

(2010) 03 BOM CK 0130

In the Bombay High Court

Case No : O.O.C.J. Appeal No. 914 of 2005 and 385 of 2008

Tata Press Employees Union

APPELLANT

Vs

Tata Infomedia Ltd. and Another

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2010) 125 FLR 514 : (2010) 2 LLJ 847

Hon'ble Judges : V.R. Kingaonkar, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : A.D. Shetty and Rita Joshi, for the Appellant; K.M. Naik, instructed by S.P. Salkar, for the Respondent

Judgement

1. Considering the facts involved in both these appeals, both these appeals can be conveniently disposed of by a common order.

2. The respondent No. 1 in both the appeals is same. It appears that there was some incident of Gherao by the employees of respondent No. 1 on August 22, 1990 a September 14, 1990. Thirteen workmen were involved, according to the Management, in, these incidents. After holding their departmental inquiry, those thirteen workmen were dismissed from service. Two references were made to the Labour Court. Reference No. 281/1995 involved 10 workers and Reference] No. 477/1998 involved 3 workers. In Reference No. 281 Part-I of the Award was made by the Labour Court which is dated October 23, 2001. The Labour Court held that the departmental inquiry that was held was fair and proper but the finding recorded by the Inquiry officer are perverse. Against that Award, Writ Petition No. 1049/2002 was filed in this Court. That Writ petition was disposed of by order dated March 23, 2005 by the learned single Judge of this Court. The learned single Judge held that the findings recorded by the Labour Court that the findings recorded by the Inquiry Officer are perverse, is not justified. The findings recorded by the Inquiry officer were not perverse and that; the misconduct alleged against the workmen involved was proved. The matter was

therefore, remitted back to the Labour Court to consider the question whether in view of proved misconduct, the punishment of dismissal on the workmen involved was shockingly disproportionate. That order of the learned single Judge was challenged by the trade Union in Appeal No. 914/2005. It appears that during the pendency of Appeal No. 914/2005, the proceedings under reference No. 477/1998 were taken up before the Labour Court. Before the Labour Court, an application was filed on behalf of the Union dated October 6, 2005. The application reads as under:

1. The workmen submits that the Hon"ble IInd Labour Court pleased to pass Part-I Award dated October 23, 2001, in respect of 4 employees referred in the Reference (IDA) No. 281/1995, The first party company challenged the said Award dated October 23, 2001, by referring a Writ Petition No. 1049/2002, in the Hon"ble High Court, at Bombay. The said Writ Petition was finally disposed off by judgment dated March 23, 2005, by his Lordship Dr. D.Y. CHANDRACHUD. The petition was allowed and the order dated October 23, 2001, was quashed and set aside. The Hon"ble High Court further directed to this Hon"ble IInd Labour Court to proceed to dispose off the reference on remaining issues i.e. the question as to whether the punishment, which has been imposed is disproportionate to the charge of misconduct.

2. The workmen submits that the direction given by the Hon"ble High Court by its judgment dated March 23, 2005, in Writ Petition No. 1049/2002, is in the similar matter. In view of the above, now we may be permitted to record oral evidence in respect of the workmen on the issue of past service record as well as their gainful employment. After recording the oral evidence of these workmen, the Hon"ble Court may decide the reference.

Thus, on behalf of the Union, it was stated before the Labour Court that in view of the findings recorded by this Court by its judgment dated March 23, 2005 in Writ petition, now it can be taken that the findings recorded by the Inquiry officer in the Inquiry which is subject matter of these References are also not perverse and that the misconduct is proved against the workmen involved. Therefore, the Union sought permission of the Labour Court to lead oral evidence only in relation to the past service record as well as the aspect of gainful employment to establish before the Labour Court that the punishment imposed is shockingly disproportionate to the guilt found and that the workmen involved are entitled to full back wages. Thereafter, the Labour Court disposed of the Reference No. 477/1998 by its Award dated May 8, 2007. The Labour Court held that considering the proved misconduct the punishment of dismissal imposed cannot be said to be shockingly disproportionate. However, the Labour Court directed payment of Rs. 2,00,000/- and Rs. 3,00,000/- to the workmen involved, as compensation. Against that Award, the employer filed Writ petition No. 2599/2007 in this Court, that writ petition was decided by order dated February 6, 2008. The learned single Judge held that in view of the findings recorded by the Labour Court that considering the proved misconduct the punishment of

dismissal imposed cannot be said to be disproportionate, the Labour Court in view of the provisions of Section 11A of the Industrial Disputes Act, could not have directed payment of compensation, and accordingly, allowed the petition. Appeal (Lodg) No. 385/2008 is filed by the Trade Union challenging that order passed by the learned single Judge.

3. We have heard the learned counsel appearing for both the sides. Now first taking up Appeal No. 914/2005, in our opinion, we cannot consider that appeal on merit at the instance of the trade Union at this stage because of the conduct of the trade Union of filing an application which we have quoted above in Reference No. 477/1998 and the application filed in Reference No. 281/1995. The application that was filed in Reference No. 281/1995 is dated October 4, 2005. It reads as under:

1. The workmen submits that the Hon"ble Court was pleased to pass Part-I Award dated October 23, 2001 in respect of 4 employees referred in the present Reference. The first party company challenged the said Award dated October 23, 2001 by preferring a Writ Petition No. 1049/2002 in the Hon"ble High Court at Bombay. The said writ petition was finally disposed off by judgment dated March 23, 2005 by His Lordship Dr. D.Y. CHANDRACHUD. The Petition was allowed and the order dated October 23, 2001 was squashed and set aside. The Hon"ble High Court further directed to this Hon"ble Court to proceed to dispose off the reference on remaining issues i.e. the question as to whether the punishment, which has been imposed is disproportionate to the charge of misconduct.

2. The workmen submits that in respect of 6 other workmen, who are involved in the present reference, are also proceeding on the basis of the direction given by the Hon"ble High Court by its judgment dated March 23, 2005 in Writ Petition No. 1049/2002. The workmen submits that earlier 4 workmen their oral evidence in respect of gainful employment and past record are already on record. Now we may be permitted to record oral evidence in respect of other remaining 6 workmen on the issue of past service record as well as their gainful employment. After recording the oral evidence of these 6 workmen the Hon"ble Court may decide the reference in respect of all the workmen involved in the present reference.

3. The workmen are filing Affidavit in lieu of their examination in chief, as stated herein, which may be taken on record.

In our opinion, filing of these applications before the Labour Court disentitles the appellants now to contend that the findings recorded by the learned single Judge in his judgment challenged in Appeal No. 914/2005 that the findings recorded in the Inquiry report are not perverse, are not proper. The Trade Union accepted the findings of the learned single Judge and represented before the Labour Court that the Labour Court can proceed further on the basis of those findings and consider the question whether the punishment is shockingly disproportionate or not. Now therefore in appeal No. 914/2005 the Trade Union cannot urge that

those findings of the learned single Judge are not proper and should be revoked. In our opinion, therefore, Appeal No. 914/2005 will have to be dismissed, and it is, accordingly, dismissed.

4. So far as Appeal (Lodg) No. 385/2008 is concerned, that order is made by the learned single Judge u/s 11A of the Industrial Disputes Act. That Section reads as under:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an Industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require;

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

Perusal of the above quoted provision shows that the Labour Court would get jurisdiction to make an order u/s 11A of the Act interfering with the punishment imposed by the employer only on recording jurisdictional finding that the employer was not justified in awarding punishment of dismissal or discharge. Insofar as the present case is concerned, the Labour Court not only has not recorded that finding but has recorded a contrary finding. In paragraph 12 of its Award, the Labour Court has recorded thus:

Therefore, considering the facts of the present matter, particularly acts of misconduct committed by the concerned workmen and the ratio laid down in cited supra cases relied upon by the first party company it can be said that the concerned workmen had committed serious misconduct and dismissal from service cannot be said to be too harsh and disproportionate therefore, I have answered issue No. 3 in the negative.

Thus, the Labour Court has recorded a finding that considering the gravity of the misconduct proved against the workmen, punishment of dismissal cannot be said to be too harsh and disproportionate. In our opinion, once the Labour Court recorded this finding, it lost jurisdiction u/s 11A of the Act to say anything further and to interfere with the punishment awarded. The view taken by the learned single Judge, in our opinion, is perfectly justified and therefore, the order of the learned single Judge does not require any interference. Both the appeals are disposed of.