

(2009) 01 BOM CK 0123

In the Bombay High Court

Case No : Writ Petition No's. 3942 and 3525 of 1997

Thermax Limited and Another

APPELLANT

Vs

Vishwanath N. Jadhav and Others

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Citation : (2009) 3 BomCR 303 : (2009) 121 FLR 750 : (2009) 3 LLJ 265 : (2009) 2 MhLj 921

Hon'ble Judges : Bobde S.A., J

Bench : Single Bench

Advocate : C.U. Singh, Neel Helekar and Neha Mehta, instructed by Haresh Mehta and Co in W.P. No. 3942 of 1997, P.M. Huddar, instructed by A.S. Rao, in W.P. No. 3525/1997, for the Appellant; P.M. Huddar, instructed by A.S. Rao in W.P. No. 3942 of 1997 for Respondent No. 1, C.U. Singh Neel Helekar and Neha Mehta, instructed by Haresh Mehta and Co. in W.P. No. 3525/1997, for the Respondent

Judgement

Bobde S.A., J.—These two petitions are filed by the employer and the workman, respectively, against the order of the Industrial Court refusing to vary the order of the Labour Court and dismissing both the revisions filed by the parties. The Labour Court has held that the workman is guilty of misconduct as enumerated in Clauses 24(a) and (1) of the Model Standing Orders. However, the Labour Court took the view that punishment of dismissal from service is shockingly disproportionate and, therefore, allowed the workman's complaint partly.

2. The workman Vishwanath N. Jadhav was working as a Fitter with the employer, Thermax Limited, Pune. He was charged with insubordination and commission of an act subversive of discipline or good behaviour on the premises. The incident which led to the charge is as follows:

On 2.3.1984, when the supervisor tried to explain the work to be performed by the workman and what was required, he did not listen to the superior and clearly refused by saying that the superior could not tell him to do any work and that he

does not recognise him as a superior at all. On 3.3.1984, again he told the superior that he is his supervisor and asked him insultingly as to how many time a dog should be driven away. The Labour Court which allowed the parties to lead evidence before itself found that the charge in respect of the incident on 2.3.1984 was clearly proved. As regards the incident of 3.3.1984, the finding of the Labour Court is not clear, but the Labour Court seems to suggest that the workman had some reason for refusing the work assigned by the supervisor because there was some earlier work which was incomplete. The Labour Court came to the conclusion, therefore, that Clause 24(a) and 24(1) of the Model Standing Orders have been proved by the respondent. The said clauses read as follows:

24. The following acts and commissions on the part of a workman shall amount to misconduct:

(a) wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior;

(1) commission of any act subversive of discipline or good behaviour on the premises of the establishment;

While considering the punishment imposed on the workman, the Labour Court concluded that it was shockingly disproportionate in spite of observing that the workman had a record of earlier misbehaviour and insubordination for which he was warned over and over again. Peculiarly, the Labour Court has observed that considering his past record, the punishment of dismissal is shockingly disproportionate. The Labour Court has, however, found it fit to deny back wages to the workman.

3. The order of the Labour Court was questioned by both the parties on grounds relevant to each one of them before the Industrial Court. The Industrial Court, as stated above, has dismissed the Revision Application.

4. Mr. Singh, the learned Counsel for the petitioner-employer submitted that the order of the Labour Court suffers from a serious error of law apparent on the face of the record in that, though it holds the workman guilty of misconduct under Clauses 24(a) and (1) of the Model Standing Orders, it grants him the relief of reinstatement on the ground that the charges proved are minor and technical. The learned Counsel for the employer submitted that it is settled law that a single act of insubordination is sufficient to warrant the punishment of dismissal. It is, therefore, necessary to consider the validity of the finding of the Labour Court that the punishment imposed on the workman was shockingly disproportionate. In the first place, it must be noted that the Labour Court was considering a complaint of the workman under Item 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act which reads as follows:

1. To discharge or dismiss employees-

(a) by way of victimisation;

- (b) not in good faith, but in the colourable exercise of the employer's rights;
- (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
- (d) for patently false reasons;
- (e) on untrue or trumped up allegations of absence without leave;
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment. (Emphasis supplied)

5. The Labour Court has not rendered any finding in respect of the grievance under (a), (b), (d) and (e) above, but has found the dismissal violative of (g) above. It is obvious from Clause (g) above that the dismissal constitutes an unfair labour practice when it is for misconduct of a minor or technical character only when such dismissal is made "without having any regard to the nature of the particular misconduct or the past record of service of the employee". It is difficult to comprehend how the Labour Court could have treated the dismissal as one for misconduct of a minor or technical character when the past record of the workman was staring in the face. It is clear from the facts of the case that the dismissal was not for a misconduct without any regard to the nature of the misconduct or the past record of service of the employee. On the contrary, there is clear evidence of the past record of insubordination which is also taken note of by the Labour Court with the observation that it has not been denied by the workman. I am, therefore, of view that the Labour Court could not have come to the conclusion that punishment was shockingly disproportionate, having regard to Clause (g) of Item 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. Indeed, the object and purpose of the provision would stand frustrated if the entire clause is not taken as a whole. Surely, the clause does not purport to condone a minor misconduct which is repeated and is apparent from the past record of the service of the workman.

6. It must be observed that it is settled law vide judgement of this Court in *Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Limited Vs. M.S. Ajmere and Another*, where this Court was considering a single act of disobedience by a Stenographer and observed in paragraphs 17 and 18 as follows:

17. Now it is difficult to see why such disobedience will not amount to insubordination. The learned Counsel appearing on behalf of the workman wanted to draw a distinction between disobedience and insubordination and it was contended before us that unless there is a flagrant disobedience or rebellious disobedience, the conduct of a workman cannot amount to insubordination. In our view, this argument is plainly contrary to the very concept of

insubordination. A subordinate officer or employee is duty bound to obey a lawful order of a superior officer. That such is the duty of a subordinate officer is not required to be stated in so many words in any list of duties. The concept of obedience is implicit in the fact that the officer receiving the order is subordinate to the officer giving the order and a lawful order has to be obeyed, unless there is good justification for not complying with such a lawful order. It is this conduct of declining to obey an order which not only results in disobedience, but the conduct of the workman would also amount to insubordination. The Concise Oxford Dictionary gives the meaning of the word "insubordinate" as "disobedient, rebellious". The two meanings given by the dictionary do not mean that only a rebellious conduct would amount to insubordination, but even disobedient conduct would amount to insubordination. The Random House Dictionary gives the meaning of "insubordinate" as follows:

"Not submitting to authority: disobedient, one who is insubordinate". These meanings would indicate that any person who is disobedient becomes insubordinate and his conduct amounts to insubordination. Therefore, where a workman disobeys a lawful order, he can be said to be guilty of insubordination and it needs hardly to be stated that a misconduct of disobedience and insubordination would also amount to indiscipline. We have, therefore, no difficulty in holding on the finding recorded by the Labour Court that it was a part of the workman's duty to type the delivery challans and his declining to do so would clearly amount to insubordination and indiscipline.

18. It is difficult for us to appreciate the view taken by the Labour Court that there must be a series of disobedient conduct for acts of indiscipline before a workman can be charged with insubordination or indiscipline. As already pointed out, the Labour Court has unambiguously stated in the award that one single act of disobedience will not amount to an act of insubordination or an act of indiscipline. If each act of disobedience would result in act of insubordination and indiscipline, then it is difficult to see what warrant there is for the proposition which is being laid down by the learned Judge that a workman cannot be charged for insubordination in respect of one act.

The ratio of the decision in the above case fortifies the conclusion that proved misconduct of the workman which constitutes a disobedience of the lawful orders given by his superiors constitutes a misconduct punishable under Clause 24(a) and (1) of the Model Standing Orders and that the punishment of dismissal imposed on that count cannot be said to be shockingly disproportionate under Item 1(g) of Schedule IV.

7. In this view of the matter, Writ Petition No. 3942 of 1997 filed by the employer, Thermax Ltd., is allowed and the rule is made absolute. The impugned orders are set aside insofar as they direct reinstatement of the 1st respondent workman. Writ Petition No. 3525 of 1997 filed by the workman is dismissed and the rule is discharged.

No order as to costs.