

(1999) 11 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 3448 of 1992

Shri M.D. Kawade and another

APPELLANT

Vs

Mahindra Engineering and Chemical Products Ltd. and
another

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Evidence Act, 1872 — Section 115

Industrial Disputes Act, 1947 — Section 10(1), 11

Citation : (2000) 1 ALLMR 10 : (2000) 2 BomCR 166 : (2000) 85 FLR 217

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mrs. Meena H. Doshi, for the Appellant; P.H. Purav, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner No. 1-workman and his union are the petitioners in the present petition to impugn the award Part II passed by the Presiding Officer, 2nd Labour Court, Pune rejecting the reference.

2. The petitioner No. 1 (hereinafter referred to as "the workman") was in employment of respondent No. 1 company as a Turner from 1980 in its factory. He was served with a charge sheet dated 19-2-1986 by the Company that during the Calender year 1985 from January to December, he remained absent without leave for total period of 23 days and that the said act on his part amounted to a misconduct under the Model Standing Order 24-F viz. habitual absence without leave. The charge sheet has set out the details of the dates and month of absence. In the charge-sheet it was also mentioned that in the past also he was punished for similar misconduct and in spite of the punishment in the past there was no improvement in his attendance whereby inconvenience and loss was caused to the management of the company. In the charge-sheet itself the details of the past absence was clearly set out. He was warned by

(1) a letter dated 22-4-1981 for absence without leave for 14 days during the

period from (1) April 1980 to December 1980.

(2) by letter dated 22-9-1981 he was again warned for remaining absence without leave for 18 days from January 1981 to June, 1981. This punishment was given to him after a show cause notice was issued to him.

(3) an order of suspension dated 22-11-1983 was issued for his total unauthorised absence for 12 days and a half.

(4) an order of punishment was again issued on 17-4-1985 for his unauthorised absence for 61 days during the calendar year 1984. All these punishment orders are on record. It is seen from the charge sheet that three of the punishment orders are brought to the notice of the workman as his past record. It appears that the habitual absence of the workman continued and there was no improvement in his conduct and, therefore, the company was compelled to issue him a charge sheet on 19-2-1986, which is the subject matter of the industrial dispute before us.

3. There is no dispute about the following facts :

(a) The charge-sheet was received by the workman and that the charge-sheet contained all the material particulars.

(b) The workman had not submitted his written explanation or reply to the said charge-sheet explaining his unauthorised absence. The company had held a domestic enquiry in the above mentioned charge sheet and the workman had participated in the enquiry.

(c) He was allowed to cross examine the company's witness and had cross examined them.

(d) He did not make his statement before the Enquiry Officer to deny the charges and to explain his unauthorised absence.

(e) There is no grievance of any nature that he was denied an opportunity of hearing before the Enquiry Officer or that any principles of natural justice were violated.

(f) The workman has also not denied the past record and the past punishments inflicted on him by the company from time to time.

(g) The company has slowly increased the degree of punishment, that is, initially he was imposed only minor punishment of warnings and third time he was suspended for one day and fourth time he was suspended for four days and finally he was dismissed from employment by the dismissal order dated 25-8-1986.

(h) The only ground of challenge of the dismissal order was that the findings recorded by the Enquiry Officer were perverse.

4. In the aforesaid undisputed facts, Mrs. Meena Doshi the learned Advocate for

the workman has challenged the impugned award of rejecting reference of the workman. It is needless to narrate the stages which have preceded the final award of the Labour Court. After the order of dismissal the workman raised an industrial dispute challenging the propriety and legality of the order of dismissal, the industrial dispute was referred for adjudication to the 2nd Labour Court by the Government u/s 10(1)(c) of the Industrial Disputes Act, 1947 after conciliation proceedings. The workman filed his statement of claim before the Labour Court and the company filed its written statement and both the parties filed their respective documents etc.

5. As required the Labour Court by its Part-I Award dated 31-7-1990 held that enquiry held against the workman was fair and legal and that the findings were not perverse. It appears from the record and submissions of the learned Advocate for the petitioner-workman that the Labour Court recorded oral evidence on the merits of the case. It is seen from the evidence that the workman tried to any how explain his unauthorised absence mainly on the ground that on account of his job he had developed allergy and itching sensation in the chest and therefore he was required to remain away from work due to infection caused by the powder of fiber glass used by the company in the manufacturing process.

6. Both the parties have adduced evidence after Part I award was given. It appears that the workman himself had insisted for such evidence while the company had opposed any such effort to bring in additional material on record which was not there in the enquiry and on the merits of the charges, that is, the unauthorised absence of the workman, the Labour Court however overruled the objections of the company and recorded the oral evidence on merits of the charges. The Labour Court thereafter has given his final award Part II and has held that the punishment imposed by the company on the workman was legal and proper and was not shockingly disproportionate considering not only the alleged misconduct but also considering the past record of the workman. The said award is assailed by the learned Advocate for the workman that there was no material on record of the Enquiry Officer to have found the workman guilty of the misconduct of the habitual absence and therefore, she dubbed the findings of the Enquiry Officer as perverse. She further submitted that the Labour Court ought not to have taken on record the additional material as it was not permissible for the Labour Court to allow parties to produce such evidence which is totally barred u/s 11A of the Industrial Disputes Act, 1947. She has also submitted that the punishment was not proportionate, legal and proper. She has also tried to make out a case of mala fides that the company wanted to reduce its work force and had offered voluntary retirement scheme to the workmen and since the petitioner had not accepted the offer the company got an opportunity of dismissing him from employment under the pretext of his unauthorised absence. She further pointed out that on account of the petitioner's unauthorised absence there was no inconvenience or loss of production to the company. She also submitted that there is no findings recorded by the Labour

Court that misconduct was proved and that punishment was justified. She has also urged that some lesser punishment of stoppage of increment under the settlement could have been imposed.

7. As against the aforesaid submissions on behalf of the petitioner workman Shri Purav the learned Counsel for the company stressed that the decision to dismiss the workman was legal and proper and that the company had complied with all the principles of natural justice and had given the workman fullest opportunity to improve his attendance and that the company was left with no alternative but to dismiss him finally as a last resort. As far as the law point of Mrs. Doshi regarding additional material is concerned, he has pointed out that there is no bar u/s 11A of the Act to record evidence and to bring additional material in respect of victimisation, unfair labour practice, mala fides in respect of punishment, mitigating circumstances, if any, and the issue of back wages. He submitted that all these points can be agitated by the workman and he can bring on record any additional material on those issues and the employer can also produce material and adduce evidence in rebuttal before the Labour Court. Shri Purav has drawn my attention to the past record of the workman and has submitted that the company was totally helpless as it had given him several opportunities to improve and therefore, the extreme punishment of dismissal was imposed after giving him gradually lesser punishment. Shri Purav also pointed out from the evidence on record that after dismissal from service he has started his own workshop and is not sitting idle as he tried to make out a case in the pleadings. He has drawn my attention to the oral evidence of the workman that he was dismissed from employment on 20-8 1986 and he had started his own workshop soon thereafter but he had falsely stated in the statement of claim filed by him in February 1988 that he was unemployed and he was sitting idle at home. In the circumstances the learned Counsel has urged that there is no merit in the case and the same deserves to be dismissed.

8. I fail to appreciate the submissions of Smt. Doshi that the Labour Court had erred in recording evidence before it after concluding that the enquiry held by the company was fair and proper and that the findings of the Enquiry Officer were also not perverse. Firstly, it was the workman himself who had sought such a permission to adduce fresh evidence to bring on record the "mitigating circumstances" to justify his unauthorised absence so that the extreme punishment of dismissal could be reduced. The Labour Court had granted the application inspite of the company's objection. Shri Purav the learned Counsel for the company has in fairness supported the said course adopted by the Labour Court and submitted that there was no bar for the workman to adduce evidence before the Labour Court on the issues such as mitigating or extenuating circumstances to reduce the quantum of punishment, unfair labour practice or mala fides, victimisation and back wages and compensation in lieu of reinstatement. In support of his submissions he has relied on the following two judgments of the Karnataka and Patna High Courts:

1. Karnataka Electricity Board; Bangalore v. Workmen of M/s. Amalgamated Electric Co- Ltd., Belgaum & others, reported in 1992(11) C.L.R. 283.

2. Indian Aluminium Co. Ltd. v. Labour Court, Ranchi and another, reported in 1991(1) L.L.J. 328.

I am in respectful agreement with the learned Judges of the two High Courts and I follow the ratios laid down therein.

8.A Even ignoring the fresh evidence adduced before the Labour Court, I have no doubt in my mind that the misconduct of unauthorised absence has been proved by the company in the domestic enquiry. It is pertinent to note that the workman had at no time, either at the time of absence or after receipt of the charge sheet, submitted his written explanation for his absence. Even before the Enquiry Officer he did not make his statement to explain the charge of absence. It was too late for him to have adduced medical evidence before the Labour Court as "a mitigating circumstances" for his absence or for his punishment. It was a clear afterthought and even otherwise it was a very weak evidence to support his case of absence on that ground. His last attempt to put forward the medical ground for his ill-health is futile. He attributes the cause for irritation etc. to the chemical inhaling while working. But the doctor had also advised him not to consume tobacco for which, certainly, the company is not responsible. If this was the real cause he would have voiced it long before through his Union and serious steps could have been taken. He appears never to have complained about his work allergy to the company. It is further pertinent to note that this was not the first year (1985) of his habitual absence but it was the fourth occasion that he was being tried for the habitual act of habitual absence. Earlier three times he was gradually punished as mentioned earlier by me but at no time he complained about his so called allergy, irritation, inhaling fiber-chemical etc. There was not even a whisper at any time. Further more, his absence for all these years, including the year of 1985, was after exhausting all his casual leave, sick leave and privilege leave. It appears that he was under an impression of "Privilege absence". It was argued by Smt. Doshi that because of his absence there was no evidence on record that any inconvenience was caused to the company and she further pointed out that the company's witness had admitted that there was no loss of production because of his absence. I have stated these submissions to be instantly rejected.

9. Considering the case from any angle, I do not find any merits in the petition. The workman himself has now become a workshop-owner and naturally would not like to be a workman back again and I am sure even he would not tolerate any such absentee workman in his workshop too. A workman must be always "at work" and not "away from work". That should be our "work culture". The petitioner was more away from work than at work. There is no reason to interfere with the Awards of the Labour Court nor with the order of punishment. The writ petition is dismissed. Rule is discharged. No order as to costs. C.C. of the order is expedited.

10. Writ petition dismissed.