
(1999) 10 BOM CK 0029
In the Bombay High Court
Case No : C.A.J. W.P. No. 543 of 1989

Standard Motor Union

APPELLANT

Vs

Shakuntala P. Shene and Another

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 25F

Citation : (2000) 85 FLR 428 : (2000) 3 LLJ 273

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner company has questioned the legality and propriety of the Award dated August 29, 1988 passed by the Second Labour Court, Thane reinstating the workman with continuity of service and full back wages from August 27, 1978. Besides the challenges by the petitioner company in its Writ Petition to the award of reinstatement with full back wages and continuity of service, the Company has filed an affidavit dated October 7, 1999 to update the facts and developments which appear to have transpired during the pendency of the present writ petition. In short what the affidavit says is that the company has finally closed its factory at Thane on account of acute financial difficulties as set out in the affidavit and that it was not possible for the company to reinstate the workman in service. It is prayed in the affidavit that these subsequent events also be considered while deciding the present petition.

2. The 1st respondent (hereinafter referred to as "the workman") was employed by the petitioner from February 1, 1977 as an unskilled workman. As an unskilled workman she was not supposed to operate any machine. She however, tried to operate the machine and met with an accident on August 17, 1977 resulting in loss of three right hand fingers. She was admitted in Thane Civil Hospital till September 14, 1977 and thereafter she never reported for work. It is the case of the company that on and from September 19, 1977 the company was closed and

all the workmen employed at that time were discontinued after payment of their legal dues. On November 6, 1977 the present workman also reported at the gate of the factory and collected her dues. The company restarted its activities on and from January 1, 1978 and such notice was put up on the notice board of the company and the news was circulated among the workmen that those who were interested in joining would be allowed to join. In response to the Petitioner's message which was circulated amongst its ex-workmen almost all of them had come back and joined except the present workman who did not report till January 31, 1978 when the company had engaged another workman in her place. It is the case of the company that the workman never reported for the work, though however, it received by post on August 27, 1978 three medical certificates including a fitness certificate dated August 28, 1978 and a copy of an application filed by several workmen u/s 33-C(2) of the Industrial Disputes Act, 1947 claiming certain dues from the petitioner company. Though in fact the present workman was not concerned in the said application. It appears that on December 7, 1978 the workman reported for work at the factory and by its letter dated December 8, 1978 the company informed her that she had already lost her lien on employment, and therefore, she could not be allowed to join her duties at such a late stage. Thereafter it appears that the workman has replied to the said letter that she was removed from employment from October 17, 1978 illegally. Thereafter it appears that she approached the Government Labour Officer on January 8, 1979 and on intervention by him an amount of Rs. 750/- was paid to her on February 11, 1979 in full and final settlement of her claim. In spite of receipt of the said amount the workman did not keep quiet and sent a demand letter on March 17, 1979 calling upon the petitioner company to reinstate her with full back wages and continuity of service. Consequently all other stages as prescribed in the law were followed and the industrial dispute came to be referred to by the Government to the Second Labour Court, Thane for adjudication.

3. Before the Labour Court it was the case of the workman that she was illegally removed from employment and that no enquiry was held before her removal or termination and that there was no compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. It was admitted by the company that no enquiry was held against the workman as she remained absent from duty for a long period and thereafter she came and collected her dues of Rs. 750/- from the factory gate and thereafter again Rs. 750/- on account of intervention by the Government Labour Officer. The company, therefore, was under the impression that the workman having settled her dispute on receipt of total sum of Rs. 1500/- there was no occasion to hold any enquiry against her. The petitioner company however adduced oral evidence before the Labour Court to justify its action. It was further proved by the company that meanwhile the workman had another dispute with her former other employer Franco (India) Ltd. And by an award dated November 29, 1978 got reinstatement in that company and finally she settled the said dispute on monetary basis on March 14, 1989. It was

therefore submitted by the learned Counsel Ms. Meena Doshi for the petitioner company that the workman was in the habit of raising such disputes and earning out of them. She argued that the workman was claiming reinstatement from two employers which was not possible. It was further urged that there was no violation of Section 25-F of the Industrial Disputes Act, 1947 and that the petitioner company has fully justified its action by adducing oral evidence before the Labour Court. She pointed out that the workman was employed for hardly six months and thereafter she remained absent from duty may be initially for the reason of accident but even thereafter she never cared to come back to the factory. No application for leave was sent though a bunch of medical certificates was sent by post. Ms. Doshi further argued that if the workman could go for treatment to the Civil Hospital Thane and K.E.M. Hospital at Parel as an out patient she could have very well reported to the company with a request to grant her leave etc. Ms. Doshi, therefore, submitted that the workman was not contesting her claim for bona fide industrial dispute but she was only trying to make money out of industrial adjudication. Ms. Doshi submitted that the petitioner company had waited for the workman till January 31, 1978 when another workman was employed in her place. She finally added that there was no question of granting reinstatement as now the company is finally closed.

4. Since no one appeared for the workman, there was no assistance on the side of the workman. I have carefully gone through the award and the other materials on record. It is a fact that the company had made full payment for a period of three to four months from the date of the accident to the workman. It is also on record that the company has paid every month wages to the workman from the date of the award as required u/s 17-B of the Industrial Disputes Act, 1947 during the pendency of this Petition under the order of this Court dated April 13, 1989. Considering the period of six months' service as a temporary helper and considering the fact that the workman herself has remained away from employment and she never bothered to report for work at any time and considering also the fact that the workman has received Rs. 750/- on two occasions as full and final settlements of her dues, according to me, substantial justice has been done to her. Besides she has also received an amount of Rs. 27,000/- by way of settlement with Franco (India) Ltd. during the subsistence of the present dispute with the petitioner company. I am not in favour of granting reinstatement with full back wages and continuity of service to the present workman. In the present set of facts and circumstances it would be travesty of justice to allow such a workman to be reinstated with full back wages and continuity of service as has been done by the Labour Court by its award dated August 29, 1988 whereby the workman is reinstated with effect from August 27, 1978. From the facts it is clear that the company had not terminated or removed the employment of the workman. It was she, who remained away for a very long period from employment and she never applied for leave and never reported for work except on one occasion she came to collect her legal dues of Rs. 750.00 as a result of closure of the company. After approaching the Government Labour

Officer she received, on the intervention of the said officer, another sum of Rs. 750/-. Though both the figures might sound paltry sums nothing more could have been paid to her as she had hardly put in service of six months or so and she was not entitled to retrenchment compensation u/s 25-F of the Industrial Disputes Act, 1947. In no case the company can be blamed for her not reporting for work and if that is so it cannot be saddled with the punishment of reinstatement with full back wages and continuity of service for a period of ten years upto the date of the award. In the peculiar facts and circumstances of this case more than substantial justice has been done to her as she has been receiving her full wages last drawn under the provisions of Section 17-B of the Industrial Disputes Act, 1947 under the Orders of this Court dated April 13, 1989. In view of the subsequent development of closure of the company the award of reinstatement cannot obviously be enforced or implemented. In any case according to me, since no action of termination or removal from employment was taken by the petitioner company and in view of the fact that the workman herself had remained away from work, for a very long period the order of reinstatement with full back wages and continuity of service will not be justified at all. It cannot be expected from the employer company to have chased a temporary helper who had hardly put in six months service and having waited upto January 31, 1978 the petitioner company had engaged another helper in the place of the present workman. I do not find any illegality or impropriety in the action of the petitioner company. I, therefore, quash and set aside the impugned award dated August 28, 1988. I allow the petition by making the Rule absolute in terms of prayer Clause (a). No order as to costs.

5. Ad interim order dated April 13, 1989 stands vacated.

6. Parties to act on an ordinary copy of this Order duly authenticated by the Sheristedar of this Court.