

(2007) 09 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No's. 555 of 1997 and 2404 of 1998

Tata Engineering and Locomotive Company Ltd.

APPELLANT

Vs

Suhas Madhukar Mulay and Another

RESPONDENT

Date of Decision : 06-09-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2007) 6 BomCR 527 : (2007) 115 FLR 918

Hon'ble Judges : Mhatre Nishita, J

Bench : Single Bench

Advocate : C.U. Singh, Neel Helekar and Niranjana Mogre, instructed by Haresh Mehta and Co. in W.P. No. 555/1997 and B.V. Bukhari and A.V. Bukhari, in W.P. No. 2404/1998, for the Appellant; C.U. Singh, Neel Helekar and Niranjana Mogre, instructed by Haresh Mehta and Co. for respondent No. 1 in W.P. No. 2404/1998 and B.V. Bukhari and A.V. Bukhari for respondent No. 1 in W.P. No. 555/1997, for the Respondent

Judgement

Mhatre Nishita, J.—The petitions challenge the award of the Labour Court in Reference (IDA) No. 259 of 1994. By this award, the Labour Court has directed the Company which is the petitioner in Writ Petition No. 555 of 1997 and respondent No. 1 in Writ Petition No. 2405 of 1997, to reinstate with continuity of service the workman, who has filed Writ Petition No. 2404 of 1998. However, the Labour Court has declined to award any back wages to the workman.

2. The facts in brief are as follows:

The workman was charge-sheeted on 27.3.1988 for habitual absenteeism of 71 days for a period from February, 1987 to November, 1987. A domestic enquiry was held against him. The workman admitted before the Enquiry Officer that he had committed the act of misconduct alleged against him. The Enquiry Officer, therefore, held that the charges levelled against the workman had been proved. The Enquiry Officer submitted his findings on 14.6.1988. This report of the Enquiry Officer was considered by the Company. It also took note of the past

service record of the workman and dismissed him from service.

3. The workman raised an industrial dispute which was referred for adjudication to the Second Labour Court at Pune as Reference (IDA) No. 259 of 1994. The Labour Court on the basis of the pleadings and evidence led before it, concluded that the misconduct was proved against the workman. The Labour Court held that the enquiry conducted against the workman was fair and proper since the workman had not contested this issue. The Labour Court also concluded that the findings of the Enquiry Officer were not perverse. The Labour Court has observed that there was no dispute that the workman was absent on many occasions irrespective of the fact whether there was sufficient reason for absence, and on this basis held that the misconduct had been proved. However, while exercising its jurisdiction u/s 11-A of the Industrial Disputes Act, the Labour Court opined that absence from duty cannot be considered to a major misconduct warranting dismissal from service. In these circumstances, the Labour Court exercised its discretion u/s 11-A of the Industrial Disputes Act and held that the workman was entitled to be reinstated with continuity of service. As regards back wages, the Labour Court found that, although the dismissal order was passed in the year 1988, the workman had raised the dispute only in 1993. The Labour Court, therefore, held that depriving the workman of back wages from the date of dismissal till the date of the award was sufficient punishment for the misconduct of absenteeism.

4. Mr. Singh, learned Counsel appearing for the Company has submitted that the past service record of the workman is dismal and does not warrant any leniency. He submits that once the Labour Court has concluded that he misconduct was proved against the workman, the Labour Court was not in interfering with the punishment of dismissal. He also points out that remaining absent for a period of 17 days in a period of 10 months should not be condoned as it would affect the discipline in the factory. He further submits that, in the year 1982 the workman was absent unauthorizedly for 72 days and a warning was issued to him.

5. The learned Counsel for the Company has relied on several judgments including, (L.I.C. of India v. R. Dhandapani) reported in 2006(1) C.L.R. 32 (Supreme Court); Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, ; (NRC Limited v. NRC Employees" Union) reported in 2001 (111) C.L.R. 286; and Delhi Transport Corporation Vs. Sardar Singh, . He submits that absenteeism has not been condoned by the Supreme Court as well as this Court and, therefore, no leniency need be shown to the workman in this case.

6. The main contention of the learned Advocate for the workman was that the workman had genuine reasons for remaining absent. The learned Advocate attempted to demonstrate that the findings of the Labour Court are incorrect. In my view, once the workman has accepted his guilt before the Enquiry Officer, the Labour Court had no option but to record a finding that the workman was guilty of the charges levelled against him. The workman had at no point of time disputed the fact that he had admitted the misconduct alleged against him. In

these circumstances, the submission made on behalf of the workman cannot be accepted. An attempt was made to submit that the workman is entitled to wages from the year 1988 till the approval application filed by the Company was rejected. However, this submission cannot be accepted since the approval application was restored and the workman consented that approval to the order of dismissal be given by the Tribunal.

7. In the case of L.I.C. of India v. R. Dhandapani reported in 2006(1) C.L.R. 32, the Supreme Court has deprecated the conduct of an employee who was unauthorizedly absent. The Court has observed that reliefs granted by the Courts must be seen to be logical and tenable within the frame work of the law. In the case of Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, the Supreme Court has again held that the practice of awarding back wages merely because a workman has been reinstated must be changed. The Supreme Court has held that the Labour Court should not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out. In this case, I find that the Labour Court has unnecessarily interfered with the punishment imposed by the Company. This was a case of chronic absenteeism and there was no reason to condone the behaviour of the workman when he chose to remain absent time and again. The learned Single Judge of this Court, in the case of N.R.C. Ltd. (supra) has also, in similar case of absenteeism, held that the discretion which is to be exercised by the Labour Court u/s 11-A must be exercised on considerations germane to the jurisdiction of the Court. The discretion must be exercised having regard to the facts and circumstances of each case. In my view, the Company has demonstrated that the absenteeism on the part of the workman was prolonged and that he had been warned on two occasions i.e. in the years 1982 and 1983. In 1984 and 1985, he was suspended by way of punishment for the same act of misconduct. In my view, therefore, the order of the Labour Court granting reinstatement to the workman with continuity of service, must be set aside.

8. Writ Petition No. 555 of 1997 made absolute. Writ Petition No. 2404 of 1998 is dismissed. No order as to costs.