

(2000) 02 BOM CK 0035

In the Bombay High Court

Case No : O.O.C.J.A. No. 774 of 1995 in Writ Petition No. 2096 of 1990

Srikrishna Keshav Kanerkar and Others

APPELLANT

Vs

Century Spinning and Weaving Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 97

Citation : (2003) 3 LLJ 65

Hon'ble Judges : S. Radhakrishnan, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : C. Gonsalves, for the Appellant; Naik, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This appeal is directed against the judgment and order of the learned single Judge dated August 12, 1993 by which the petition was dismissed.

2. Though Mr. Gonsalves, with his characteristic ability, attempted to persuade us to interfere with and reverse the findings of facts recorded by three Courts below, we refrain from doing so. We may point out that the rival cases of the contending parties were tried by the Labour Court, which recorded findings that the appellants were absent from work for a period from January 18, 1982 to the middle of year 1984. It also found in favour of the employer that the show cause notices had been dispatched to the appellant employees for participation in a strike which had been declared to be illegal. It also accepted the respondent employer's case that in the circumstances of the case it had to be concluded that the documents were despatched to the concerned employees and, in fact, received by them. The Labour Court found no merit in the plea that the punishment of dismissal was harsh, particularly taking into consideration the repeated attempts made by the employer and the Mill Owners' Association to call back the striking workers to work. The fact that several public appeals were issued, informing the workers that, the textile strike called by the Maharashtra Girni Kamgar Union had been decided to be illegal by the Labour Court u/s 97 of

the B.I.R. Act has been accepted. Making an overall assessment of the evidence the Trial Court viz., the Labour Court held that the appellants were guilty of misconduct as alleged against them and that the orders of dismissal did not amount to harsh punishment. In the result it dismissed the application of the appellants. The appellants filed three appeals there against .The Industrial Court once again reassessed the evidence at the instance of the appellants and upheld the conclusions of the Labour Court. The three appeals before the Industrial Court were dismissed. Being dissatisfied, the appellants moved this Court by their common Writ Petition No. 2096 of 1990. The learned single Judge, by a well considered judgment, went into each and every aspect and upheld the judgments of the Industrial Court. We are now called upon to do the same exercise for the fourth time. We think it is, time to drop the curtain and put an end to this saga persisting from 1982.

3. Mr. Gonsalves, learned counsel for the appellants, invited us to go into the evidence on record and take a different view on the evidence. In our view, this is not permissible at all. We are sitting in appeal over a judgment rendered in writ jurisdiction and we must act within the parameters of the said jurisdiction. It is trite law that the writ jurisdiction does not extend to sitting in appeal over conclusions of fact drawn by the Trial Court. In the instant case, the conclusions of facts were drawn by the Trial Court (Labour Court), and upheld by the Industrial Court. The learned single Judge has also reconsidered the matter and reaffirmed the findings on fact. In our view it is not permissible to go into the evidence again and reappraise the findings of fact. We therefore decline to do the exercise that Mr. Gonsalves desires us to do.

4. It is not necessary to refer to the facts in detail and write a long judgment, for the learned single Judge has referred to all the salient facts and rejected the contentions of the appellants. We are in full agreement with the conclusions of fact and law drawn by the learned single Judge and, therefore, it is unnecessary for us to give our detailed reasoning for upholding the judgment of the learned single Judge.

5. Mr. Gonsalves, learned counsel for the appellants, however raised two contentions. First, that the service of show cause notices and dismissal orders had not been effected on the concerned employees. In our view, this is not legal ground being urged in appeal before us, but clearly a reiteration of a challenge to conclusions of fact. Mr. Gonsalves cited the judgment of the Supreme Court in the case of Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, and tried to impress upon us that a certificate of posting was easy to procure and does not inspire confidence. He also cited the judgment of learned single Judge of this Court in the case of Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani, that when in the situation of an ex parte decree the summons by registered post is returned with the endorsement "refused" and the statement is made by the defendant on oath that such a summons was not tendered, failure to examine the postman would be sufficient ground for setting

aside the decree.

6. In our view, neither judgment lays down any invariable and rigid principle of law. The judgment indicates broad principles to assess the evidence before the Trial Court. We do not think that there is any principle embodied in the statute before the Trial Court viz., Bombay Industrial Relations Court, that show cause notice or dismissal order had to be served in any particular mode. In the absence thereof, the conclusion as to whether in a given situation such documents have been tendered or delivered to a party is a matter of overall assessment of the evidence on record. In a given set of circumstances, even on oral evidence the Court may take such a view. In any event, there was both oral and documentary evidence before the Trial Court which has been carefully gone into and conclusions drawn therefrom. We see no reason to disagree with the finding that the show cause notices and dismissal orders were served on the Appellants.

7. Mr. Gonsalves, then contended that the punishment of dismissal was harsh in the facts and circumstances of the case. He also relied upon a Division Bench Judgment of this Court in Changanabai Chanoo Palkar v. Khatau Makanji Mills Ltd. and Ors. reported in 1992 II LLJ-640. In our view, the discretion to interfere with punishment is primarily that of the Labour Court, and, perhaps, also of the statutory Appellate Court viz. Industrial Court. The issue as to quantum of punishment was specifically canvassed during the trial and in the Industrial Court in the appeal. It is not permissible for this Court to interfere with the quantum of punishment in exercise of writ jurisdiction. It is true that in the judgment of this Court in Changanabai Chanoo (supra), the Court did interfere with the punishment, but there were specific circumstances. Perusal of paragraph 13 of the judgment shows that no charge-sheet was served, nor an enquiry was held before the appellant was dismissed and even the dismissal order had not been served upon her. The absence from service was also for a period of about 12 to 14 months. In the circumstances, this Court was inclined to interfere. In our case, there is undisputed absence from work from 1982 to 1984. The Courts below have all held that the show cause notices and the dismissal orders were served upon the appellants. It is also admitted by the appellant that the letters written by the company on January 8, 1986 calling upon them to accept their terminal dues though sent by ordinary post, were received. There is absolutely no satisfactory explanation for the continued absence from work. The explanation that there was an atmosphere of terror is belied by the admission that there was police bandobast which enabled the willing workers to go back to work. Upon assessment of all these facts cumulatively, the three Courts below were disinclined to interfere with the quantum of punishment. We too decline to do so.

8. We find no merit in the appeal, we dismiss the appeal. No order as to costs.