

(1991) 07 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 1166 of 1984

Vomayya Babu Shetty

APPELLANT

Vs

Digvijay Spinning and Weaving Mills and others

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1992) 1 LLJ 691 : (1991) MhLj 1026

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Judgement

1. The petitioner-workman was in the employment of the first respondent Mills as a fitter since 1963 and was working as an erection fitter at the relevant time. He was served with a charge-sheet on December 9, 1976 that on that day at about 11.00 a.m. when he was searched by a watchman on duty, he was found in possession of half broken brass bush and four small pieces of brass in his back pocket and thus committed a misconduct under Standing Order 21(d). After the petitioner gave a detailed reply to the said charge sheet on December 18, 1976, a departmental enquiry was held against him in consequence of which he was dismissed from service with effect from December 25, 1976. He, therefore, carried the matter to the Labour Court at Bombay presided over by the second respondent by filing Application (LCB) No. 202 of 1977. The learned Labour Judge held that the domestic enquiry conducted against the petitioner was legal and proper and in accordance with law. Thereafter, by a judgment and order dated June 29, 1982 the learned Labour Judge dismissed the application of the petitioner. Being aggrieved, the petitioner filed Appeal (IC) No. 98 of 1982 in the Industrial Court at Bombay. The said appeal was heard by the third respondent Member of the Industrial Court and dismissed the same by his judgment and order dated August 31, 1983. Hence, the petitioner invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

2. The only point urged before this Court by Mr. Dharap on behalf of the petitioner is that assuming for the sake of argument that the charges levelled against the petitioner were proved and that he had committed theft of the property in question, the punishment inflicted on the petitioner was disproportionate to the charges levelled and proved. In reply, Mr. Naik, appearing for the first respondent-company, submitted that the petitioner indulged in an act of dishonesty for which he had no remorse and, therefore, the punishment of dismissal inflicted on him need not be interfered with.

3. I am not able to persuade myself to agree with the submission of Mr. Naik and I do agree with what Mr. Dharap has urged inasmuch as assuming for the sake of argument that the petitioner had committed theft of the property as described above which would hardly be of any value and, therefore, he could not have been visited with an extreme penalty of dismissal from service. Any reasonable punishment commensurate with the charges levelled and proved against the petitioner would have served the ends of justice. But in my judgment for the misconduct committed by the petitioner he could not have been saddled with the extreme penalty in the nature of economic death by removing him from service. I am supported for taking such a view by a judgment of the Single Judge of this Court which was confirmed by a Division Bench. Thus, in case of *Mahindra and Mahindra Ltd. v. G. V. Akerkar*, 1988 (57) FLR 667, the workman was dismissed for committing theft of petrol worth Rs. 9.50/-. The Labour Court had held the punishment to be disproportionate to the offence and substituted the same by ordering reinstatement with full back wages. The learned Single Judge before whom the Award of the Labour Court was challenged held that the punishment of dismissal was extremely harsh and disproportionate. The decision of the learned Single Judge was challenged by the employer in Appeal No. 634 of 1988 decided on July 11, 1988 which was dismissed by a Division Bench of this Court. In another case of the *National Textile Corporation (South Maharashtra) Ltd. v. Shramik Janata Union and Ors* 1990 Mh. L.J. 1315, the two employees of two textile mills were dismissed from service for causing monetary loss of Rs. 42/- to the management of the mills by fraudulent means. The Labour Court had granted reinstatement with half back wages which was challenged and it was held by the Division Bench of this Court that there was no substance in the contention on the point raised by the petitioner, National Textile Corporation, that the order of the Labour Judge was perverse.

4. In this view of the matter, I am of the opinion that the impugned orders passed by the learned Labour Judge and the learned Member of the Industrial Court non-suited the petitioner in not granting him the relief are bad in law and deserve to be set aside. It is no doubt true that for the kind of the misconduct which the petitioner committed he should be suitably punished but that does not mean that he should be thrown out of job.

5. In the result, the writ petition succeeds and the same is allowed. The impugned orders passed by the second and the third respondents are quashed

and set aside. The petitioner is ordered to be reinstated with continuity of service and 50 per cent back wages as, in my opinion, punishment of loss of 50 per cent back wages is more than sufficient for the misconduct alleged and proved against the petitioner.

6. Rule is made absolute in the terms aforesaid with no order as to costs.