

(1968) 03 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 154 of 1968

Vasant Gopal Gurav and Another

APPELLANT

Vs

F.M. Lyla and Others

RESPONDENT

Date of Decision : 04-03-1968

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 73

Citation : (1968) 2 LLJ 182

Hon'ble Judges : J.L. Nain, J;D.V. Patel, J

Bench : Division Bench

Judgement

Per Patel, J.—There was a dispute between the workers of the textile mills on the one hand and the Millowners' Association on the other in respect of the bonus payable to the textile workers for the year 1962. After negotiations this dispute was settled and an award in respect of the settlement was made. This was announced on 12 December, 1963. In some mills there were strikes and in some mills tension had also developed. There was strike in Sayaji Mills, Ltd., on 12, 13, 14, 15 and 16 December, 1963. It appears that there were negotiations and it is said that the then Labour Minister intervened and asked the workers to resume work in the striking mills on obtaining an assurance from the Millowners' Association that the workers will not be victimized unless they were responsible for either causing violence or inciting violence. On 17 January, 1964, five of the workers in this mill were served with chargesheet for misconduct under standing orders 21(b) and 21(c), the first being for illegal strike and the second for inciting illegal strike. The date for inquiry fixed was 20 January, 1964. On the date of the inquiry the workers applied for adjournment which the inquiry officer refused to grant. It appears that thereafter the workers continued to remain present. After the inquiry was completed the inquiry officer gave a finding that these five workers were responsible for misconduct under both the standing orders, i.e., 21(b) and 21(c). Having regard, however, to the past clean record of these workers, he directed that they be discharged from service with thirteen days' wages in lieu of notice. The workers then took up the matter as an

industrial dispute under the Bombay Industrial Relations Act and requested the Government to refer the matter to the industrial court under S. 73 of the Bombay Industrial Relations Act which it did.

2. The industrial court held that the inquiry was not mala fide and that there was no victimization. It further observed that there was no proof of incitement and violence. It said that under the standing orders the orders of discharge made against these workers could not be said to be illegal and improper. It, therefore, rejected the demand for reinstatement.

3. In this petition much reliance has been placed on the finding of the industrial court that there was no proof of incitement of violence and violence. It is said that during the negotiations the Labour Minister had assured that except in the case of violence, the workers would be reinstated. It was, therefore, said that the order of discharge was invalid. It was secondly contended that in any event for these misconducts the orders can be of suspension or of dismissal but not of discharge with wages.

4. The amplification of the jurisdiction of the industrial court in a matter of this nature has been considered by the Supreme Court in *The River Steam Navigation Co. Ltd. Vs. Shyam Sundar Tea Co. Ltd.*, and it laid down the following principles (p. 501) :

"(1) Where an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry;

it is open to him to act upon the report submitted to him by the enquiry officer and so dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice. In such an enquiry before the tribunal, it is not open to the tribunal to sit in appeal over the findings recorded at the domestic enquiry. When a proper enquiry has been held, it would be open to the enquiry officer holding the domestic enquiry to deal with the matter on the merits, bona fide and come to his own conclusion.

(2) Where it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all."

5. Unless, therefore, the industrial court came to the conclusion that the inquiry was mala fide or improper or that the workers had no reasonable opportunity under the circumstances of the case to defend themselves, there could be no

question on the part of the employer to justify the order of dismissal on merits, i.e., by leading evidence before the Court regarding the actual misconduct alleged against the workers. Once the Court found against the workers on the question of mala fide and propriety of the inquiry, no further question could arise.

6. In this connexion, it must be noticed that the charge against these workers is not merely that they struck work illegally, but the farther charge is that these persons incited others to go on an illegal strike. The second charge is comparatively much more serious than the first. Therefore, when the inquiry officer found that both these charges were established, the manager was entitled to make the order permitted by the standing orders and these orders cannot be challenged on this ground.

7. The second argument is that under the standing order 22(1) the punishment envisaged is suspension not exceeding four days or dismissal without notice or any compensation in lieu of notice if a worker is found to be guilty of misconduct. The said standing order also provides that in awarding punishment under the said order the manager shall take into account the gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist. If, in the present case, the manager thought that dismissal would be a harsh punishment, he would be fully justified in making the orders of discharge with payment of thirteen days' wages so that the workers may not earn a black-mark and may not be hampered in their service at any other place. We refuse to accept the argument that the only punishment that could be imposed is one of suspension or dismissal. There may be cases which do not call for extreme punishment of dismissal and unless there is anything which prevents the employers from imposing a lesser punishment, there is no reason why the said standing order should be construed in this limited way.

8. In the result, the petition fails and the rule is discharged. In the circumstances of the case, there will be no order as to costs.