

(2000) 07 BOM CK 0044
In the Bombay High Court
Case No : C.A.J.W.P. No. 1823 of 2000

Satish Ganesh Saphtarshi and Others	APPELLANT
Vs	
Kirloskar Oil Engines Ltd.	RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2001) 89 FLR 405 : (2001) 3 LLJ 50

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—A finding of misconduct having been arrived at in the course of a disciplinary enquiry held by the employer and, upon the imposition of a penalty of dismissal, the Petitioner workmen filed a complaint in the First Labour Court, Pune. The complaint was to the effect that the employer had committed an unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint was initially rejected by the Labour Court by an order dated April 30, 1986. The aggrieved workmen filed a Petition under Article 226 of the Constitution in this Court. By a judgment and order dated January 30, 1995, the Learned single Judge, Mr. B.N. sriKRISHNA, held that the disciplinary enquiry had been vitiated by non observance of the principles of natural justice, in that the statements and reports of witnesses on the basis of which the charges were framed were not supplied to the workmen. At that stage, apart from the enquiry documents, no evidence had been led before the Labour Court. Consequently, the learned single Judge, while setting aside the order of the Labour Court, directed that both sides may be given an opportunity to lead evidence, before the Labour Court so that the Labour Court could decide on an appraisal of the evidence as to what relief, if any, needs to be given. Evidence was thereafter led before the Labour Court. By an order dated January 27, 1997, the Labour Court held that the charge of misconduct was proved and the penalty of dismissal was not shockingly

disproportionate. That order had been confirmed, in revision, by the Industrial Court on April 22, 1999. The present proceedings have been initiated in order to challenge the decision of the Industrial Court.

2. The Petitioners were, at the material time, employed by the Respondents in their factory at Kirkee. The Petitioners belonged to the Datta Samant Union. There were two different unions namely, the Association of Engineering Workers to which the Petitioners belonged and another union called the Rashtriya Engineering Shramik Sangh. The charge against the Petitioners is that on April 24, 1982 during the course of a Shiv Jayanti Puja, an altercation took place within the precincts of the factory. An employee of the Respondents, S. V. Kulkarni, was alleged to have been severely assaulted by the Petitioners. Another employee, S.V. Athale was also alleged to have been assaulted in the course of the incident. As a result of the assault, Kulkarni sustained a fracture on his nasal bone and other injuries. The charge involved was that the Petitioners had indulged in riotous behaviour in the factory premises and were guilty of a serious misconduct under Clause 22(11), (12) and 26 of the Certified Standing Orders.

3. The Labour Court as well as the Industrial Court have arrived at the concurrent findings of fact. Both the courts have found that the Petitioners were guilty of committing the misconduct alleged against them. The case of misconduct was held to have been established through the evidence of S. V. Kulkarni and S. V. Athale who were the two employees who had been assaulted and of another employee Sarote. The 1st two witnesses were eye witnesses to the incident and were injured in the course of the assault. These witnesses deposed that while Shiv Jayanti Puja was being performed, and Kulkarni was applying Gulal to the persons present, Petitioner Nos. 1, 2 and 3 assaulted Kulkarni with fist blows. Petitioner Nos. 4 and 5 also assaulted Kulkarni, and Petitioner No. 4 kicked him on the eye brow. The nasal bone of Kulkarni was fractured and he suffered a bleeding injury. The matter was thereafter immediately reported to the factory Manager and that report was Exhibit 68 in the evidence. A complaint was also lodged with the Bopodi Police Station. The injured employees were sent to Sasoon General Hospital and their medical certificates were produced on the record. Kulkarni also deposed that he was taken to the hospital of Dr. Paranjape where an X-ray was taken.

4. In para 19 of its judgment, the Industrial Court noted that there was no cross examination on the point of actual assault. Both the Courts came to the conclusion that these three witnesses were consistent and reliable and there was no reason for them to depose falsely. The Labour Court and the Industrial Court also held that the evidence of the three witnesses was corroborated by the evidence of Shri Gokhale and Shri Athale, two other officers, Shri Gokhale and Shri Athale deposed that though they were not eye-witnesses to the actual incident, on receiving information about the commotion, they came to the spot of the incident and found that an altercation had taken place. They took Petitioner No. 2 to the security gate and found that Petitioner Nos. 1 and 3 had already

been detained in the room of the Supervisor for the sake of safety. The Industrial Court held that the evidence of these two witnesses was not challenged on material particulars in cross examination. Kulkarni also deposed in his evidence that after the assault he was taken to the Sasoon General Hospital and thereafter to the dispensary of Dr. Paranjape. The certificate issued by Dr. Paranjape, Exhibit - 69, showed that the X-ray revealed a fracture of the nasal bone of Shri. Kulkarni. A xerox copy of the certificate issued by the Sasoon General Hospital was placed on record together with other documents issued by the Employees' State Insurance Corporation. The Industrial Court noted that though the doctor who issued the certificate at the Sasoon General Hospital had not been examined, the certificate of Dr. Paranjape who had taken x-ray was exhibited and was not challenged at all through out the evidence. The fact that Kulkarni and Athale had sustained injuries had also not been denied or challenged. The Industrial Court noted that the injured workmen were office bearers of a rival union and that the relations between the two unions were strained. The presence of the witnesses at the spot of the incident was admitted because complaints had been made against Kulkarni and others about the same incident. The Labour and Industrial Courts, thus came to the conclusion that the charges of misconduct was established. The charge sheeted employees having been found guilty of riotous behaviour in the premises of the factory causing injuries to co-workmen belonging to a rival union, it was held that the order of termination of service was not shockingly disproportionate. By the time the Industrial Court delivered its order on April 22, 1999, the Petitioners who also had been prosecuted came to be acquitted, in appeal by an order of the Additional Sessions Judge, Pune dated January 22, 1998. In para 25 of its order, the Industrial Court, however, held that the standard of proof in a criminal trial was different from that of a departmental enquiry and that the acquittal of the Petitioners in appeal could not conclude the matter, once the charge of misconduct was established. Among other persons who gave evidence was the injured employee Kulkarni, and the other employee Athale, who was also assaulted.

5. In view of the finding of fact which has been arrived at by the Labour Court and in revision by the Industrial Court, the scope for interference of this Court under Article 226 is limited. There was adequate evidence on the record which was sufficient to sustain the finding of the Labour and Industrial Courts with regard to the misconduct committed by the petitioner employees. The charge of misconduct was held to have been proved by the evidence of three employees, S/ Shri Kulkarni, Athale and Sarote of which the first two were injured witnesses. The evidence of these employees was supported by the deposition of the two other employees, Shri Gokhale and Shri Athale. The medical evidence in the form of the report of Dr. Paranjape was sufficient to establish the nature of injuries suffered by Shri Kulkarni including a fracture of the nasal bone.

6. The Learned Counsel on behalf of the Petitioners submitted that the Petitioners were tried for criminal offences before the Court of the Judicial Magistrate First Class, Kirkee. Except for Petitioner No. 4 and one other accused, the Learned

Judicial Magistrate First Class, Kirkee convicted the other Petitioners of offences punishable under Sections 147 and 323 read with Section 149 of the Penal Code. The accused were, however, released on their furnishing personal bonds in the amount of Rs. 1000/-each on probation for one year. In Appeal, the learned Addl. Sessions Judge, Pune, by a Judgment and Order dated January 22, 1998, allowed the Appeal preferred by the Petitioners and acquitted them of the offences of which they were charged. The learned Addl. Sessions Judge noted that this was a case of inter-union rivalry and that the evidence should hence be considered with a degree of caution. The Court was inter alia of the view that (i) it was not possible for the accused when a majority of workers belonging to the Datta Samant Union were present, to have injured the complainant; (ii) there was a discrepancy between the nature of the assault and the actual injuries which had been sustained and if in fact an iron rod had been used, the injury would have been more serious; and (iii) there was a delay in recording the statements of the injured witness. The appeals were therefore allowed. Significantly the Judgment of the Sessions Court refers to the injuries which were found on Kulkarni by the Medical Officer who gave evidence in the case. These injuries were noticed in para 8 of the order of the Sessions Court. The Court was of the view that the injuries appeared to be simple injuries. In the circumstances, the Court was of the view that the Accused were entitled to get the benefit of the discrepancies which were noticed and to be acquitted.

7. It is now a well settled principle of law that findings which are arrived at by the Court in the course of a criminal trial are not necessarily conclusive of the charge of misconduct in a disciplinary enquiry. In the State of Andhra Pradesh Vs. Sree Rama Rao, , a Bench of three Learned Judges of the Supreme Court held thus at p. 154 of LLJ:

"The enquiry officer appears to have stated that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against the public servant. In so stating the enquiry officer did not commit any error. The first ground on which the High Court interfered with the order of the punishing authorities is therefore wholly unsustainable."

The object of the criminal trial is to punish or deal with offenders who have committed a violation under the penal law of the land. On the other hand, the disciplinary enquiry is for the purpose of dealing with a breach of the service Regulations of the employer. The standard of proof in a criminal trial is proof beyond reasonable doubt. In the case of a departmental enquiry the standard of proof is proof on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are not attracted in the case of a departmental enquiry. These principles have been enunciated by the Supreme Court in the case of State of Rajasthan Vs. B.K. Meena and others, wherein it was held thus :-

"17. the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary

proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the questions whether the offences registered against Him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different."

8. The Judgment of the Supreme Court in Meena's case which was of two learned Judges in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., . In a case involving departmental enquiry for contracting a second marriage, the employee who had also been prosecuted was discharged by the Criminal Court for want of evidence. The Supreme Court held that this would not operate to relieve the employee from the disciplinary proceedings. The Supreme Court in State of Karnataka and Another Vs. T. Venkataramanappa, thus held as follows at p. 717 of LLJ:

"Now, it transpires that the Court of the Additional Sessions Judge concerned vide order dated September 11, 1990, has affirmed the view of the trial Magistrate with the result that the Respondent remains discharged. This apparently is on the basis that strict proof of solemnisation of the second marriage must be proved before conviction can be recorded for such offence. There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a Government servant to marry a second time without the permission of the Government. But, here, the Respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. It was thus beyond the ken of the Tribunal to have scuttled the departmental proceedings against the Respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental enquiries, as the decisions of competent Courts tending to be decisions in rem would stand at the highest pedestal. There was a clear fallacy in such view because for purposes of Rule 28, such, strict standards, as would warrant a conviction for bigamy u/s 494 IPC, may not, to begin with, be necessary."

9. In the facts and circumstances of the present case the order of the Industrial Court cannot be faulted. It was open to the Labour Court and the Industrial Court in revision, to consider whether, on the evidence that was led before the Labour Court, a finding of misconduct stood established and it was correctly held to have been established. Shri Ganguli, the Learned Counsel appearing on behalf of the Petitioners submitted that the extreme penalty of dismissal from service is not

called for in the present case. The Labour Court and the Industrial Court which dealt with the case have upheld the penalty of dismissal having regard to the seriousness of the misconduct and these findings cannot be regarded as perverse or erroneous. This is a case where an assault took place on co-employees arising out of inter union rivalry within the precincts of the establishment of the Respondent.

10. In the circumstances, I do not find any infirmity in the concurrent findings arrived at by the Courts below. The Petition is consequently rejected though with no order as to costs.

11. An ordinary copy of this order duly authenticated by the Personal Secretary of this Court may be made available to the parties.