

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.2254 OF 2006**

Association of Engineering Workers.)
252, Janata Colony, Ram Narayan)
Nakar Marg, Ghatkopar (East),)
Mumbai – 400 077.)...Petitioner

versus

Hindustan Motor Manufacturing Company)
32/A, Vidayavilla Compound,)
S.Radhakrishnan Road, Andheri (East))
Mumbai – 400 077.)...Respondent

Mr.N.M.Ganguli with Ms.Karuna Yadav, for Petitioner.

Mr.Anand Pai with Mr.R.S.Pai with Ms.Radha Ved i/b. Sanjay Udeshi
& Co., for Respondent.

CORAM : G. S. KULKARNI, J.

Reserved on : 16th APRIL, 2015

Pronounced on : 6th MAY, 2015

JUDGMENT :

1. This Writ Petition challenges the Award dated 30 March 2004 passed by the learned Presiding Officer, Labour Court, Mumbai, in Reference (IDA) No.645 of 1994. By the impugned Award, the Labour Court has answered the reference under Section 10(1) of the Industrial Disputes Act, 1947 (for short 'the Act') against the petitioner – employee and has held that the charge of misconduct against the concerned workman Shri.Kashinath D. Bhare (for short 'the workman') under Standing Orders 24(a), 24(b), 24(k), 24(l) and 24(q) stand proved and the punishment of dismissal as imposed on the concerned workman by the respondent – employer does not call for interference.

2. In brief the facts are : Petitioner is a registered Trade Union espousing the cause of the workman. The Deputy Commissioner of Labour (Conciliation) on 29 July 1994 made the following reference to the Labour Court under Section 10(1) of the Act.

“SCHEDULE

Shri.Kashiram D.Bhare should be reinstated with full back wages and continuity of service with effect from 17.7.1993.”

The case of petitioner in the statement of claim as filed before the Labour Court was that the workman was in the permanent employment of the respondent an engineering industry since 1 February 1979 as a Helper and his last drawn wages was Rs.1750/- per month. Almost all the workmen were the members of the petitioner – Union which was to the dislike of the respondent. The respondent, therefore, decided to break the Union and victimized those workmen who were the committee member of the petitioner. The workman concerned in the present proceedings was one of the committee members. The workman was served with a dismissal order dated 16 July 1993 and only after service of the dismissal order it came to the knowledge of the workman that there was ex-parte inquiry which was held by the respondent against the workman. It was the case of the petitioner that workmen were kept out of the company since 19 April 1993 due to a lock out imposed by the respondent. The lock out was intended to break the Union and teach a lesson to the workman for their Trade Union activities. The workman on account of the lock out had gone to his native place to attend a marriage of his relative and only after returning in the month

of July,1993, he came to know of the order of dismissal. No charge-sheet was served on the workman, the workman had no knowledge of the inquiry proceedings, the workman was dismissed in gross breach of principles of natural justice and thus, the order of dismissal was illegal and deserved to be set aside with a direction to the respondent to reinstate the workman. The only case, therefore, as pleaded in the statement of claim was breach of principles of natural justice.

3. The respondent appeared before the Labour Court and filed its written statement denying the allegations as made in the statement of claim. The respondent's case in the written statement was that the respondent had engaged about 10 to 11 casual workers. By the end of year 1992 about 50% of the permanent workmen had left the previous Union viz. Association of Engineering Workers Union and had joined the petitioner-Union. The petitioner-Union had raised a charter of demand on behalf of all the workmen, though only 50% of the workmen had joined the petitioner Union. In the middle of March,1993 talks with the petitioner Union failed. On failure of the talks, the Committee members of the petitioner Union and some other

leaders of the workmen instigated the workmen to start violent and unruly agitations and willful non-co-operation with the management with a view to compel the company to accept the dictates of the Union. From the beginning of April, 1993, five workmen which included the concerned workman willfully and deliberately threatened the partner of the respondent not to continue with the casual workman till the charter of demand of the petitioner-Union is settled failing which threats of serious consequences were given. The workmen including the concerned workman indulged into several acts of serious misconduct beginning from 1 April 1993 and continued this for several days thereafter. The misconduct was in the nature of illegal strike by adopting sit down strike, go slow and several other acts of force, violation, threats to the representatives of the employer, humiliating the representatives of the employer which severely affected production and resulted into the respondent declaring a lock out on account of workmen failing to give a undertaking of good behaviour when at work. It is the respondent's case that resultantly the workman and four others were issued a charge-sheet dated 1 May 1993. The workmen were also placed under suspension. The details of the misconduct of the workman under the model standing order

was enumerated in the charge-sheet and that the workmen were informed that an inquiry would be held on 13 May 1993 and were called upon to submit their written explanation. The charge-sheet was sent to the workman by Registered post as also Under Certificate of Posting at his residential address as furnished to the respondent. The workmen, however, remained absent and the Inquiry Officer had, therefore, adjourned the inquiry proceedings to 22 May 1993. Further as again the workman remained absent, the inquiry proceedings were adjourned to 5 June 1993. Again a notice of adjourned date of hearing was given by letter dated 22 May 1993. On the adjourned date of hearing the workmen however remained absent. The Inquiry Officer, therefore, conducted an inquiry by examining two witnesses of the respondent. The Inquiry Officer submitted his findings dated 7 July 1993 to the respondent on the basis of which the respondent passed the dismissal order dated 16 July 1993 to take effect from 17 July 1993. It was the case of the respondent that thus complete opportunity was given to the workmen to attend the inquiry proceedings, however, the workman refrained to turn up and participated in the enquiry proceedings. The respondent – Management also contested the statement of claim of the workman

on merits that the misconduct as alleged in the charge-sheet was correct, legal and proper inasmuch as the workman had resorted to go slow, sit down strike, violent meetings, assault etc. It was stated that the respondent was left with no alternative but to declare lock out which was resorted after following due process of law and after displaying several notices to the workmen requiring the workmen to refrain from acting in a manner prejudicial to the industry. The contention of the workman that the charge-sheet was not received by him was also denied.

4. As regards the observance of the principles of natural justice, perversity and fairness of the enquiry proceedings before the enquiry officer, the Labour Court had delivered a Part-I Award dated 27 April 2001, by which it was held that the Inquiry as undertaken by the respondent was fair and proper and that the findings of the Inquiry Officer were not perverse. Thereafter, the Labour Court proceeded to adjudicate on the reference by an Award dated 29 May 2001. The reference was partly allowed whereby the respondent was directed to pay lump-sum payment of Rs.50,000/- to the workman from the date of publication of the Award by the appropriate

Government, as compensation towards loss of future employment by treating the workman as discharged. It was held that the workman was not entitled to the benefit of reinstatement, continuity of service alongwith payment of full back-wages, but the punishment of discharge be imposed on the workman for the proved misconduct in the inquiry proceedings.

5. The award dated 29 May 2001 passed by the Labour Court was challenged by the petitioner by approaching this Court in Writ Petition No.173 of 2003. By a judgment dated 14 January 2004, the learned Single Judge of this Court allowed the Writ Petition by issuing the following directions:-

“8. In the result, while leaving open all the issues sought to be raised by the parties, the impugned awards are hereby quashed and set aside and the matter is remanded to the Labour Court to give an opportunity to the respondent company to lead evidence in support of the charges against the employee and thereafter for the Labour Court to dispose of the case in accordance with the provisions of law. Considering the fact that the matter relates to the year 1994, needless to say that the Labour Court is expected to dispose of the matter as expeditiously as possible and in any case on or before 31st December 2004. The Petition made absolute with no order as to costs.”

6. Pursuant to the above orders of this Court, the parties lead evidence before the Labour Court. Respondent examined two witnesses viz. Mr.Himanshu Jadia, the partner of the respondent and Mr.Bali M.Sharma, the Supervisor, who filed their affidavits in lieu of examination in chief. These management witnesses were extensively cross-examined on behalf of the petitioner. The workman examined himself and was cross examined on behalf of the respondent. The learned Presiding Officer of the Labour Court thereafter proceeded to adjudicate the reference and has passed the following Award:-

- “1. The Reference stand answered in negative.
2. The second party/concerned workman failed to make out any case for grant of relief in his favour. Hence, prayer for grant of relief in terms of order of reference mentioned in schedule to the order of reference is hereby rejected.
3. The misconducts enumerated under standing order 24(a), 24(b), 24(k), 24(l), 24(q) are proved to the hilt.
4. The misconducts alleged to have committed under standing order 24(d) and 24(r) was not proved by the satisfactory evidence hence the concerned workman is absolved of the said charge.
5. The misconducts proved under standing order 24(a), 24(b), 24(k), 24(l), 24(q) are serious enough to justify punishment of dismissal and no inference

is called for from the court in the decision of the management. The action of the management is hereby stand confirmed.

6. The second party shall not entitled to any relief.

7. The award be sent to the appropriate Government for its publication.”

7. I have heard the learned Counsel for the parties. With their assistance I have gone through the relevant documents and the impugned judgment and Award of the Labour Court.

8. Learned Counsel for the petitioner in assailing the impugned Award, has made the following submissions:-

(i) the Award deserves to be set aside as the Labour Court has failed to appreciate that the charges as framed against the workman were vague and there was no application of mind on the part of the respondent in issuing charge-sheet.

(ii) the reference was required to be allowed as it was a case of no evidence against the workman and hence, the charges could not have been said to be proved.

(iii) even assuming that the charges against the workman were proved, the Labour Court has not discharged its obligation under

Section 11A of the Industrial Disputes Act.

(iv) the punishment awarded to the workman is disproportionate.

In support of his submissions, the learned Counsel for the petitioner has relied on the following decisions:- (i) *Sur Enamel and Stamping Works Ltd. Vs. Their Workmen*¹; (ii) *Crompton Greaves Ltd. Vs. The Workmen*²; (iii) *Union of India Vs. Shri.Ramesh Cotton Mills Ltd.*³; (iv) *Scooter India Ltd. Vs. Labour Court, Lucknow & Ors.*⁴; (v) *Girja Shankar Tiwari & Anr. Vs. Hirday Ranjan Chakraborty & Anr.*⁵; (vi) *Colour-Chem Ltd. Vs. Alaspurkar A.L. & Ors.*⁶; (vii) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.*⁷; (viii) *Tapash Kumar Paul Vs. BSNL & Anr.*⁸; (ix) *Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd.*⁹; (x) *Harjinder Singh Vs. Punjab State Warehousing Corporation.*¹⁰

9. On the other hand the learned Counsel for the respondent submits that the present petition does not warrant any interference in the exercise of its jurisdiction under Articles 226 and 227 of the

1 Vol.XXV F.J.R. 88.

2 AIR 1978 Supreme Court 1489

3 AIR 1978 Supreme Court 1491

4 AIR 1989 Supreme Court 149

5 AIR 1989 Supreme Court 151

6 1998 ILLJ 84

7 (2013)10 Supreme Court Case 324

8 2014 LAB.I.C. 4486

9 (2014)11 S.C.C. 85

10 (2010)3 SCC 192

Constitution of India, as the scope for interference is very limited. The learned Counsel for the respondent contends that the charges as contained in the charge-sheet were absolutely clear. The petitioner at no point of time even before the Labour Court made any grievance in regard to the nature of charge-sheet which was issued and has fully participated in the inquiry as undertaken by the Labour Court by leading his evidence as also cross examining the witnesses of the respondent. It is submitted that from evidence which has come on record clearly show that the charges against the workman were proved and that the findings of facts as recorded by the Labour Court in the impugned Award cannot be disturbed. It is submitted that the findings of the Labour Court are based on evidence and that there is no perversity whatsoever in these findings as recorded by the Labour Court. It is submitted that the petitioner has failed to point any perversity in the findings of fact as recorded in the impugned Award. The contention on behalf of the respondent is that the submission of the petitioner are of such a nature as if this Court is sitting in appeal against the Award passed by the Labour Court so as to re-appreciate the evidence to come to a different conclusion from the one reached by the Labour Court. It is submitted that this approach on the part of

the petitioner is wholly impermissible in law. Learned Counsel for the respondent has drawn the attention of the Court to the evidence as recorded by the Labour Court and appreciation of the same in the impugned award the each of the charge, which shows that the findings as recorded by the Labour Court is completely based on the evidence and in no manner perverse so as to call for interference of this Court in exercise of writ jurisdiction. Learned Counsel for the respondent submits that the petitioner has miserably failed to demonstrate perversity in the findings as recorded by the Labour Court. In support of the submissions, the learned Counsel for the respondent has relied on the decisions in (i) *L.K.Verma Vs. HMT Ltd. & Anr.*¹¹; (ii) *Saini R.S. Vs. State of Punjab & Ors.*¹²; (iii) *Muralilal Ramharak Gupta Vs. India Link Chain Manufacturers Ltd.*¹³; (iv) *Ware's Educational Trust & Anr. Vs. Subhash Bhagwan Khedkar & Anr.*¹⁴; (v) *Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*¹⁵; (vi) *Mahatma Phule Krishi Vidyapeeth Vs. 1.Vitthal Sakharam Kadam & Anr.*¹⁶

11 (2006)2 SCC 269

12 1999 – II LLJ 235

13 2005 II CLR 674

14 2015(2) Mh.L.J. 870

15 AIR 1965 SC 1803,

16 (2010) 1 Mah L.J. 818

10. After having considered the rival submissions of the parties and after perusing the documents on record and the impugned award, it is quite clear that there were certain disputes between the petitioner-Union and the respondent-employer from the year 1992 which were aggravated in the year 1993 when the petitioner-Union headed by Union leader Dr.Datta Samant served a general charter of demand on the respondent in January,1993. There was a failure of the negotiations between the petitioner and the respondent. One of the issues in the charter of demand was employment of casual employees and the claim for increase in wages by an amount of Rs.2000/-. It is an admitted fact that the workman was a committee member of the petitioner-Union. It has come in the evidence that the workman had taken active part in talks with the representatives of the respondent. A perusal of the charge-sheet shows that the charges of misconduct as contained in the charge-sheet pertain to various incidents which had taken place on 1 April 1993, 15 April 1993, 16 April 1993, 17 April 1993, 19 April 1993, 20 April 1993, 23 April 1993, 24 April 1993, 25 April 1993, 28 April 1993, 29 April 1993. The various acts of misconduct as contained in the charge-sheet were

instigation and abetting other workmen to strike, to resort to sit down strike till the casual workers were removed from factory, abusing representatives of the respondent in highly indecent, derogatory, defamatory, vulgar language, remarks and slogans, threats of physical violation, gherao of representatives of the Management compelling them to leave workshop, preventing the management personnel from entering the factory floor and giving threats of physical harm, attempting to assault staff members and partners, preventing delivery of finished goods by causing physical obstruction, preventing the representatives of the Management to enter the factory premises and threatening with dire consequences. A common charge-sheet was issued to the workman who is at serial No.1 alongwith four others who were the committee members of the petitioner. The charge-sheet is a detailed one. The misconduct which was alleged against the workman was under model standing order 24(a), 24(b), 24(d), 24(k), 24(l), 24(q), 24(r). A plain reading of the charge-sheet does not indicate that there is any vagueness as alleged by the petitioner.

11. The evidence which has come on record on behalf of the respondent was of Mr.Himanshu Jadia the partner of the respondent

and that of Mr.Bali M.Sharma, a Supervisor who was in the employment of the respondent for a period from 1988 to 1999. A perusal of the affidavit in lieu of examination-in-chief of both these witnesses as also the cross-examination as undertaken on behalf of the workman clearly demonstrates that the incidents of misconduct which had taken place on the date as alleged in the charge-sheet stand proved. Mr.Himanshu Jadia, in his evidence on behalf of the Management spelt out in detail about the various incidents which amounted to a misconduct on the part of the workman. A perusal of his cross examination shows that the said evidence is hardly disturbed. The only admission which is elicited in the cross examination is that in respect of these misconducts no police complaint or any legal proceedings were undertaken on behalf of the employer in this regard. However that cannot be a ground to disbelieve the evidence as come on record to come to a conclusion that the charges are not proved. Similar is the position of the evidence of the other witness Mr.Bali M.Sharma. The evidence of both the witnesses of the respondent clearly reveal that the witnesses have deposed in respect of each and every incident of misconduct which had taken place between 1 April 1993 till 29 April 1993. These facts

in no manner are disproved in the cross-examination of these witnesses as undertaken on behalf of the petitioner. It, therefore, certainly cannot be said that the charges as alleged against the workman are not proved or the present case is a case of no evidence as urged on behalf of the petitioner. The learned Presiding Officer of the Labour Court in adjudicating the dispute has extensively considered the evidence in respect of each of the charges, to record a finding of fact that the charges as alleged against the workmen not only stand proved but substantially proved. Learned Counsel on behalf of the petitioner has failed to point out any perversity in these finding as recorded by the Labour Court.

12. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case “*Food Corporation of India & Ors. Vs. Sarat Chandra Goswami*”¹⁷ to contend that the Disciplinary Authority should have applied its mind to the material before it, before issuance of charge-sheet. This decision in the facts of the case in hand is of no avail to the petitioner. In this decision, the Supreme Court while interpreting the provisions of Regulation 60 of the Food Corporation of India (Staff) Regulations, (1971), which contemplated

¹⁷ 2014 LAB.I.C. 2809 (S.C.)

the procedure for imposing minor penalties, held that it was necessary for the disciplinary authority to form an opinion whether it is necessary to hold an inquiry in a particular case or not and that even in case where a summary procedure for imposing minor penalties is adopted, the same cannot be exercised in an arbitrary manner. It was held that the opinion was required to be formed by the Disciplinary Authority on objective criteria so that the employer can satisfy the Court that an opinion was formed on certain subject matter indicating that there was no necessity to hold an inquiry. The facts in the present case are, however, totally different. The workman was issued a charge-sheet and an inquiry was held, however, in view of the order of this Court dated 14 January 2014 in Writ Petition No.173 of 2003, the respondent was granted an opportunity to lead evidence before the Labour Court to prove the charges. It cannot be said that in the present case there was no material with the respondent to form an opinion to issue a charge-sheet. The contention on behalf of the petitioner that no opinion was formed before issuing the charge-sheet in the facts of the case, therefore, cannot be sustained and in fact would stand negated from a plain reading of the charge-sheet, neither can it be raised for the first time in these

proceedings. It is, therefore, surprising as to how this decision of the Supreme Court is being relied on behalf of the petitioner. The reliance on behalf of the petitioner on the other decisions as referred above, in my opinion, is of no avail to the petitioner as there can be no quarrel about the principles of law these decisions lay down. However, the petitioner is not correct in applying those principles to the facts of the present case inasmuch as that in the present case the charge-sheet categorically stated the number of misconducts. Further the respondent was accorded opportunity to lead evidence before the Labour Court to prove the charges and the petitioner had a full opportunity to rebut the case of the respondent. The petitioner, however, did not examine any other witnesses except the concerned workman. On the other hand, the respondent had examined two witnesses who were extensively cross examined on behalf of the petitioner. Perusal of the evidence clearly indicates that there is no substance in the submission as made on behalf of the petitioner that the charges are not established on evidence as also that the punishment awarded was not justified. Reliance as placed on behalf of the petitioner on the decision of the Supreme Court in the case of *“Scooter India Ltd. Vs. Labour Court, Lucknow & Ors.”* (supra) to

contend that even if the mistake proved against the workman is of serious nature, it would be open to the Labour Court to award a lesser punishment in view of the provisions of Section 11-A of the Industrial Disputes Act. It is contended that the Labour Court has not exercised its powers judicially by upholding the termination. This contention on behalf of the petitioner is wholly without merit. The Labour Court in the facts of the case on appreciation of evidence has recorded a finding of fact that charges against the workman which were quite serious, stood proved and on this consideration on being so satisfied has reached to an ultimate conclusion that the punishment which was awarded to the workman was appropriate. There is nothing illegal in this approach of the Labour Court. Perusal of the impugned award clearly indicates that the Labour Court has taken into consideration the entire material on record and after examining the evidence reached to the conclusion to reject the reference. The decision of the Supreme Court in the case of "*Scooter India Ltd. Vs. Labour Court, Lucknow & Ors.*" (*supra*), is, therefore, of no assistance to the petitioner. The submission on behalf of the petitioner that relief of reinstatement with continuity of service with full back-wages ought to have been granted by the Labour Court thus also cannot be

countenanced. The decision cited in support of this proposition, hence are of no avail to the petitioner.

13. The next submission urged on behalf of the petitioner is that the punishment awarded is disproportionate. The learned Counsel for the petitioner however has failed to support this contention on any material which would substantiate this plea. Learned Counsel for the respondent in responding to this submission on behalf of the petitioner has drawn my attention to the specific evidence which has come on record, a perusal of which clearly shows that the petitioner had actively participated in go-slow, sit down strike on the occasions as narrated in the charge-sheet as also he was a part of the group which prevented the representatives of the management to enter the factory shop premises as also the factory premises. Furthermore, it is proved on evidence that the workman had used filthy and abusive language against the Management and against two witnesses who have deposed on behalf of the Management. It is, therefore, clear that this was not the case where there was no evidence. There was sufficient material to sustain a charge of such misconduct. The Labour Court has appreciated evidence on each of

the charges and has recorded its finding on each of these charges. On this material, the Labour Court had held that the finding of misconduct was established. Thus, there is no perversity in the Labour Court holding that the charges under Standing Orders 24(a), 24(b), 24(k), 24(l) and 24(q) against the workman stood proved. Moreover, it can be seen that the charges against the petitioner were quite serious, the normal functioning of the factory was completely disturbed in view of these series of acts of commission and omission on the part of the workmen in which he indulged alongwith other workers. In view of this finding on misconduct, the punishment of dismissal certainly cannot be regarded as disproportionate or a victimization of the workman in any manner, as contended on behalf of the petitioner.

14. Learned Counsel for the respondent is justified in submitting that the Labour Court has undertaken an enquiry to test on evidence whether the respondent was justified in imposing the punishment awarded to the workman and after giving a full fledge opportunity to the workman to prove otherwise has reached to a conclusion that the action of the respondent was justified. In this

context learned Counsel for the respondent is justified in relying on the decision of the Supreme Court in the case of “*Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*” (supra), is apposite. The facts involved in the said decision pertained to the unruly behaviour of the workman who came to be discharged after notices and warnings without enquiry. The Supreme Court has laid down as an established principle of law that it was perfectly justified for the Tribunal to give opportunity to the parties and try the case on merits and accordingly, judge the award of the punishment. In any event the petitioner has failed to demonstrate any perversity in the finding as recorded in the impugned Award.

15. The reliance placed on behalf of the respondent on the decision of the Supreme Court in the case of “*Saini R.S. Vs. State of Punjab and Ors.*”(supra) in support of the contention that this Court in its writ jurisdiction, cannot re-appreciate evidence and record a different findings than the one reached by the Labour Court, is quite apposite. The Supreme Court in the said decision has laid down the parameters of such interference as under:-

“15. Before advertng to the first contention of the appellant regarding want of material to establish the

charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the enquiry authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. (emphasis supplied)

16. In view of the above discussion, I have no hesitation to hold that the Award of the Labour Court does not suffer from any perversity. The interference of the Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not warranted. There is no merit in the petition. It is accordingly dismissed. No order as to costs.

(G. S. KULKARNI, J.)