

(2002) 02 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 3879 of 1995

Sudhakar Shridhar Shelar

APPELLANT

Vs

Steelage Industries Ltd. and Another

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

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

Citation : (2002) 6 BomCR 266 : (2002) 95 FLR 1124

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Bhavesh Parmar and Rekha Tawade, for the Appellant; J.P. Cama, Sr. C. and Ashish Ovalekar, instructed by K.P. Anil Kumar, for the Respondent

Judgement

Nishita Mhatre, J.—Through this writ petition, the petitioner has impugned the Award of the Labour Court dated 7-6-1995 rejecting Reference (I.D.A.) No. 252 of 1988 for reinstatement with continuity of service and full back-wages.

2. The petitioner was employed as a helper since 1982 with respondent No. 1. He was transferred to FRFCF department in January, 1986. A charge-sheet was issued to him on 30-9-1986 under Standing Order 29(1), (3) and (12) of the certified Standing Orders applicable to respondent No. 1 for the misconduct of wilful go-slow in the performance of work and for commission of acts subversive of discipline. An enquiry was held against the petitioner and his services were terminated by way of dismissal on 4-8-1977. The petitioner, therefore, approached the machinery under the Industrial Disputes Act, 1947 for redressal of his grievance.

3. A reference was made for adjudication before the Labour Court. The petitioner contended, inter alia, in his statement of claim that the enquiry held against him was not in accordance with the principles of natural justice and that he had been transferred in January, 1986 without any justifiable reason due to which he was denied promotion and increment. The respondent contended that the petitioner was held guilty of misconduct and, therefore, there is no question of

reinstatement. It was further contended that the go-slow on the part of the petitioner was wilful and deliberate with a view to compel the respondent to transfer the petitioner back to the machine department where he was initially working. It was also contended that the past service record of the petitioner was dismal and, therefore, no latitude should be shown to the petitioner.

4. By Award Part I dated 5-1-1994, the Labour Court held that the enquiry conducted against the petitioner was fair and proper. By another Award dated 14-12-1994, the Labour Court held that the findings of the Enquiry Officer are perverse. The respondent then justified the action by examining one A.A. Chavan on their behalf. The petitioner did not lead any evidence. By an Award dated 7-6-1995, the Labour Court dismissed the reference.

5. It is contended on behalf of the petitioner that once the Labour Court had found that the enquiry held against the petitioner was fair and proper and that the findings were perverse, no opportunity could be given to the employer to lead fresh evidence before the Labour Court as this amounted to permitting the employer to fill in the lacunae which might have existed in the evidence before the Enquiry Officer. The learned Counsel relies on the judgment in the case of Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, and the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, in support of his contention that giving an opportunity to the employer to lead evidence after the Labour Court had held that the findings of the Enquiry Officer were perverse would lead to great prejudice to the workmen. He urges that section 11-A of the Industrial Disputes Act (for short hereinafter referred to as "the Act") was enacted to benefit the workman and not the employer whereas in the present case, it was the employer who has taken advantage under the provisions of the section by leading fresh evidence in the Court. He also contends that assuming the workmen had committed misconduct it did not warrant the punishment of dismissal. The learned Counsel urges that the production norms have not been fixed by way of any settlement or agreement and, therefore, no reliance could be placed on any production records which contain production levels maintained by the petitioner and a few other workmen. He submits that the Labour Court having once rejected these production records, which was produced in the enquiry, could not have then relied on them when they were produced before it to hold that the petitioner was not giving requisite production.

6. The submission of the learned Counsel that the employer should not be permitted to lead evidence if the findings of the Enquiry Officer are perverse is no longer *res integra*. It has been held time and again by the Apex Court that once the Labour Court comes to the conclusion that the findings of the Enquiry Officer are perverse, it is necessary to give an opportunity to the employer to justify his action before the Labour Court itself while leading fresh evidence. This has been held so in the case of Motripur Sugar Factory (*supra*) as well as in the case of The Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. (*supra*)

which considered the provisions of section 11-A of the Act. Moreover, in the case of Fida Film & Hotel Co. Pvt. Ltd. v. Theatre Employees Union & others, 1986 (2) C.L.R. 255 the Division Bench of this Court has taken a similar view. Therefore, the submission of the learned Counsel that the Labour Court ought not to have permitted the respondent to lead evidence before the Court to justify their action is without any substance.

7. As regards the second contention of the learned Counsel that no production norms were fixed and, therefore, it could not be ascertained whether the petitioner was in fact giving the production at a lower level. The Labour Court has found that after being transferred to the new department in January, 1986, the petitioner was giving a certain level of production which was similar to the others working in the jobs akin to his job. Further, it was only between the period from 18-8-1986 to 28-9-1986 that is, till the charge-sheet was issued to him, that the petitioner gave increasingly less production. The Labour Court has observed that this is because the petitioner was dissatisfied on his being transferred to the new department. The demand to the respondent to transfer him back to his original place was not acceded by the respondent. This had made him dissatisfied and, therefore, he had given less production. The Labour Court has also observed that on the issuance of the charge-sheet and during the pendency of the enquiry, the petitioner had given the requisite production and, therefore, the petitioner could have similarly given the same level of production during the period from 18-8-1986 to 28-9-1986.

8. The learned Counsel for respondent No. 1 submits that go-slow is a heinous offence which affects the entire working of the establishment. He submits that in fact it causes greater damage to the plant and machinery than a strike. He relies on the judgment of this Court in the case of Shri Sonaba Baburao Dalvi Vs. Factory Manager and Others, , in support of his contention that even when the production levels have fallen for 8 days, the employer is entitled to take action of dismissal against the employee. He also submits that no leniency should be shown to the petitioner as the petitioner had been suspended for 4 days in 1986 after conducting an enquiry against him. A warning was issued to the petitioner for misconduct and at least on five occasions, he was warned and suspended. The learned Counsel, therefore, submits that the punishment of dismissal could not be considered as shockingly disproportionate.

9. It is true that the Labour Court had discarded the production book which was produced before the Enquiry Officer while coming to the conclusion that the findings of the Enquiry Officer were perverse. However, the production book was produced by the witness before the Labour Court. The Labour Court has accepted this as evidence and placed reliance on it as the witness who was the production supervisor, deposed that he had maintained the production book. The Labour Court has believed the version of the production supervisor when he has said that he has not signed the production book as there is no practice to sign the same. The witness has deposed that the production book was maintained to

arrive at the percentage of work performed by a workman in the department and when a workman gave 100% production, no figures were shown against his name, but the word "completed" was shown. He has also averred that Counselling the petitioner about the production being given by him had no effect, warnings to this effect also fell on deaf ears and the petitioner was issued a charge-sheet as he did improve his performance.

10. The Labour Court on the basis of evidence led before it, has come to the conclusion that the petitioner is guilty of the misconduct levelled against him. I see no reason to differ with the finding of the Labour Court. However, in my view, the penalty of dismissal seems to be shockingly disproportionate and the workman would be adequately compensated if the respondent pay him an amount of Rs. 1,25,000/- in lieu of any further demands with respect to his employment within a period of four weeks from today. This amount shall be paid besides the gratuity, provident fund and other dues payable to the petitioner.

11. Writ petition is disposed of in the aforestated terms. However, there shall be no order as to costs.

12. Issuance of certified copy of this order is expedited.