

(1995) 04 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 5458 of 1989

V.A. Sabastian

APPELLANT

Vs

Jaya Hind Sciaky Ltd. (India)

RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 2 LLJ 15

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : S.B. Naik, for the Appellant; J.P. Cama, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This writ Petition under Article 227 of the Constitution of India impugns an award (Part-11) dated December 20, 1988 made by the 2nd Labour Court, Pune, in Reference (IDA) No. 106 of 1988 (New) (Reference (IDA) No. 244 of 1983 (old) under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"))

2. The Petitioner is an ex-employee who was working in the service of the 1st Respondent in its establishment at Chinchwad, Pune. On March 15, 1982 the Petitioner was served with a charge- sheet in which it was alleged that on March 9, 1982 between 9.30 to 10 a.m. he was found idling away his time by sitting on a table instead of working at his work place and was reprimanded by Foreman Tiwari to go to the place of his work and carry on his job. It was alleged that the Petitioner refused to obey the instructions and arrogantly replied to Tiwari that he would not do any work, nor go to his place of work. Even when advised by Assistant Manager Dalvi, the Petitioner refused to go to his place, behaved rudely and abused Tiwari in filthy language, using choicest abuses in the presence of all the officers and employees of the Production Department. A detailed inquiry was held into the said misconducts alleged against the Petitioner, as a result of which the Inquiry Officer came to the conclusion that the Petitioner was guilty of the

charges. At the stage when the 1st Respondent employer was about to take a decision on the quantum of punishment to be imposed on the Petitioner, a registered Trade Union by name Engineering Labour Union (CITU) operating in the 1st Respondent's establishment, of which the Petitioner was a member, interceded on behalf of the petitioner. As a result of the intercession by the said Union, an agreement dated November 12, 1982 was arrived at between the said Union and the management of the 1st Respondent on the action proposed against the Petitioner. The relevant clause in the said agreement is as under:

"The Union appealed to the management that the decision in regard to punishment to Shri V.A. Sebastian should be withheld for a period of three months. He would improve his behaviour. The management concedes the request without prejudice to its right to award appropriate punishment to him on the basis of the report of domestic inquiry already held against him."

3. After the said agreement, an order was passed on November 20, 1982 by the 1st Respondent revoking the suspension of the Petitioner and directing him to resume work. In the said order, the 1st Respondent, stated, "We have received the report of the inquiry and our decision on the basis of the inquiry shall be conveyed to you in due course of time"

4. On December 7/8, 1982, the Petitioner was found to have misconducted himself again by entering and detaining the bus of Kinetic Engineering Limited, a neighbouring business establishment, and creating a fracas despite clear instructions to him by his official superior that the bus of Kinetic Engineering Ltd., was not meant for travelling of the workmen of the 1st Respondent establishment. In view of the fact that the Petitioner was found to have indulged in a misconduct again, when he was so to say on parole, the 1st Respondent decided to take action on the Inquiry Officer's report pursuant to the charge-sheet dated March 15, 1982. On December 11, 1982, the 1st Respondent passed an order in which, after making reference to the fact that the Petitioner had been found guilty of the charges levelled against him by a charge-sheet dated March 15, 1982, the Petitioner was informed of the facts pertaining to the subsequent misconduct which took place on December 7/8, 1982. Instead of dismissing the Petitioner from service, the 1st Respondent, chose to pass an order of discharge simpliciter and offered him compensation at the rate payable u/s 25F of the Industrial Disputes Act, 1947.

5. The Petitioner raised an industrial dispute for his reinstatement which came to be referred to the Labour Court, Pune. Before the Labour Court, Pune, in the first instance, the issue tried was about the legality, propriety and validity of the domestic inquiry held into the charge-sheet dated March 15, 1982. The Labour Court raised the following issues and answered them as under :-

"(1) Does second party prove that enquiry held by the first party is against the provisions of Model Standing orders applicable to the parties and against the principles of natural justice? No.

(2) Does he prove that findings of the enquiry Officer is perverse? No".

6. Consistent with its finding, the Labour court upheld the legality and validity of the inquiry and the findings of the Inquiry Officer and directed that the Reference be heard further on merits. Before the Labour Court evidence was given by the 1st Respondent with regard to the subsequent misconducts of December 7/8, 1982. The Petitioner also gave his version of what transpired on those days. After appreciating the said evidence, the Labour Court came to the conclusion that there was no need to hold a separate inquiry for the incidents of December 7/8, 1982. The Labour Court accepted the evidence of one Chaudhari examined on behalf of the 1st Respondent to prove the said incidents. It also relied on the admissions made by the Petitioner during his cross-examination when he gave his evidence before the Labour Court. On assessment of the evidence on the record, the Labour Court concluded that the incidents alleged were true and that the Petitioner had entered the bus of Kinetic Engineering Limited, misbehaved and refused to get down inspite of Manager Chaudhari of the 1st Respondent instructing him to get down. Considering the background against which the order of punishment proposed to be issued pursuant to the charge-sheet dated March 15, 1982 had been virtually kept under suspension, the Labour Court was of the view that the Management of the 1st Respondent was justified in revoking its earlier decision to suspend the punishment and in making the order of termination dated December 11, 1982. The Labour Court also highlighted the fact that the past record of the petitioner showed that he was adamant in his attitude as the past record consisted of warnings for habitual neglect of work, carelessness, negligence and disobedience of lawful orders. Considering the past record, the Labour Court concluded that by no stretch of imagination could it be said that the termination of the service of the Petitioner by the order dated December 11, 1982 was not justified. In the result, the Labour Court rejected the Reference and denied all reliefs to the Petitioner, Being aggrieved, the Petitioner is before this Court by the present Writ Petition.

7. Considering the backdrop of the circumstances of the case, I find it difficult to disagree with the reasoning of the Labour Court in the impugned Award. Somewhat unusually, the 1st Respondent employer acceded to the request made by the Petitioner's Union that final order in the inquiry commenced pursuant to the charge-sheet dated March 15, 1982 be kept under suspension. It is clear from what was agreed between the Union on behalf of the Petitioner and the Management of the 1st Respondent, that this was done only to afford one final opportunity to the Petitioner to improve his behaviour. It is also clear from the evidence on record that the Petitioner did not improve his behaviour and continued to misbehave as before. The suspension of the order of punishment was, therefore, justifiably revoked by the Management and the Management was, therefore, justified in passing the order of termination dated December 11, 1982.

8. Mr. Naik, learned counsel appearing on behalf of the Petitioner, contended that

the order of termination dated December 11, 1982 is in the nature of a hybrid, inasmuch as it is neither an order of dismissal, nor an order of retrenchment, properly so called. He does not, however, dispute that, in the 1 st Part of the Award, the Labour Court has fully upheld the inquiry including the findings recorded by the Inquiry Officer. He also does not dispute that on the evidence on record with regard to the misconduct alleged in the order dated December 11, 1982, the Management might have been justified in dismissing the Petitioner from service. Merely because the Management went out of its way to pass an innocuous order of discharge simpliciter and even went ahead and paid retrenchment compensation, which perhaps might not have been necessary, it is not possible to hold that the order of termination becomes vitiated on that count.

9. Mr. Naik then urged that a scrutiny of the circumstances would show that there must have been no interpretation based on charity. It is an objective assessment of the facts which is required . Such an objective assessment has been carried out by the Labour Court and I see no reason to interfere with the assessment of facts by the Labour Court.

10. I, therefore, see no merit in the Writ Petition, which deserves to be and is hereby dismissed. Rule discharged. No order as to costs.

11. Issuance of the certified copy of this judgment is expedited.