

(1992) 02 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 3924 of 1988

Wai Taluka Sahakari Kharedi

APPELLANT

Vs

Shri Bajirao Mahadeo Mahadik

RESPONDENT

Date of Decision : 26-02-1992

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1992) 02 BOM CK 0004

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

Bench : Single Bench

Advocate : C.J. Sawant with S.G. Deshmukh, for the Appellant; R.S. Kulkarni with Abhay Kulkarni, for the Respondent

Judgement

B.N. Srikrishna, J.—This writ petition, under Article 227 of the Constitution of India, impugns an award dated 10th March, 1988, made by the Labour Court, Sangli, in Reference (IDA) No. 2 of 1981 under the provisions of the Industrial Disputes Act (hereinafter referred to as "the Act"). The Respondent was in the employment of the Petitioner from 26th January, 1974, as a clerk. His services were abruptly terminated by the Petitioner with effect from 1-5-1979 pursuant to a Resolution passed by the Petitioner-Society on 8-5-1979. By the said resolution, the Petitioner purported to terminate the services of the Respondent with effect from 1.5.1979 on the ground that he had not shown any improvement in his work despite his attention being drawn several times to his unsatisfactory work. The Petitioner-Society, therefore, resolved that the Respondent's work was unsatisfactory and that the society did not need his services. The Respondent raised a demand for reinstatement in service. The Society having declined to accede to the demand, the Respondent got his demand processed under the provisions of the Act and ultimately obtained a reference for adjudication to the Labour Court, Sangli, which is marked as Reference (IDA) No. 2 of 1981. The industrial dispute referred for adjudication was the demand of the Respondent for reinstatement in service with full back wages and continuity in service. Before the Labour Court, the Petitioner-

Employer had to accept that the employment of the Respondent had been terminated without resorting to any disciplinary procedure as there was not even a charge-sheet served on the Respondent, much less any explanation sought for his alleged misconduct or unsatisfactory services. The Petitioner-Society persuaded the Labour court to permit it to lead evidence to prove the unsatisfactory nature of the Respondent's service. Since there were no precise charges with regard to which evidence could be led, the learned Judge of the Labour Court allowed himself to be persuaded to frame a charge-sheet. Such a charge-sheet came to be framed at the instance of the Petitioner-Society on 21st April, 1982. Upon appreciation of the evidence led by the rival parties, the learned Judge answered the issues framed by him as under:

Issues:

- (1) Whether the First Party proves that the Second Party has misappropriated any amount viz. Rs. 1,519/- by debiting the amount in his own name?
- (2) Whether the second party proves that there was a practice of so debiting the amount in the name of the branch manager to tally the balance amount?
- (3) Whether the First Party proves that the Second Party had mensrea to misappropriate the said amount for himself?
- (4) Is it proved by the First Party that the second party remained absent without leave from 13/4/1979 to 22/4/1979 and on 24/4/1979?
- (5) Is it proved by the First Party that the applicant was habituated to remain absent from time to time without obtaining leave?
- (6) Is it proved by the First Party that the Second Party behaved in rude manner and disobeyed the orders of the superiors?
- (7) Is it proved by the First Party that the Second Party was medically unfit and was suffering due to epileptic fits?
- (8) Is it proved by the First Party that the Second Party used to retain amounts of the Society for his own use?
- (9) Whether the applicant second party proves that he had debited Rs. 1,519/- in his own name for tallying the balance, as per practice prevailing in the said Society?
- (10) Is it proved by the Second party that he was removed from service without issuing a charge-sheet and without holding any enquiry into his alleged misconduct?
- (11) Whether the Second Party is entitled to reinstatement and back wages and continuity of service?
- (12) What Order?

Findings:

- (1) No.
- (2) Yes.
- (3) No.
- (4) No.
- (5) No.
- (6) No.
- (7) No.
- (8) No.
- (9) Yes.
- (10) Yes.
- (11) Yes.
- (12) As per final Order.

Consistent with his findings the learned Judge came to the conclusion that the order of termination of service of the Respondent was illegal and improper and deserved to be set aside. The order of termination came to be quashed and set aside and the Respondent was granted reinstatement on the original post with full back wages from the date of termination of service. It is this award which is impugned in the present petition.

2. When the present petition came up for admission on 20th September, 1988, the Division Bench admitted the petition by granting rule only with regard to back wages and stayed the order directing payment of back wages. The Petitioner was, however, directed to reinstate the employee forthwith.

3. Mr. Sawant, the learned counsel for the Petitioner, contended that though the rule in the petition was restricted to the direction with regard to back wages made in the award, the Petitioner would be entitled to contend that no order of reinstatement and/or back wages ought to have been made by the Labour Court. I, therefore, permitted him to satisfy me that on the material on record that the impugned award was bad in law and liable to be quashed on any ground available in law.

4. Having heard the counsel for the Petitioner at length, I am satisfied that the award does not suffer from any infirmities. To start with, there is no doubt that the Respondent was summarily removed from service by the Resolution which, without doubt, casts a stigma upon him. It is also not disputed that no semblance of charge-sheet was given to him, nor was any enquiry held before the Respondent was removed from service. The Petitioner should have failed on

this very ground. The Labour Court was, however, persuaded to accept the charge-sheet drafted by the Petitioner as the accusation upon which the petitioner wanted to lead evidence and justify its action against the Respondent. In my view, this was wholly impermissible. It is only if there is a charge-sheet in existence, with respect to which a defective enquiry has been held, that the liberty to satisfy the Tribunal upon material in support of the charge could be exercised. It is no function of the adjudicating Tribunal to frame the charges, suo motu or at the instance of the employer. As if this was not sufficient, the material produced on record by the Petitioner is woefully short of establishing any of the allegations made in the so-called charge-sheet.

5. Mr. Sawant fairly did not bark up the wrong tree. He only high-lighted the fact that there was evidence to show that the Respondent had retained with him a certain amount and debited certain amounts to his account. This, if nothing else, is a proved misconduct, in the submission of the learned counsel, which would justify the order of summary termination of service. I am afraid, that this is too fragile a petard on which the Respondent could be foisted. The excess amount in question retained was Rs. 4/-. The Labour Court has rightly found that the Respondent was authorised to keep an amount of Rs. 50/- in his hands and on one occasion he had kept an additional amount of Rs. 4/- in excess of the said limit. The circumstances are that the Head Office of the petitioner-Society is situated at Wai, about 20 kilometres away from the village Verali where the Respondent was working. He therefore, thought it impracticable to travel 40 kilometres to and fro to deposit the small excess amount of Rs. 4/-, in the Head Office. The Labour Court rightly observed that, even if the said act amounted to misconduct, the action taken against the Respondent was grossly disproportionate.

6. Another justifying factor urged by the learned counsel for the Petitioner was that the Respondent had debited Rs. 1,519/- to his account. As found by the Labour Court, the evidence showed that there was a practice in the Petitioner-Society to give articles on credit to the members and staff of the Society and that the Respondent had also got articles on credit. Under the circumstances, this fact could not have justified any action being taken against him.

7. The labour Court rightly found that in the case of another co-employee, who was in arrears of Rs. 3,440/-, no action was taken against him and he continued in service. Finally, the Labour Court found that the Respondent's evidence on oath that he was unemployed and not earning anything in the inter-regnum was totally unchallenged inasmuch as the Petitioner had failed to cross-examine him on this point.

8. Mr. Sawant, perhaps in sheer desperation, attempted to salvage something out of what appeared to be a total wreck. He contended that by an order made on 26th June, 1986, the reference had been rejected as the Respondent had failed to appear during the hearing. Subsequently, upon an application being made by the Respondent-workman, the reference was restored to file on 20th

July, 1987. In the submission of the learned counsel, if nothing else, the back wages for this period i.e. from 26th June, 1986 to 20th July, 1987, ought not to be paid to the Respondent. I am unable to accept this submission. It is true that the reference came to be rejected by the order dated 26th June/1986, but the order dated 20th July, 1987, more than amply demonstrates that there was good reason which prevented the Respondent from remaining present at the time of the hearing. Incidentally, I may state that the reason was that his mother was sick and had to be operated upon. This reason has been accepted as just and sufficient cause for restoring the reference back to file. The fact that it took one year for the Labour Court to do it is not a fault attributable to the Respondent-workman. The mills of justice, like the mills of gods, grind slowly, yet exceedingly small, and it is not possible to apportion the blame for the delay to any party. I see no reason why the back wages, if otherwise payable, should be deprived on the ground of systemic delay.

9. Under these circumstances, the Labour Court was fully justified in recording its findings and in setting aside the order of termination of service of the Respondent and directing payment of full back wages. I have not been persuaded to see the matter in any different light. I see nothing objectionable or exceptional in the impugned award of the Labour Court. There is no misdirection, no perversity, no error of law and nothing else which would require this Court to interfere with the award in exercise of its extra-ordinary powers under Article 227 of the Constitution of India. The result is that the petition deserves to fail.

10. In the circumstances, the petition being devoid of any merits is hereby dismissed. Rule shall stand discharged.

11. There shall, however, be no order as to costs.

12. Mr. Sawant during the course of his submission has produced a statement of the back wages payable to the Respondent under the impugned award for the period 1.7.1978 to 30.8.1988. The total sum comes to Rs. 64224-00. Dr. Kulkarni, while not disputing the aforesaid amount, stated that the actual reinstatement was with effect from 7.11.1988 and therefore though the Respondent would be entitled to about two months more wages, he would rest content if the aforesaid sum of Rs. 64,224-00 is paid expeditiously without driving the Respondent to further litigation.

13. The aforesaid amount to be paid to the Respondent within eight weeks from today. Certified copy to be expedited.