that the impugned Awards passed by the Labour Court suffer from any infirmity so as to invoke the writ jurisdiction of this Court. In the result, the petition fails. Rule is discharged with no order as to costs.