
(1988) 02 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 2284 of 1986 with W.P. No. 5902 of 1986

Santosh Dattaram Nadkarni, Bombay

APPELLANT

Vs

New India Industries Ltd. and another

RESPONDENT

Date of Decision : 29-02-1988

Acts Referred:

Citation : (1988) 2 LLJ 392

Hon'ble Judges : P.B. Sawant, J;B.G. Kolse Patil, J

Bench : Division Bench

Judgement

Sawant, J.—These are two cross writ petitions. Writ Petition No. 2284 of 1986 is by the employee and Writ Petition No. 5902 of 1986 is by the employer and they arise out of the award of the Industrial Tribunal. The facts in brief are as follows :

The employee was recruited on July 7, 1976 as a Trainee Helper in the Finishing Department. On September 1, 1977 he was recruited in the said establishment on probation and was confirmed in service on December 1, 1977. His services however were terminated with effect from January 27, 1982 for loss of confidence. He raised an industrial dispute which was eventually referred to the Industrial Tribunal. Before the Tribunal, the employer-company led evidence to show that they were forced to terminate the employee's services because the workmen in the company had pressurised them to do so by threatening to go on strike. The cause of the workmen's wrath against the employee was that the employee was against the settlement which was arrived at between the recognised union and the company with regard to various demands of the workmen. The employee, according to them, was not only propagating against the said settlement but was also trying to recognise or bring in a different union. When the payment under the said settlement was to be made on January 22, 1982 according to the company, the employee in company with another employee Mr. Warty, a supervisor, and some outside bad elements was standing at the gate of the factory and collecting signatures from incoming workmen to disown the settlement and also to form a new union. The Personnel Manager and

the Manager of the factory of noticing the same, called the police and when the police came on the scene, the outsiders left and the employee and his other associate Mr. Warty came into the factory. Some of the workmen thereafter approached the Personnel Manager to take action against the employee and Warty, under the threat of resorting to a strike. Hence, the termination of the employee's service to avoid industrial unrest in the factory. To prove its case the company led evidence of the Personnel Manager, the Manager of the factory and three workmen who admittedly were the members of the committee of the union whose leadership the employee was all along challenging and which workmen had admittedly approached the Manager for removal of the employee.

2. As against this, the case of the employee was that he was also a member of the Union committee. He had an objection to some clauses in the settlement and was therefore opposed to the settlement being signed. He had therefore expressed his dissatisfaction over the settlement to the President of the Union Shri R. J. Mehta. He was also of the opinion that there was a need for a change in the Union leadership and was therefore thinking of organising another union to safeguard the interests of the workmen. Because of his dissent, the Union President had threatened that he would be removed from service, and hence, it was he who had prescribed to the management through the workmen supporting him, to remove him from the employment. He denied that he was coercing or forcing the workmen not to accept the payment under the settlement on the morning of January 22, 1982, as alleged by the company and its witnesses. In particular he denied that he and the other employee Warty were at that time accompanied by outsiders, much less by bad elements and had gathered outside the gate. According to him, it is because of his rivalry with the Union President he was framed up in that manner. On the contrary, he had signed the settlement and had also accepted the payment under it on the same day, i.e. on January 22, 1982, as other workers did. He therefore urged that there was no misconduct of any kind on his part either inside or outside the factory and he was victimised at the instance of the Union President who did not tolerate any dissenting voice.

3. On the basis of the evidence before it, the Tribunal came to the conclusion that the termination was not only illegal but also malafide and the company had failed to prove its case that on January 22, 1982 the employee had indulged in the kind of activity that is attributed to him. The Tribunal however held that although the termination was illegal, the employee did not deserve reinstatement in service because the employee had led no evidence to show that he had tried for employment. On the other hand he had stated that he did not try to get employment and continued his education which he was doing while in service. He had further stated that he had passed his B.A. and had appeared for First LL.B. Examination. The Tribunal therefore held that the very fact that the employee did not try to get any employment showed that he was not hardpressed for job. The Tribunal further held that since the employee had completed his B.A. and First LL.B. (which is not correct as he had only appeared for First LL.B. examination and Shri Kochar for the employee informs us that he did not get through the said

examination), he had a good urge for taking education and a budding advocate should not be kept as a helper in the company as he was, four years prior to the date of the Award. The Tribunal also held that "moreover this is a case where I am not inclined to grant him full back wages" and granted only 50% of the wages from January 27, 1982 to January 27, 1986; i.e. the date of the Award and 12 months' wages as compensation in lieu of reinstatement with interest at 6% per annum of the total amount of wages and compensation. The Tribunal gave no reasons for not granting full back wages.

4. Although the company has in its writ petition challenged the finding of the Tribunal that the termination of the services was illegal and mala fide, and Shri Bhatkal, appearing for the company, invited us to go through the evidence for the purpose, we made it clear that the finding being a finding of fact, we had no intention to reappreciate the same. There is no error apparent on the face of the record nor can it be said that the conclusions arrived at by the Tribunal are perverse. The crucial issue before the Tribunal was whether the employee had tried to coerce the workmen not to sign the settlement and to receive payment thereunder. The company has failed to prove it. As regards the other allegation against the employee viz. that he was propagating against the settlement and for a change in the union leadership, these activities are legitimate trade-union activities and they cannot amount to misconduct of any kind. The employer cannot take a plea that he had lost confidence in the employee on that account. As has been candidly admitted by the Personnel Manager Gupta and as has also been stated in the written statement of the company, the action against the employee was taken because the workmen threatened to go on strike. Taking into consideration the fact that the employee is only a helper and even on the admission of the employer, the employee and his associate Warty were the only persons who were agitating against the settlement and for a change in the union-leadership, it is difficult to understand as to how their propaganda could have resulted in industrial unrest. This is particularly so when admittedly the employee as a member of the Union-Committee had not only signed the settlement but had also accepted the payment under it on the very day, i.e. January 22, 1982. It is no part of the business of the company to take sides in intra-union rivalries or disputes. Even if, further we accept the contention of the company that it is because of the other workmen that the Petitioner-employee had to be removed, we are afraid that if we permit such grounds for termination of the services of employees, it would open a floodgate for abuses. Apart from the fact it would lead to a closed-shop policy, it will also suppress all freedom of expression and dissent and encourage union-bossism. It will then always be open for a majority to remove any employee not only from its fold but also from the employment itself. This is exactly what was sought to be achieved by the loyal members of the union in the present case by trying to get rid of the employee from the company itself. Unfortunately the company succumbed to these tactics.

It must, however, be recorded that although the Tribunal's finding that the termination of the employee's services is illegal is correct in view of the candid

admission made on behalf of the company that they had no grievance against the employee as such and they were forced to terminate his services because the other workmen threatened to go on strike, the termination can hardly be said to be malafide. Probably the Tribunal has used the said expression to mean legal and not factual malafides. In any case it should be read as such. An action suffers from legal malafide when its ostensible purpose is different from the real one. In the present case the company resorted to the discharge simpliciter on the ground of loss of confidence when the company wanted to remove the employee because of the pressure of the other workmen.

5. The only question therefore that falls for our consideration is what relief should follow the setting aside of the order of termination. As stated above, the Tribunal has refused reinstatement on two grounds. The first is that the employee had not stated that he had made attempts for employment and secondly, he had since passed his B.A. examination and 1st LL.B. examination. It is true that in his corss-examination the employee had stated that he had not tried for employment. Relying on that sole sentence the Tribunal came to the conclusion that the employee was not in need of employment. That approach according to us is incorrect. It is well known that employment particularly in the present state of unemployment in the country is hard to come by secondly in the petition the employee has stated that no sooner his services were terminated, he had registered himself with the Employment Exchange on August 21, 1984 vide Card No. 68/509. He had received no call the from the Employment Exchange atleast up to the date of filing of this petition. We do not know what other attempts he could have made to obtain employment. Hence the said ground given by the Tribunal to refuse reinstatement does not appeal to us. As regards the other ground, as has been pointed out by the employee in his petition, on the date of filing of the petition, he was about 31 or 32 years old and he had joined the company as a Trainee when he was a student of Standard IX and receiving education in night school. Thereafter while in service, he passed S.S.C. examination and cleared his final B.A. examination in October 1983. He then jointed the 1st LL.B. Class in June 1984, but has so far failed to clear it. Between the date of termination of his service form January 27, 1982 till to-day he has continued his studies. His father though employed is on the verge of retirement. He comes from a lower middle class family and is the eldest child with four sisters. Being uncertain about his future, he had to equip himself with more education to secure his future and to support his family. He also tried to complete some part-time training course and complete in 1984 the Library Certificate Course conducted by the Government. In October 1982 he completed Screen Printing Course with the hope that he would get a job of Screen Printing in some textile mill, but could not get any. He has also stated that he had applied to various companies for employment but without avail. He has given particulars of the attempts made by him to secure an employment. He has also stated in 1984 alone about 22,105 graduates had enrolled with the Employment Exchange where he had registered himself for employment. It is therefore no wonder that

he did not receive any call for employment. Admittedly, further, in this very concern there is one more employee who has passed his B.A. examination and is also working even to-day as a packer. A lady employee also continued to work as a packer till she acquired her M.A. degree. The packers and helpers belong to the same Class IV workmen. Hence the mere fact that the Petitioner has acquired the B.A. degree or that he is studying for 1st LL.B. should not come in his way of reinstatement in his post as a helper. The very fact that the Petitioner, inspite of his advance education, seeks reinstatement as a helper shows how acute is the problem of educated unemployment and how desperate he is to secure some means of livelihood.

6. Shri Bhatkal for the company relied on a decision of the Supreme Court O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, to contend that reinstatement should not be granted in the present case because it was likely to create industrial unrest. A reading of the said judgment shows that it was a case of an employee of the managerial cadre in a Public Corporation. The trade union had lodged a strong protest against his attitude and had held out a threat of a strike in the context of some acts of the appellant. The Court therefore held that it was neither in the interests of the employee nor in the interests of the undertaking to reinstate him in service and instead granted him compensation. While doing so the Court in paragraph 6 of the judgment observed as follows at p. 513 :

".... No doubt in regard to the "blue-collar," workmen and "white-collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. In so far as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective - a large perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector, The public sector can never fulfill its life-aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings."

It is thus apparent from this observations that so far as "blue-collar" workman as in the present case is concerned, reinstatement is a rule. We are therefore of the view that the authority relied on by Shri Bhatkal not only does not help him but helps the employee.

7. There is further no reason why the employee should be deprived of his full wages till date. To deny him even a part of the wages is to inflict punishment on him for no fault of his. On the other hand it will amount to encouraging the union-bosses and the other workmen to persecute dissent. In fact the employee is entitled to interest on the amount. We are however refraining from awarding it, since he will receive the amount in a lump-sum.

8. In the result, Writ Petition No. 2284 of 1986 is allowed and the impugned order of the Tribunal is set aside. Respondent No. 1 employer is directed to reinstate the employee in service with full back wages and all other benefits within four weeks from to-day. Rule is made absolute accordingly with costs.

9. In view of our order in Writ Petition No. 2284 of 1986 as above, the employer's Writ Petition No. 5902 of 1986 is hereby dismissed. Rule is discharged. The parties to bear their own costs.