
(2008) 06 BOM CK 0065
In the Bombay High Court
Case No : Petition No. 430 of 1996

Shri Luthfuddin Shaikh

APPELLANT

Vs

The Asiatic Oxygen and Acetylene Company Limited

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Industrial Disputes Act, 1947 — Section 11A

Citation : (2008) 5 BomCR 134 : (2008) 110 BOMLR 2027 : (2008) 118 FLR 804 : (2008) 3 LLJ 997 : (2009) 1 MhLj 294

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : J.N. Singh, for the Appellant; R.P. Powar, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—This is a writ petition filed by a workman challenging the orders passed by an authority under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as, "the Maharashtra Act of 1971") and Judge, Labour Court in Complaint (ULP) No. 317 of 1988 on 8.5.1990, as confirmed by the Industrial Court, Aurangabad in Revision (ULP) No. 79 of 1990 on 4.1.1994; whereby dismissal of the petitioner by the respondent was upheld.

2. At the outset, certain undisputed facts in this case may be stated as follows.

On 1.3.1983 the petitioner was appointed as a Turner-cum-Fitter in the respondent company and in about October, 1983 he was confirmed. There were about 50 workmen working in the respondent company. On 25.8.1987 the petitioner and other office holders of the Union presented charter of demands to the respondent. The petitioner was Secretary of the Union. On 28.4.1988 a chargesheet was served on the petitioner. One Mr. Mirza was appointed as Inquiry Officer. Inquiry was conducted exparte. The report was submitted by the Inquiry Officer on 9.8.1988 and thereafter dismissal order was passed by the

respondent company against the petitioner on 2.9.1988. In this case, learned advocate for the petitioner canvassed following points.

- (1) The Inquiry Officer act several times as retainer of the respondent company and as such he was biased.
- (2) The Inquiry was held ex parte. There was no opportunity given to the petitioner.
- (3) No notice was given to the petitioner before imposing punishment.
- (4) Punishment was shockingly disproportionate.
- (5) Only 48 hours time was given for reply to the chargesheet which was not reasonable.

3. Learned advocate for the respondent pointed out that earlier conduct of the petitioner and the fact that matter had reached police station and police had to take proceedings by way of Chapter Case against the petitioner and others, showed that the things had reached flash point and subsequent misconduct on 24.4.1988 was a very serious incident in which a real threat of beating was given to superiors by the petitioner. The petitioner also insulted the superior and it was a clear case of indiscipline and gross misconduct which could not be tolerated and it cannot be said that the punishment is disproportionate. Learned advocate for the respondent also argued that the Labour Court and the Industrial Court have considered all the points which are raised before this Court and have held concurrently that the petitioner behaved in such a way that there was no way other than to hold enquiry proceed ex parte. It is also pointed out that the Labour Court has held that Inquiry Officer was not prejudiced. In fact that is the concurrent finding of both the Courts below. It is also argued that in this case the dismissal was prior to the decision in the case of Union of India and others Vs. Mohd. Ramzan Khan, and as such the law laid down by the Constitution Bench of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., does not apply. He also argued that the inquiry was held to be legal and proper by both the Courts below .

4. Firstly I will consider the main points which are extensively argued by both the sides. In the case of Mohd. Ramzan Khan (supra), it is held that a delinquent employee is entitled to a copy of enquiry report submitted by the Inquiry Officer to the disciplinary authority and to make representation against it. Non furnishing of the report to the delinquent would be violative of principles of natural justice rendering the final order invalid.

5. The Constitution Bench in the case of B.Karunakar (supra) considered the entire position of law and effect of 42nd Amendment to the Constitution under Article 311(2) first proviso. In paras 30 and 31 entire law is summarised. Para 30(i) lays down that the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are

against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. However, in 30(v) it is specifically laid down that when the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. It is further observed that whether, in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. In para 44 Their Lordships have held that the law laid down in Mohd. Ramzan Khan's case is prospective in operation. In para 31 Their Lordships considered cases where the report of the inquiry officer was not furnished to the delinquent employee in a disciplinary proceedings. It is laid down that the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report.

6. In this case the dismissal order produced on record is dated 2.9.1988 and it's copy is produced at Exh. "F" with the petition. The case of Mohd. Ramzan Khan is decided on November 20, 1990 and as such in this case the dismissal is prior to the case of Mohd. Ramzan Khan and as laid down by the Supreme Court it has no retrospective effect.

7. Moreover, the matter was fought at length in the Labour Court, so also in the Industrial Court. It is nowhere said that by the time Labour Court decided the matter, the copy of report was not placed on record. Both Labour Court and the Industrial Court have dealt with this subject and have come to the conclusion that no prejudice was caused to the petitioner. There is no reason why a different view should be taken by this Court.

8. Learned advocate Shri Singh relied upon the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., . In that case, the Supreme Court has discussed the doctrine of proportionality. It is observed in para 13 that the punishment of dismissal awarded to the appellant is shockingly disproportionate to the charge framed against him. It is observed that extreme punishment of dismissal for a

flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory is something with which the Labour Court and the Industrial Court can interfere with u/s 11-A of the Industrial Disputes Act, 1947.

9. It is argued before this Court that the misconduct alleged against the petitioner was not of such a nature so as to warrant dismissal. The punishment awarded is shockingly disproportionate.

10. For that purpose, we may consider the charge. The chargesheet served on the petitioner is produced at Exh. "E". It states that on 24.4.1988 the petitioner was on duty in the workshop. He was supposed to work on Lathe Machine and was accordingly instructed to prepare Piston Rings. When the Assistant Branch Engineer and Foreman on deputation Shri P.K.Singh were attending emergency maintenance in Oxygen Plant, the petitioner went there with a broom in his hand and threatened the Assistant Branch Engineer and Foreman to beat them with the broom and also asked them to sweep the plant room and surrounding area near the appointed place of work and he also threatened them that otherwise he would beat both of them by the said broom. The documents on record show that this was not the only instance. Document Exh. 8 shows the report filed by Police Sub-Inspector, CIDCO police station, Aurangabad before the Taluka Executive Magistrate, Aurangabad. It was in a Chapter Case. It was filed on 2.4.1988, some 22 days prior to the incident for which chargesheet was served. The name of petitioner is at Sr. No. 1 in Party No. 2. There were other 8 workers. Party No. 1 was consisting of some officers of the respondent company. The Party No. 1 had given application to the police that somebody had placed an egg with a chit on the table of Assistant Engineer and he was threatened that he would be crushed like egg. It is further stated that petitioner and one Shekhar Janrao had done that act. Party no. 1 requested police for taking action against the workers named. It is also said that they were members of Datta Samant Union and they were not working properly. Police apprehended that there would be some serious incident in future and, therefore, report was given for taking action by the Taluka Executive Magistrate.

11. So it is clear that the relations between workers and at least some of the officers were not cordial. The officers were afraid. The petitioner was admittedly Secretary of the Union and it is said that he and some other worker were involved in the incident. So in this case we will have to consider the abovesaid background and not the incident of 24.4.1988 in isolation.

12. Both the Labour Court and the Industrial Court have held that considering the background as depicted in the report of the police, this is not a case where punishment of dismissal was shockingly disproportionate. The approach to such types of cases have changed over the years.

13. In the case of Bharat Forge Co. Ltd. v. Uttam Manohar Nakate 2005 I CLR 533, the respondent was found sleeping in the work place during duty hours. The

past record of the respondent was not good. After holding domestic enquiry the respondent was dismissed from service for said proved misconduct. The Labour Court held that the inquiry was fair and proper and there was no perversity. The Labour Court took lenient view and directed his reinstatement with 50 per cent back-wages. The Industrial Court set aside the order of the Labour Court and maintained that of the appellant. The Single Judge of the High Court confirmed the same. In writ appeal the Division Bench concluded that the order of dismissal was covered by Item 1(a) of Schedule IV of the Act and awarded compensation of Rs. 2.5 lacs. The Supreme Court considering the entire history and conduct of the petitioner held that the dismissal was proper. In para 29 it is specifically stated that it is obligatory on the part of the respondent to plead and prove the acts of victimization. It is further observed that the Labour Court and the Industrial Court, as the case may be, in terms of the provisions of the Act must act within four corners thereof. The Industrial Court would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. It is further observed in para 31 that if the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on the compassionate ground. In para 31, a reference was made to the case of *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.*, and it is observed that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. In that case the Supreme Court set aside the order of the High Court and upheld the order of dismissal.

14. Another case is *Mahindra and Mahindra Ltd. v. N.B. Narawade* 2005 1 CLR 803. In that case the respondent workman had abused his superior in presence of his subordinates. It is held that language used by respondent workman is such that it cannot be tolerated by any civilized society and the use of such abusive language against a superior officer in the presence of subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of extenuating factor.

15. In the present case superiors were asked to sweep the premises with a broom and were told that otherwise the petitioner would beat them with the said broom. This is nothing but gross indiscipline and I agree with both the Courts below that this is not a case wherein punishment can be said to be shockingly disproportionate.

16. It is argued before this Court that the Inquiry Officer was retainer for the respondent-company. Both the Labour Court and the Industrial Court had perused of inquiry produced before them and both the Courts observed that it did not reveal that there was any prejudice or bias shown by the Inquiry Officer. It was fair and proper inquiry. This question was never raised before completion of the inquiry.

17. So far as holding of *ex parte* inquiry is concerned, both the Courts have

observed that by his conduct, the petitioner left no other way than to hold inquiry exparte. Both the Courts stated that several opportunities were given to the petitioner, but he did not avail the same. Thus the petitioner never availed himself of the opportunities given to him to participate in the enquiry. So far as time of 48 hours to reply chargesheet is concerned, there is nothing to show that petitioner asked for more time. His conduct in not participating in the enquiry in true sense and allowing the enquiry to proceed exparte makes this ground redundant. It is argued that only Assistant Branch Engineer and one Mishra were witnesses. The question is whether there was sufficient evidence to prove the incident. Both the Courts below have held that there was enough evidence.

18. In the circumstances of the case, I am of the considered opinion that this is not a case where any interference is called for in the orders passed by the Courts below.

19. In the result, the petition is dismissed. Rule is discharged. In the circumstances, the parties to bear their own costs.