

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1378 OF 1995

The Sarchitnis,
A.H.Wadiya Sarvajanik Vachanalaya,
Beed through its Secretary,
Chandrakant N.Shahapure,
Age-Major, Occu-Service,
R/o Beed, Ta. And Dist. Beed

PETITIONER

VERSUS

1. Digambar Vishwanathrao Malge,
Age-Major, Occu-Clerk,
(Now terminated), R/o Azizpura,
Shirale Galli, Beed,

2. The Presiding Officer,
Labour Court, Aurangabad (**Deleted**)

RESPONDENT

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.Harshal P. Randir h/f Mr.Vinod P.Patil, Advocate for respondent
No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/12/2015

ORAL JUDGMENT :

1. This petition was admitted on 31/03/1995. This Court had granted interim relief to the petitioner in terms of prayer clause 'C', by which the judgment of the Labour Court dated 06/01/1995 in Reference (IDA) No.44/1988 was stayed. As a consequence of the interim relief, the respondent has been out of employment from

10/06/1987.

2. Contention of Mr.Shahane, learned Advocate on behalf of the petitioner is that the respondent, who was a "Watchman" and working from 27/04/1978 was dismissed for proved misconducts on 10/07/1987. By the impugned judgment and award, the Labour Court has directed reinstatement of the respondent with continuity and 60% back wages.

3. It is submitted that two thefts occurred in the petitioner/ Library on 23/05/1987 and 24/05/1987. One fan, one tube light and one issue of "Amrut" Magazine was stolen when the respondent was on duty. A charge sheet cum show cause notice was issued to the respondent. He submitted 2 representations dated 13/06/1987 and 29/06/1987 by which he admitted that because of his negligence, the theft has occurred. Mr.Shahane frankly submits that it is not the case of the petitioner that respondent himself has committed the theft. It is the case of the Management that because of his negligence, the theft occurred.

4. Mr.Shahane points out that in so far as the fairness of the enquiry and the sustainability of the findings of the Enquiry Officer

are concerned, the Labour Court has not caused any interference and has upheld the enquiry and the findings in the light of the admission of the respondent in the enquiry. He, therefore, submits that the only issue that remained for adjudication was as to whether the punishment awarded to the respondent was proportionate or not.

5. Mr.Shahane vehemently submits that a Watchman, whose negligence caused two thefts on 23/05/1987 and 24/05/1987, does not deserve to be retained in employment. He relies upon the judgment of the Apex Court in the case of Bharat Forge Co.Ltd., V/s Uttam Manohar Nakhate [(2005) 2 SCC 489].

6. He further submits that unless the punishment awarded amounts to a shockingly disproportionate punishment, the Labour Court could not have invoked its jurisdiction u/s 11(A) of the I.D.Act, 1947 in the light of the ratio laid down by the Apex Court in the case of the Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813]. He, therefore, prays for quashing and setting aside of the impugned award.

7. Mr.Harshal Randir with Mr.V.P.Patil strenuously defends the impugned award. He submits that the respondent was working as a

“Watchmen” for almost 10 years with the petitioner. Presently, he is 70 years old. Retirement age is of about 58 years. In this entire past service, not a single misconduct has been proved against the respondent. No negligence has been alleged against him. No show cause notice was ever issued to him. The petitioner failed to consider the mitigating factor of a clean and unblemished past service record while awarding the punishment of dismissal on 10/07/1987,

8. He further submits that a blemished past service record would operate as an aggravated factor. A clean past service record being a mitigating factor would reduce the seriousness and gravity of the misconducts proved against the respondent. This has been rightly considered by the Labour Court.

9. He further submits that the conduct of the respondent needs to be appreciated. He admitted in the enquiry and also by addressing the employer that due to his negligence, the theft of 1 fan, 1 tube light and 1 magazine occurred. He, therefore, submits that the admission of the respondent indicates his character and that he did not try to hide anything from the employer or the Enquiry Officer. He, therefore, submits that this was a fit case for the employer to

show leniency in the light of the admission of the respondent. He, therefore, prays for the dismissal of this petition.

10. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

11. It is undisputed that the respondent admitted before the employer as well as the Enquiry Officer that the theft may have occurred due to his negligence. The submissions of the learned Advocate for the respondent could not be refuted by the petitioner that his past service record does not indicate any blemishes. I find that the learned Advocate for the respondent has rightly submitted that the petitioner/Management should have shown leniency towards the respondent in the light of the fact that his past service record was clean and he had accepted his guilt of being negligent which resulted in a theft.

12. The issue before the Labour Court was purely as regards whether the punishment of dismissal from service could be termed as being shockingly disproportionate. It is not the case of the petitioner that the respondent has committed the theft. Charge proved is of negligence. The charge is not of sleeping on duty while

discharging functions as a “Watchman”. This is a distinguishing feature in the facts of this case and in the facts of the Bharat Forge Co.case (supra). Sleeping on duty is undoubtedly a serious charge when it comes to a Watchman and more so if a Watchman has been deployed on a sensitive installation.

13. In the fact situation as above, I do not find that the Labour Court has committed any error in concluding that the punishment of dismissal from service considering the clean past record and the admission of the respondent, could be termed as being shockingly disproportionate. However, this Court stayed the award by its order dated 31/03/1995 and as a consequence of which, the respondent was kept away from employment and is now of a ripe age of 70 years (Date of birth 24/02/1945). Needless to state, the issue of reinstatement is, therefore, put to rest.

14. In the light of my conclusions as above, as the opportunity of reinstatement and discharging duties is lost, the situation needs to be salvaged so as to compensate the respondent appropriately. Nevertheless, some punishment needs to be imposed on the respondent as the act of misconduct cannot go unpunished and moreso when the respondent was a “Watchman”.

15. The respondent had an approximate remainder service of 180 months from the date of dismissal till his date of retirement 24/02/2003. Section 17(B) of the I.D.Act entitles the respondent to last drawn wages during the pendency of the proceedings before this Court or the Apex Court. Section 17(B) reads as under :-

“17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court: Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]”

16. In the light of the above, I am sustaining the order of the Labour Court granting 60% back wages from the date of dismissal

10/07/1987 till the date of the impugned judgment 6th January 1995. Needless to state, his monthly salary would have grown from February till his retirement in February 2003, which is a period of about 95 months. I find it appropriate to hold that the respondent would have earned at least an amount of Rs.1,500/- per month in between January 1995 to February 2003.

17. In the light of the above, considering the subsequent events as noted above, the impugned award is sustained to the extent of 60% back wages for the period July 1987 to January 1995 considering Rs.300/- per month as the last drawn wages. From February 1995 to February 2003, for an approximate period of 95 months, the petitioner shall pay the respondent an amount of Rs.1,500/- multiplied by 95 months without interest in the event this amount and the 60% back wages are paid to the respondent within a period of 8 (eight) weeks from today. If the said amount is not paid within the said duration, the back wages shall carry a simple interest of 3% p.a. from the date of judgment of the Labour Court and the amount of wages for the 95 months shall carry an interest of 3% p.a. from February 2003 onwards.

18. The respondent in addition to the above shall be entitled for the

gratuity for the period February 1995 to February 2003 as per the Gratuity Act and the said amount shall be paid within a period of 12 (twelve) weeks from today. Needless to state, the amount of Rs.5,000/- deposited by the petitioner and withdrawn by the respondent, shall be adjusted in the gratuity amount.

19. Since the payment of legal dues has been taken care of by this order, the respondent shall not resort to any litigation against the petitioner on any count whatsoever beyond what has been granted by this Court by modifying the impugned award.

20. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)