

(1993) 08 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 1899 of 1990

Shripat Vishram Angre

APPELLANT

Vs

Phoenix Mills Ltd. and Others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 LLJ 885

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; S.Naphade and K.S. Bapat, for the Respondent

Judgement

S.H. Kapadia, J.—By this writ petition under Article 226 of the Constitution, the petitioner-worker seeks to challenge order of the Labour Court dated August 30, 1988 and order of the Industrial Court dated January 4, 1990 in Application (BIR) No. 612 of 1984 and Appeal (IC) No. 308 of 1988 respectively.

2. The facts giving rise to this writ petition are as follows:-

(a) The petitioner was in the employment of respondent No. 1 Mills as an Operator for 22 years.

(b) From January 18, 1982, a general strike in the cotton textile industry in the city of Bombay commenced and continued thereafter. The said Mills was kept closed for some time on account of tension. It is not in dispute that the said strike was subsequently declared as illegal by the Labour Court. The petitioner preferred an approach letter on June 19, 1984 u/s 42 of the Bombay Industrial Relations Act, 1946 read with Rule 53 of the Bombay Industrial Relations Rules, inter alia, alleging that he had repeatedly reported at the gate of the Mills but he was not allowed to resume duties.

(c) Thereafter the petitioner preferred Application (BIR) No. 612 of 1984 to the Labour Court. By the said application the petitioner alleged that he was working

in the Mills in Dyeing Department for 22 years; that workers of the textile industries resorted to strike from January 18, 1982; that the situation was of such a nature that he could not go to the Mills for work and accordingly he was not in a position to report for work in the Mills. According to the said application the worker was stopped at the gate. No work was offered to the workman despite repeated endeavours. In the circumstances, he asked for the above reliefs of reinstatement. By a written statement, the Mills denied the above allegations. According to the management, the workman should have resumed work after January 1982 and, therefore, they presumed that he was not interested in reporting for duty. That even some of the workers whose services were terminated were allowed to resume work but the applicant did not return for duty. They denied that the workman met the Manager for work and he was refused work. The management has also denied allegations of victimisation. It was further contended that in any event the approach letter was not within time and, therefore, the application under the said Act, 1946 for reinstatement vide Sections 78 and 79 read with Section 42 was not within time and was not maintainable.

(d) Thereafter evidence was led before the Labour Court.

(e) By the impugned judgment, the Labour Court framed certain issues which are as follows:-

(i) Does the workman prove that after some days from the commencement of the strike on January 18, 1982 he reported for duty but was not allowed to resume work?

(ii) Does the workman prove that not allowing him to resume duty amounted to termination?

(iii) Whether the approach letter was within time?

(iv) Whether the application was bad for want of approach letter within time;

(v) Whether the company proved that applicant had left the service of his own accord?

The Labour Court answered all the said four issues in the negative and against the workman. However, with regard to the last issue mentioned above, the Labour Court came to the conclusion that the workman did not leave the service of his own accord. In answer thereto the Labour Court came to the conclusion that in the present case the workman approached the Mills on December 31, 1983 i.e. after 2-1/2 years which was not within reasonable time. There was no merit in the contention of the company that the applicant had abandoned the service because the company produced before the Labour Court the charge-sheet dated June 5, 1982 which the Labour Court found did not reach the workman and the workman had no knowledge about the said charge-sheet. The Labour Court came to the conclusion that when the company wanted to take action, they decided to do so by issuing charge-sheet but no further steps were taken. The

Labour Court found that when the Mills took the above action, they cannot say that the applicant had abandoned service. The Labour Court further came to the conclusion that although the applicant was negligent, the Mills had not proved that he had abandoned the service particularly when there was a charge-sheet issued by the company and, therefore, the Labour Court concluded that the company had failed to prove that the workman had left the service on his own accord. However, the Labour Court dismissed the application of the workman on the ground that he was not prevented by the company from 1 resuming duty. The Labour Court also came to the conclusion that the approach letter was within time but as the applicant was never prevented by the company from resuming duty, he was not entitled to reinstatement with continuity of service. Accordingly, the application was dismissed.

(f) Being aggrieved by the said order the workman preferred appeal to the Industrial Court. The Industrial Court by the impugned order came to the conclusion that admittedly the Mills had not taken any disciplinary action, under the standing orders, although it was alleged, inter alia, by them that the employee was guilty of misconduct for participating in illegal strike and for remaining absent without leave. The Industrial Court also recorded the fact that the charge-sheet dated June 5, 1982 was produced before the Labour Court but the said inquiry was not proceeded with further and no specific orders seem to have been passed thereon. The Industrial Court also came to a conclusion that it was not open to the respondent Mills to contend that the approach letter was barred by limitation and to that extent the Labour Court had erred in upholding the contention of the Mills. However, the Industrial Court came to the conclusion that the inaction of the petitioner in not presenting himself for work for a period of 2-1/2 years amounted to abandonment of service because the strike was officially called off within a period of six to seven months and the same in any event had fizzled out. According to the Industrial Court, the employees who were interested in working had reported back on duty and though there were public appeals made by the respondent Mills through newspapers, the workman did not resume duty. In the circumstances, the Industrial Court inferred abandonment of service from the above facts. Accordingly, the appeal was dismissed. Being aggrieved by the impugned orders, the present writ petition has been filed.

3. The short point which requires consideration in the present case is whether on the facts and circumstances of the case, the Industrial Court was right in coming to the conclusion that there was abandonment of service as contended by the Mills because the workman did not report for work upto December 31, 1983 i.e., for a period of 2-1/2 years. In the present case, the Industrial Court, however, lost sight of one of the most important facts viz., that as found by the Labour Court, on June 5, 1982 company had issued a charge-sheet. The Labour Court came to the conclusion that the charge-sheet was not received. The workman was charged for misconduct which inter alia, included absence without leave and permission. However, as the Labour Court found that no steps were taken pursuant to the said charge-sheet, the issue remains as to, whether in the above

circumstances, the Industrial Court was right in inferring the abandonment of service. The answer is in the negative for the reason that when the above charge-sheet was issued on June 5, 1982 and the charge-sheet was not received by the employee, the employer who had purported to charge the petitioner for misconduct expressly wanted to take action on the ground that the workman had abandoned service. The workman was undoubtedly guilty of negligence in not reporting for duty but the question still remains whether the abandonment of service in the above circumstances should be inferred. The Labour Court has rightly come to the conclusion that the Mills has not proved such abandonment of service, particularly when the charge-sheet was issued on that ground against the workman. In the circumstances, the Industrial Court erred in not considering the effect of the issuance of the charge-sheet in the context of abandonment of service. This material fact which has been apprehended by the Labour Court has not been gone into by the Industrial Court. To prove abandonment of service, in the present case, the employee was sought to be charged for the misconduct. The charge-sheet was not received as held by the Labour Court. In the circumstances, at the highest only negligence could be inferred for not reporting for work upto December 31, 1983, but it could not be said that the workman was guilty of abandonment of service. No inquiry was held pursuant to the said charges.

4. The above facts in the present case viz., issuance of a charge-sheet and the non-receipt of the charge-sheet by the workman was not the fact in the case of *Shripad Yashwant Divekar v. K.M. Desai* decided on July 13, 1993 in Writ Petition No. 2193 of 1989 and, therefore, the ratio of my judgment in the said case will not apply to the facts of the present case.

5. In the above circumstances, the impugned orders passed by both the Lower Courts below are liable to be set aside and the petitioner is ordered to be reinstated with 50% back wages from December 31, 1983 till reinstatement. The 50% of the back wages has been ordered because the workman was negligent in not reporting for duty in time. In the above circumstances, the Rule is made absolute in terms of prayer (a). The company is directed to reinstate the petitioner with 50% back wages from December 31, 1983 till today.

Mr. Naphade prays for stay of the operation of this order for a period of four weeks. Mr. Ganguli opposes. Stay granted for two weeks from today.