
(1996) 08 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 122 of 1985

Textile Corporation of Marathwada	APPELLANT
Vs	
Prabhakar Balajirao Deshpande and another	RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79

Citation : (1997) 4 BomCR 18 : (1997) 2 LLJ 466

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : A.H. Joshi, for the Appellant; R.P. Powar and S.K. Kadam, for the Respondent

Judgement

1. This is a petition by the employer-Textile Corporation of Marathwada through its Managing Director, Nanded. The Respondent No. 1 - Prabhakar Balajirao Deshpande, was working as an Operator as a Badli worker in Caustic Recovery Plant of the petitioner-industry.

2. The undisputed facts are, the Respondent No. 1 was serving as an Operator in the said Caustic Recovery Plant since May 22, 1976 and was on the list of casual workers and a Card to that effect was given to him. On June 2, 1979, the Respondent No. 1 was suspended and the chargesheet dated June 5, 1979 was issued in which four charges were framed against him, which are as under : -

- (i) Wilful insubordination and disobedience of lawful and reasonable order of the superior;
- (ii) Disorderly and indecent behaviour in the premises of the Undertaking;
- (iii) Commission of an act subversive of the discipline in the premises of the Undertaking; and
- (iv) Wilful damage to work in process of Undertaking.

The Respondent No. 1 was called upon within 48 hours of the receipt thereof to

submit his explanation as to why disciplinary action should not be initiated against him. A charge-sheet dated June 5, 1979 at Annexure "A" of the petition, indicates that one Shri M. A. Mirza was appointed as an Inquiry Officer to conduct the Departmental Inquiry which was contemplated against the Respondent No. 1. The Respondent No. 1 submitted his reply to the show cause notice on June 10, 1979. However, being dissatisfied with the explanation given by the Respondent No. 1, the Departmental Inquiry proceeded against the Respondent No. 1. The Inquiry Officer after conducting the inquiry into the allegations and after recording of the due evidence, submitted his report dated August 18, 1979, which is at Annexure "C" on record page 32 of this petition. By his report, the Inquiry Officer reached to the conclusion that but for one, the rest of the charges are proved against the delinquent and the charge which was not proved was the charge of disorderly or indecent behaviour against the delinquent. Thus, the Inquiry Officer forwarded his report to the Competent Authority, the General Manager and the General Manager of the petitioner-industry, after having gone through the said inquiry report, did accept the same and the punishment in the nature of discharge from service was inflicted on the delinquent by order dated October 4, 1979.

3. The Respondent No. 1, naturally, was dissatisfied with the punishment imposed on him and he approached before the Labour Court, Aurangabad by filing an application u/Ss. 78 and 79 of the Bombay Industrial Relations Act, 1946, challenging his discharge from service. The learned Judge of the Labour Court, Aurangabad, has found that the Departmental Inquiry conducted against the delinquent-Respondent No. 1 was fair and proper and that the Respondent No. 1 was given due opportunity to defend himself. Thus, the enquiry is held to be absolutely legal and there is no challenge in this regard before this Court in this petition. So the matter will have to be proceeded with on the basis that the inquiry was fair and proper and the only question that necessitates decision is, as to whether the charges could be said to have been proved against the delinquent and whether the punishment inflicted could be said to be shockingly disproportionate to the charges which are held to have been proved against him. The learned Judge of the Labour Court who dealt with the matter, after completing due formalities, framed four points for his decision and the material being the point No. 2 which reads, "whether the discharge order should be set aside ?" It is held in the negative thereby suggesting that the punishment imposed could not be said to be disproportionate and did not call for any interference at the hands of the Labour Court. This judgment of the Labour Court is dated May 31, 1983. By the above-said order, the learned Judge of the Labour Court dismissed the application filed by the Respondent No. 1 - delinquent.

4. The Respondent No. 1 challenged the above-said order of the Labour Court by way of an appeal before the Industrial Court, Aurangabad vide Appeal No : (IC) 12 of 1984. The learned Member of the Industrial Court, Aurangabad who dealt with the appeal, by his order dated January 17, 1985, did not agree with the reasoning and the finding given by the Judge of the Labour Court and the appeal

of the Respondent No. 1 was allowed by setting aside the order of the Labour Court. The learned Member of the Industrial Court in Appeal specifically ordered to reinstate the employee with effect from October 4, 1979 with continuity of service. However, the employee was granted only half of the back wages from the date of the discharge till his reinstatement. In short, the Respondent No. 1 was ordered to be reinstated with half back wages. It is this judgment and order of the Member, Industrial Court, Aurangabad, which is under challenge by way of this petition, at the instance of the employer-petition industry.

5. Shri A. H. Joshi, the learned counsel appearing on behalf of the petitioner, assailed the order of the Appellate Court, contending that the learned Member of the Industrial Court having once reached to the conclusion that the misconduct of the Respondent No. 1 is proved though technically, had no scope in the matter to interfere either in the judgment of the Management or in the judgment given by the learned Judge of the Labour Court, Aurangabad. Shri Joshi specifically pointed out that the learned Member of the Industrial Court has in so many words observed that the misconduct is technically proved but not strictly. According to Shri Joshi, such type of finding was not expected from the learned Member of the Industrial Court as it was open for the learned Member of Industrial Court either to observe that charges were proved or not proved. According to Shri Joshi, the words used by the learned Member of the Industrial Court that technically proved but not strictly proved, in fact, does not exactly state as to what the learned Member of the Industrial Court wanted to say thereby. The second point on which the learned counsel for the petitioner assailed the order of the learned Member, Industrial Court, is that the Industrial Court has labelled the discharge order as an order which is induced by motivation and, according to Shri Joshi, this finding arrived at by the learned Member of the Industrial Court is absolutely unwarranted and wrong. Shri Joshi, therefore, argued that the order passed by the learned Member of the Industrial Court, cannot be sustained and the reasoning given by him cannot be said to be the convincing one, whereas a well-reasoned order passed by the learned Judge of the Labour Court, deserved to be restored. Shri Joshi, the learned counsel for the petitioner, further, vehemently argued that when it is clear from the judgment of the Appellate Court that the Appellate Court was also of the view that the charges levelled against the Respondent No. 1 were proved though technically, then in such a circumstance, it was not open for the learned Member of the Industrial Court to interfere with the punishment awarded to the delinquent as, in fact, it is a discretion which totally rests with the employer unless and until it is shown that the punishment awarded is either shockingly disproportionate or is motivated and is by way of victimisation. Shri Joshi also relied on the decision of the Supreme Court, reported in Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen, .

6. As against this, Shri R. P. Powar, the learned counsel appearing on behalf of the Respondent No. 1 employee, argued that the learned Member of the Industrial Court was justified in setting aside the judgment and order of the Labour Court. He further argued that even assuming for the sake of arguments

that the charges levelled against the delinquent are proved against him, even in that case, the punishment which was inflicted on the delinquent since was shockingly disproportionate, the learned Member of the Industrial Court was justified in setting the same aside by directing reinstatement with half back wages. It is not disputed by the parties before this Court that the order of the Industrial Court is not challenged by the Respondent No. 1 on the point of back wages. Shri Powar, the learned counsel for the Respondent No. 1 further specifically argued that the charge as regards disobedience and in subordination could not be said to have been proved at all in the instant matter as, according to Shri Powar, the order which is said to have been not obeyed by the Respondent No. 1 could not be said to be a lawful and reasonable order. On the basis of this contention, Shri Powar further wanted to suggest that if at all the order is disobeyed it is unlawful order and unreasonable order and, therefore, disobedience thereof would not amount to insubordination or indiscipline on the part of the employee concerned. Prima facie, this argument of Shri Powar appeared to be very convincing, however, if it is seen in the background of the facts of the present case, the fallacy therein can be conveniently demonstrated which a necessary reference will be made at an appropriate stage in this judgment.

7. Since the judgment of the learned Member of the Industrial Court is a reversing judgment, it would be necessary for this Court to refer to certain observations of both the Courts, so as to reach to an appropriate conclusion in the matter. From the record, it is clear that on June 2, 1979 one Shri Gangadhar, an Operator of Bleaching Department was on leave in the first shift and, therefore, one Shri Kanjalkar, the Supervisor, had deputed a substitute in place of Shri Gangadhar whose name was Sambhaji Waghmare. This Sambhaji Waghmare was directed to assist the Respondent No. 1 on the Caustic Recovery Plant. The Respondent, as is clear from the record, at about 7.30 a.m. in the morning switched off the Plant. On inquiry, by the Supervisor, the Respondent No. 1 had explained that he would not run the Plant with the help of substitute worker Shri Sambhaji Waghmare as, according to Shri Deshpande, the Respondent No. 1. Waghmare was not a fully experienced Helper and, according to the Respondent No. 1, he did not want to run any risk. The record further clearly shows that Shri Kanjalkar had explained the Respondent No. 1 that it was not that Mr. Waghmare was. absolutely novice or a fresh worker. On the other hand, Shri Kanjalkar explained to the Respondent No. 1 that Waghmare also had already worked for a period of about 15 days under the Respondent No. 1 himself on Caustic Recovery Plant and, therefore, to avoid the stoppage of the working in the industry, there was no harm in taking the help of said Mr. Waghmare. However, it appears that the Respondent No. 1 was absolutely adamant in his behaviour and stuck up to his stand of not to resume the work unless other substitute is provided in place of Shri Waghmare. The ultimate result of this was, the Caustic Recovery Plant remained idle between 7.30 a.m. and 4.00 p.m. thereby definitely causing substantial loss to the petitioner-

industry because of no production on the day in question and according to the petitioner, has also resulted into monetary loss to the petitioner-industry. This was the first charge which was levelled against the Respondent No. 1 which is held to have been proved by the Inquiry Officer and the learned Judge of the Labour Court has found no fault in the same and also has held that the said charge is proved against the delinquent. In fact, in the present petition, this is the only main point on which both the parties argued and as I have observed earlier in the previous paragraph that the learned counsel for the Respondent No. 1 -Shri Powar, submitted in this respect that the order issued by Shri Kanjalkar directing the Respondent No. 1 to take the help or carry on the work with the help of Shri Waghmare, could not be said to be a lawful and reasonable order as, according to Shri Powar, it is even the finding of the learned Judge of the Labour Court that a Helper has to have the experience of 30 days working and only thereafter he could be said to be a trained Helper. Shri Powar, therefore, argued that since it is clear from the record that Shri Waghmare had only the experience of 15 days which means Mr. Waghmare could not be said to be trained Helper as he was yet to complete 15 days" training more, and in such circumstances, Shri Powar, further, argued that directing an untrained Helper to assist an Operator in a Plant could be said to be an order which is unreasonable or, in other words, which could be said to be an order which is unlawful. I have already pointed out that it is on the record and that too undisputed that Shri Waghmare had an experience of 15 days and he had the knowledge of the work of a Helper. It is further on the record that Shri Waghmare also had worked with the present Respondent No. 1 previously. However, the record does not indicate anywhere that on those days, there was any complaint made by the Respondent No. 1 as regards the working of the Helper Shri Waghmare nor has the Respondent No. 1 pointed out anywhere on the record that the said Shri Waghmare was of no help/use as a Helper at any point of time and, therefore, he did not want to work with Shri Waghmare. The question, then, remains whether could it be said that the direction given by the Supervisor to Mr. Waghmare to assist as a Helper to the Respondent No. 1, to be labelled as unreasonable order. The Appellate authority failed to see that it is already on the record that since the regular Helper Shri Gangadhar was on leave and the machine was to be operated and since Shri Waghmare had an experience of working as a Helper though for fifteen days, Shri Kanjalkar, Supervisor, thought it fit to keep the machinery going on by providing Shri Waghmare as a Helper to the Respondent No. 1. It is also on the record that Helper is supposed just to assist the Operator and, he himself is not directly to operate the machinery. It is also clear from the record that the Supervisor Shri Kanjalkar and another Officer of the petitioner-industry Shri Desai had also assured that Shri Waghmare was in a position to assist the Operator, the Respondent No. 1 and in case of any difficulty, both of them were there to help the operator. The question is, could in these circumstances, be said that direction given by Shri Kanjalkar to Shri Waghmare to assist the Respondent No. 1 as a Helper was unreasonable order. On the other hand, the facts discussed above, do indicate that, in fact, that only could be the most reasonable

order in the circumstances of the case. Shri Powar, further argued that the order directing Shri Waghmare to assist the Respondent No. 1 was not a lawful order. According to Shri Powar, it has been brought on the record that 30 days training is necessary for a Helper and which, according to Shri Powar is also admitted by the learned Judge of the Labour court in his judgment. Shri Powar tried to make capital of this sentence by saying that when the Court itself says that Waghmare had undergone only 15 days" training and he had not 30 days" training, it means that directing Shri Waghmare to work as Helper was itself unlawful order. It appears that the learned counsel for the Respondent No. 1 lost sight of the fact that it is nowhere on the record that there is any special training given to any Helper before he is sent to work on any machinery as a Helper to the Operator. On the other hand, the Helper obtains the training while working with the Operator and even otherwise it is not the case of the Respondent No. 1 that there was any specific prescribed course of such training which Shri Waghmare was supposed to complete. On the other hand, it was the Respondent himself who had an occasion to work taking the very same Waghmare as a Helper in the same petitioner-industry. This, therefore, clearly indicates that there was no justifiable reason for the Respondent No. 1 to refuse to operate the machinery with the help of Shri Waghmare and if there would have been any other justifiable reason, it was open for the Respondent No. 1 to point out the same to the employer or the person concerned on the spot which would have been definitely considered by the petitioner-industry or the appropriate authority in that respect. The very approach, attitude and conduct of the Respondent No. 1 is indicative of the adamant attitude of the employee concerned who for no justifiable reason stopped the working and thereby kept the machinery idle and caused loss to the petitioner-industry. Shri Powar wanted this Court to observe as to whether if a person needs 30 days" training, sent to work only after so 15 days" training or working, could in such a case, be it said that the order was a lawful one. I have no hesitation in observing here that the order issued by Shri Kanjalkar directing Shri Waghmare to work as Helper to the Respondent No. 1 could not be said, by any stretch of imagination, either an unlawful order or unreasonable order, much less in the facts and circumstances of the present case. I have also no hesitation in observing that it definitely reflects on the attitude of the employee concerned which is definitely harmful to the industry and the charge, therefore, which was levelled against the Respondent No. 1 as regards disobedience and insubordination is definitely proved beyond doubt.

8. In the context, what is stated above, in the previous paragraph, I have further to observe that it is not open for the employee concerned to disobey the order which is issued by the Competent Authority unless and until it is shown by the employee concerned that either the said Authority had no powers to issue such orders at all or that he had some contrary order from the still higher authority. It is also not the case that the work which was ordered to be done by the competent authority was not the part of the duty of the employee. In the circumstances, a lawful and reasonable order was issued by Shri Kanjalkar and

that had to be complied with by the employee concerned and disobedience of the same even in the slightest manner, definitely amounted to grave misconduct on the part of the employee which, in the present case, the Respondent No. 1, has committed. I have, therefore, no hesitation in observing that it is not only the misconduct but a grave misconduct so also insubordination and disobedience of the lawful orders of the Competent Authority committed by the Respondent No. 1 and the same has been rightly held to have been proved by the learned Judge of the Labour Court who had an advantage to have the evidence before him as also had an advantage to dissect the complete record of the inquiry including that of finding given by the Inquiry Officer.

9. The Inquiry Officer has held the second charge also to have been proved against the employee concerned and which is also accepted by the learned Judge of the Labour Court. However, the learned Member of the Industrial Court has observed in his judgment that the Respondent No. 1 did not refuse to work with Shri Waghmare. On the other hand, the very conduct of the Respondent No. 1 of switching off the machinery and refusal to work with Shri Waghmare itself is sufficient to demonstrate that there was a clear-cut refusal in spite of the fact that Mr. Kanjalkar and Mr. Desai had assured the Respondent No. 1 that even if something goes wrong, the Respondent No. 1 would not be held responsible for the same. The learned Member of the Industrial Court appeared to have proceeded with the matter on the basis of his own surmises when he observes that probably it was because of the previous incident in the case of Shri Shinde, the Respondent No. 1 must have told the Management that he would not work if Shri Waghmare was given him as his Assistant. Here, at this point, the learned Member of the Industrial Court himself has observed that it was the Respondent No. 1 who had specifically refused to work with Shri Waghmare and the reason being that incident in the case of one Shri Shinde. Then the question arises could it be said that the Respondent No. 1 was justified in such circumstances in refusing to work and whether the learned Member of the Industrial Court was right in observing that this would not amount to wilful disobedience of the lawful orders of the superiors. From the observation in the judgment of the learned Member of the Industrial Court itself, it is clear that the learned Member is also of the clear opinion that there was a refusal by Respondent No. 1 to work with Shri Waghmare. Secondly, that this refusal could not be said to be a justifiable one as it appeared to have been based on certain previous incidents and thirdly, the refusal was not because of any incompetency on the part of the person issuing the order. If there was no justifiable reason and the attitude demonstrates nothing but an adamant approach of the employee concerned, there cannot be any other conclusion than that of wilful disobedience of lawful order of the superior by the employee concerned.

10. The learned Member of the Industrial Court tried to label this order as an order motivated and based on some extraneous consideration. The learned Member of the Industrial Court has observed that on previous occasion also, the Respondent No. 1 was suspended for certain indiscipline on his part. No doubt,

the said suspension order was withdrawn by the Management and that too after the employee concerned had approached the proper forum to challenge the said order. This incident appeared to have weighed with the learned Member of the Industrial Court to reach to the conclusion that the order is motivated and is by way of victimisation. I do not find any substance in the observations made by the learned Member of the Industrial Court. The case which was being dealt with by the learned Member of the Industrial Court was of a specific and identified incident in the matter. The question involved was as to whether the order which is concerned in the present litigation was a lawful and reasonable order and as to whether the same have been disobeyed and that too willfully by the employee concerned which, if proved, would amount not only to indiscipline but insubordination on the part of the employee concerned. I have already observed above that it is not the case of the employee-Respondent No. 1 that Shri Kanjalkar, the Supervisor, had no power to issue that order, which clearly means that the person issuing the order was competent to issue the same. I have also observed that on previous occasions also, the said Shri Waghmare had worked with the Respondent No. 1 and there was no complaint by the Respondent No. 1 as regards the working of the said Shri Waghmare and in such circumstances, directing Shri Waghmare to assist the Respondent No. 1 and that too in view of the absence of regular worker, could not be said to be unreasonable order in any manner. In such circumstances, the learned Member of the Industrial Court unnecessarily tried to base his reasonings on some previous incidents which, in fact, had no relevance whatsoever to the point in dispute.

11. The charges as regards disorderly or indisciplined behaviour in the premises of the Undertaking which were levelled against the delinquent-Respondent No. 1, are not proved. However, the third charge which was as regards disobedience of the order, not to work, the same is also held to have been proved against him. This charge, to be precise, is that on May 27, 1979, the Respondent No. 1 though was to work in "C" shift, he reported late on duty and even on the subsequent day i.e. May 28, 1979 he again, reported late on duty and on that day, having specifically directed not to proceed with the work, the Respondent No. 1 disobeying the order, did resume the work without paying any heed to the instruction of the superior. The rest of the charges as regards loitering in premises on June 2, 1979 since happened to be a consequential charge to charge (1) is also held to have been proved. The learned Member of the Industrial Court, surprisingly, observes that this charge No. (c) i.e. pertaining to the late coming of the Respondent No. 1 on May 27 and 28, 1979 is not strictly proved though according to the learned Member of the Industrial Court, it is technically proved. In fact, it is the case specifically, proved that on those two days, the Respondent No. 1 did report late on duty. In such circumstances, the question of its having not strictly proved though technically proved does not arise at all.

12. The only question that remains is as regards the punishment awarded. The learned Member of the Industrial Court has observed that it was the case of the Respondent No. 1 before the Industrial Court that the punishment of discharge

was shockingly disproportionate. On the other hand, it is the case of the petitioner that after taking a lenient view, the order of discharge simpliciter is issued and the employee has not been dismissed from service. I have already observed that in the instant matter, the question of victimisation does not arise at all and it is not even the case of the Management that the order of discharge is issued taking into consideration his previous conduct or after going through his service record. The specific incident itself is a serious matter and it is a grave misconduct on the part of the employee concerned since it is the case of insubordination on the part of the employee concerned. I do not think that the learned Judge of the Labour Court was in any way wrong in upholding the punishment inflicted on the employee concerned by the Management. If the charges have been proved, if the gravity of the charges is taken into consideration which also has a direct bearing on the working of the industry itself, then in such circumstances, if out of certain punishments, a particular punishment is chosen by the Management, I do not think that it is open for the Courts to interfere in the same unless and until it is specifically shown that either it is by way of victimisation or motivation by some other extraneous considerations or that it is shockingly disproportionate to the charges levelled and held to have been proved against the delinquent. In the instant case, the fact of alleged misconduct was of a severe nature which also indicates a wilful disobedience of the lawful order and of reasonable order and, in such circumstances, I am of the opinion that the learned Member of the Appellate Court was not right in interfering with the finding of punishment given by the management and upheld by the Labour Court. In the circumstances, the judgment and order passed by the learned Member of the Industrial Court is quashed and set aside and the order passed by the learned Judge of the Labour Court is restored.

13. In the instant matter, there was an interim order dated February 13, 1985 whereby the petitioner-industry was directed to deposit Rs. 25,000/- in the Court and on that condition, stay was granted to the reinstatement. Out of the above-said amount of Rs. 25,000/-, the Respondent No. 1 was permitted to withdraw an amount of Rs. 12,500/- without furnishing any security. However, for the rest of the amount, he was allowed to withdraw only on furnishing security. The learned counsel for the petitioner-industry states that the petitioner has already withdrawn about Rs. 12,500/- of the above-said amount. However, the rest of the amount is lying in the Labour Court at Aurangabad. Since half of the amount is already withdrawn by the Respondent No. 1, Shri Joshi, the learned counsel for the petitioner expressed that his client is not interested in recovering the same from the employee. I, therefore, do not order the refund of the same. However, the rest of the amount which is pending with the Labour Court at Aurangabad, the petitioner-industry is permitted to withdraw the same.

14. In the result, the petition is allowed. The rule is accordingly made absolute with no order as to costs.