

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3345 OF 2002

M/s Johnson & Johnson Limited Petitioner

Vs.

Maharashtra General Kamgar Union Respondents
& Ors.

Mr. S.K. More i/by Mr. M.S. Naik, the advocate for the Petitioner.
Mr. Vijay Gharat, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.

Date : 26th March, 2015

PC :

1 This petition by the employer is to challenge award dtd. 18th February, 2002, by which the petitioner is directed to reinstate respondent no.2 –employee with full back-wages w.e.f. 18th May, 1999.

2 Respondent no.2 was employed in the petitioner's factory at Mulund, Mumbai and was working as a “Watchman” in the Security Department. During the period 1993-1997, he had remained absent on number of days in every year, without prior permission. The details of his absentism are as follows:

<u>Year</u>	<u>Days of absence</u>
1993	97
1994	116
1995	106
1996	106
1997	133

Respondent no.2 was issued charge-sheet dtd. 28th January, 1998 for unauthorised absence on various occasions. He replied by his letter dtd.2nd February, 1998 claiming that his absence was on account of the Union activities. On 12th February, 1998, the second charge-sheet was issued to respondent no.2 for his absence, without leave and permission for the period 1st January, 1998 till the date of issuance of the charge-sheet. The second charge-sheet was also replied by him, by his letter dtd. 5th March, 1998 taking the same stand that he was remained absent on account of Union activities. The domestic enquiry commenced on 3rd March, 1998 and was concluded on 9th April, 1999. On 28th April, 1999, the enquiry officer submitted his findings and report on charge-sheet dtd. 28th January, 1998 and 12th February, 1998 holding respondent no.2 guilty of the charges levelled against him. Thereafter notice was given to him to show cause as to why action of termination from service be not taken against him. Respondent no.2 did not send any reply to the show cause notice. Then, by the order 18th May, 1999, the services of respondent no.2 were terminated by the petitioner.

3 Respondent no.2 then raised the industrial dispute with the conciliation officer, which was ultimately referred to the court for adjudication and Reference (IDA) No.35 of 2002 was made. The Industrial Court on 6th September, 2001 passed Award-I holding that the enquiry conducted against respondent no.2 was fair and proper and findings of the enquiry were valid. Part-II of the Award was published on 18th February, 2002 directing the petitioner to reinstate respondent no.2 with full back-wages and continuity of service from 18th May, 1999. The Industrial Court was of the opinion that respondent no.2 could not have been subjected to double punishment for the same mis-conduct. According to it, the first charge-sheet dtd. 28th January, 1998, which was issued for habitual absentism was illegal because for the period 1993-1997, respondent no.2 had been awarded punishment once of suspension from service for two days. The Labour Court also expressed it's opinion that the petitioner had failed to prove the charges in the second charge-sheet and that because respondent no.2 was a committee member of the Union, the petitioner was victimising him. It finally expressed it's opinion that the order of dismissal is definitely shockingly disproportionate to the alleged mis-conduct of respondent no.2 and against the principles of natural justice.

4 Mr. More, the learned advocate for the petitioner submits that at the time of admission of this petition, the petitioner had deposited the arrears of back-wages till the date of passing of the award in this court and that amount has already been withdrawn by

respondent no.2. He also states that pursuant to the order dtd. 17th April, 2003 in this petition on the application filed by respondent no.2, he has been receiving wages under Section 17(b) of the Industrial Disputes Act.

5 The question to be considered in the petition is therefore whether despite admission on the part of respondent no.2 of remaining absent from service regularly and for a long period of time, whether the punishment awarded of termination of service is proportionate. The observations of the Labour Court that the charge-sheet dtd.28th January, 1998 is illegal is not correct. The charge-sheet dtd.12th February, 1998 was for a specific period of absence without leave/ permission. The period was 1st January, 1998 till 12th February, 1998. The charge-sheet dtd. 28th January, 1998 is for the habitual absentism on the part of respondent no.2. The charges levelled against respondent no. 2 in the two charge-sheets being entirely different. The Labour Court could not have said that it amounted to prosecuting respondent no.2 twice and therefore one of the charge-sheets i.e. dtd. 28th January, 1998 is illegal.

6 Coming to the propriety of the punishment awarded to respondent no.2, I find substance in the opinion expressed by the Labour Court that the punishment imposed is disproportionate, but after recording that observation, the Labour Court could not have gone to other extreme of reinstating him in service with full back-wages and continuity in service. The Labour Court ought to have

appropriately reduced the back-wages payable to respondent no.2. In fact, in my opinion reinstatement ought to have been without any back-wages considering the extent of absentism by respondent no.2. However, considering the fact that respondent no.2 has already received back-wages until the date of the award by withdrawal of amount deposited by the petitioner in this court and that he has also been receiving wages under Section 17(b) of the Industrial Disputes Act, in my opinion, the appropriate order to be passed in the petition will be reinstatement of respondent no.2 without any more back-wages. The award impugned in the petition is modified accordingly and the petition is disposed off.

(Smt. R.P. SondurBaldota, J.)