

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 271 OF 2014

Mr. Dharmendra M. Fadte,
Major in age,
Workman, represented by
All Goa General Employees Union,
P.O. Box no.90,
Vasco da Gama, Goa. Petitioner

V e r s u s

M/s. Kodak India Ltd.,
L-16, Verna Industrial Estate,
Verna Go, through its Manager Respondent

Mr. Valmiki Menezes, Advocate for the Petitioner.
Mr. M. S. Bandodkar, Advocate for the Respondent.

CORAM: N. M. JAMDAR, J.

DATE: 9TH FEBRUARY, 2015.

ORAL ORDER:

By this the petition, the workman-petitioner challenges the interim award dated 17th August, 2010 and the final award dated 6th December, 2011 passed by the Labour Court, Panaji-Goa dismissing the claim of the workman-petitioner for

reinstatement. The workman was dismissed from service by the respondent on 15th September, 2003.

2. The respondent is in business of manufacturing of films. The workman- Dharmendra Fadte was appointed on 2nd February, 1996. The workman formed an union and he become the president of the union. It is case of the respondent that sometime around in October 1999 the workman caused unrest amongst other workmen working in the department and threatened the co-workers and also abused them. According to the respondent, the petitioner was warned on several occasions, however, he did not mend his ways. He also threatened and abused and continued to threaten and abuse the co-workers. According to the respondent, since the workman-petitioner apologized, the matter was dropped. It is further the case of the respondent that the workman-petitioner refused to accept any communication and misbehaved with one Mr. Pednekar. He also threatened the workers while traveling in the bus coming towards the company.

3. The incident which led to the present inquiry occurred on 27th November, 2000 when according to the respondent, the petitioner entered the cabin of the Production Engineer without permission and misbehaved with the Assistant Manager. He also asked the security personnel to switch off the DG power supply to the plant and also threatened the Utility persons. According to the respondent, he also misbehaved and abused the housekeeper personnel and the security supervisor. Since the acts on the part of the

workman were misconducts, a charge sheet dated 28th September, 2000 was sought to be handed over to the workman, but he refused to accept the same. Thereafter, he was issued the additional charge sheet on 27th September, 2000.

4. An inquiry was instituted against the workman. He submitted his reply to both the charge sheets. During the inquiry the workman took employment abroad and he is working abroad. In the inquiry the Secretary of the Union deposed and contested the proceedings. The Inquiry Officer found that the charges against the workman were proved and the workman was found guilty of willful insubordination, disobedience of any lawful and reasonable order of a superior, instigating or resorting to obstruction aimed at or resulting in paralyzing the normal conduct or work of the company, using abusive language and threatening or intimidating any person within the company premises, violating common decency, act subversive of discipline, unauthorized use of company's property, restraining an employee either inside or outside the premises of the establishment, use of impolite or insulting or abusive language within the premises of establishment against any superior or any person authorized to work in the establishment and any such outside the premises of the establishment and/or if it effects or is likely to affect the discipline or work or business or reputation of the company. The Inquiry Officer accordingly submitted his report and held that the charges were proved. Thereupon, the respondent dismissed the workman-petitioner from service.

5. Industrial dispute was raised and reference was made to the Labour Court-II at Panaji as regards the termination of the workman w.e.f 15th September, 2003. The Labour Court found that the inquiry conducted was fair and proper. The workman was given adequate opportunity to represent himself and findings were not perverse. Accordingly, Part-I of the award was held against the workman. The Labour Court, thereafter, disposed of the reference by the final award on 6th December, 2012. The Labour Court found that there was no procedural irregularity while conducting the inquiry. There was no violation of principles of natural justice. The conduct and charges were proved and the punishment meted out was proper.

6. Mr. V. Menezes, the learned counsel for the petitioner submitted that the learned Judge did not considered the evidence of the defence witness, who clearly stated that two witnesses of the management were stated to be present inside the production cabin, were in fact in the workshop. He submitted that without any proper reason the evidence of the defence witness has been discarded.

7. Firstly, in writ jurisdiction it is not possible to re-appreciate the evidence which has been considered by the investigating officer and the Labour Court. The two management witnesses in whose presence the incident took place inside the cabin have deposed. Nothing has been

brought on record to shake their testimony. The Labour Court found that the defence witness could not state the basic facts. He could not state for how long the workman was in the Production Engineer's cabin. He also stated that he was not in general shift and he was at his work place. The Labour Court accordingly did not believe the version of the said defence witness and accepted the evidence of the management witness relied upon by the investigating officer. No perversity is found in this regard as has been pointed out by Mr. M. S. Bandodkar, learned counsel for the respondent apart from this incident the other incident that took place on the same day has been proved. Nothing is brought on record to show that the other incident of the same day did not occur. The incidents which took place on 27th September, 2000 of going into the cabin of the Production Manager and threatening the staff were serious enough for stringent action. The workman was the President of the Union and he ought to have exercised more restraint. Nobody had right to enter into another person's cabin and abuse the staff and insist on making phone calls from a private cabin. Such unruly behaviour by the President of the Union sends wrong signal to the rest of the members.

8. Mr. Menezes submitted that earlier incidents were taken into consideration to examine the proportionality of punishment, which could not have taken into consideration, as no inquiry was held in respect of those incidents. There is no merit in this submission. The respondent had produced the documents on record in respect of the earlier proceedings, which have been accepted by the Labour Court. Further, the

incident proved against the workman is serious enough to warrant stringent action of dismissal. The Labour Court has rightly relied on the decisions of ***New Shorrock Mills Vs. Mahesh T. Rao*** reported in 1997 1 CLR 13, ***Mahindra and Mahindra Ltd. Vs. N. B. Narawade*** reported in 2005 1 CLR 803, ***M/s. Tata Engineering & Locomotive Company Ltd. V/s. N. K. Singh*** reported in 2007 LLR 109, ***Maharashtra State Road Transport Corporation Vs. D. C. R. Mishra & Anr.*** reported in 2009 III CLR and in the case of ***Premier Automobiles Ltd. Vs. H. S.T. Hedge & Ors.*** reported in 2006 III CLR 527. It is laid down in these decisions that gross insubordination and indiscipline cannot be tolerated in an industrial establishment.

9. In view of this position, no perversity can be found in the decision of the Labour Court. There is no merit in this petition. The petition is accordingly rejected.

N. M. JAMDAR, J.

Ap/-