

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 4682 OF 2000

M/s.Telco Employees'
Consumers Co-op. Soc. Ltd.,
Pimpri, Pune – 411 018.

.. Petitioner

Versus

1. Shri P. S. Narkar,
Presiding Officer,
First, Labour Court, Pune.
Having His office at P.M.T.
Commercial Building,
Swargate, Pune – 411 042.

2. Shri Ramchandra Mahadeo
Gargote,
At & Post Waki (Bk.),
Taluka – Khed, District - Pune

.. Respondents

Mr.K.S.Bapat, for the Petitioner.
Mr.Rajdeep Khadapkar, for the Respondents.

***CORAM: N.M. JAMDAR, J.
Wednesday, 13 January 2016***

Oral Judgment :

This petition is filed by the Petitioner-Management challenging the Award of the Labour Court Pune dated 7 December 1999. In part I Award dated 13 November 1996, the Labour Court held that the inquiry was fair and proper. By the impugned Award,

the Labour Court directed reinstatement of the Respondent No.2 (the Respondent) with continuity of service and 50 per cent back wages. The reinstatement was ordered primarily on the ground that the punishment of dismissal, even though charges were proved, was disproportionate.

2. The Petitioner is a Co-operative Society of Employees of Telco. The Petitioner-Society had undertaken to provide canteen services to its employees working at Telco (Tata Engineering and Locomotive Company-now called as Tata Motors Limited) Pimpri, Pune. The Petitioner Society was providing catering services to around 16000 employees of Telco who were taking their meals in the canteen. The Respondent was working in the said canteen from where snacks and tea were provided for the workers of Telco. The Respondent No.2 was issued a show-cause notice on 6 November 1989. The first charge against the Respondent was that the Petitioner had put up an advance notice informing that the canteen would operate on 22nd and 24th March 1989, however the Respondent and his colleagues obstructed the workers from reporting to the canteen. According to the Petitioner since the canteen was serving food to almost 16000 workers of Telco, it caused great inconvenience. The second charge was that on 3 April 1989, the Respondent No.2 and others instigated canteen employees between 6 a.m. and 9.30 p.m. and stopped the working of temporary employees. The third charge was that on 10 September 1989 after finishing the work the Respondent did not come to the canteen and he was found sitting idle and when he

returned to the canteen and was asked why he did not report, he abused his superior in filthy language. The fourth charge was that he along with his colleague proceeded on illegal strike and obstructed day-to-day functioning. Accordingly clauses 24(a), 24(b), 24(k), 24(l), 24(q) and 24(c) of applicable Standing Orders were invoked. The inquiry was held, wherein witnesses were examined and the Enquiry Officer submitted his report. The Respondent was found guilty of the charges and by order dated 1 January 1992, he was dismissed from services.

3. An industrial dispute was raised by the Respondent No.2. Deputy Commissioner of Labour, Pune made a reference under Section 10 of the Industrial Disputes Act 1947, to Labour Court, Pune. The Respondent filed a statement of claim. The Respondent contended that the charges levelled against him were false and concocted. He contended that the charges were not true and the order of dismissal was by way of victimisation. The Petitioner filed its Written statement and contended that in the enquiry charges were proved. It was contended that the job of the Respondent was such that even slightest delay in supplying food to 16000 workers would lead to industrial unrest. It was contended that the Respondent prohibited the other workmen from reporting to duty instigating them from abstaining from work and abused the superiors for which he was rightly dismissed from services.

4. The Labour Court considered the rival contentions as regards the fairness of the enquiry and by order dated 13 November 1996

held that the enquiry was fair and proper and the reference to proceed further. This order was not challenged. The Labour Court thereafter considered the matter for the purpose of Part II Award. The Labour Court framed the issues as to whether the misconduct of the Respondent was proved and held that it was proved and whether the punishment imposed is proportionate. As regards the misconduct the Labour Court after considering the material on record came to the conclusion that the absence from 22nd to 24th March 1989 inspite of issuance of notice, was proved. As regards the incident of 10 September 1989, using abusive language and indecent behaviour with the superiors, same was proved and resorting to strike was also proved. Thereafter the Labour Court considered the issue of proportionality of the punishment. The Labour Court held that the services of the Respondent was unblemished and the punishment is shockingly disproportionate and while considering the relief, Court is required to see that the workman is not thrown on streets at the same time discipline is not disturbed. The Labour Court thereafter held that the punishment was disproportionate and directed reinstatement with 50 per cent back wages and continuity of services. This order has been challenged in this petition.

5. I have heard Mr.Bapat, learned counsel for the Petitioner and Mr.Khadapkar, learned counsel for Respondents.

6. By order dated 18 October 2000, Rule was issued and interim relief as regards reinstatement was granted. The Respondent

thereafter filed a Civil application as regards the wages payable under Section 17-B of the Act, which was granted. Thereafter the Petitioner filed Letters Patent Appeal challenging the said order which is pending. Since the Letters Patent Appeal is only as regards the issue of service under Section 17(B), it will not preclude this Court from deciding the validity of the Award of the Labour Court.

7. Since in the Part I Award the Labour Court has held that the enquiry was fair and proper and also in the Part II the Labour Court has held that the misconduct of the Respondent is proved, only question therefore, would arise is the finding regarding proportionality of the punishment.

8. Mr.Khadapkar, the learned counsel for the Respondent contended that even though the Respondent has not challenged the Part 1 or finding regarding misconduct being proved or deprivation of 50 per cent back wages, this Court is not powerless to examine the position as to whether charges are proved and the finding of the Labour Court in that regard is correct or otherwise. For that purpose he relied upon the decision of the learned Single Judge of this Court in the case of *S.K.Awasthy Vs M.R.Bhope, Presiding Officer, 1st Labour Court and others* – **1994 (68) F.L.R.(Bom., H.C) pg.841**. Firstly, the Respondent had an opportunity to challenge the Part 1 Award. He also had an opportunity to file petition challenging the finding of misconduct and deprivation of 50 per cent back wages, the petition is pending since the year 2000. No

attempt is made to challenge this finding. The issue therefore, stands concluded against the issue that the misconduct stands concluded. Merely because this Court has a power to examine the correctness of a finding in absence of a specific challenge to the Award, it does not mean that in every case without any explanation from a party as to why such challenge was not levied that the Court would exercise the power. In the case relied upon by Mr.Khadapkar, facts of the case were such that the Court *suo motu* felt that the Part I Award, though not challenged by the Management, was not proper. In that case the workman who had filed the petition was charged with disorderly behaviour in a hospital where she was working as a nurse. At the time of hearing of the petition, the Petitioner therein had left India and thereafter the petition was carried further by the advocate engaged by her. The learned Single Judge while going through the Award felt that Part I Award was completely perverse and the behaviour of the Petitioner was such that no hospital management could tolerate and that being a matter of discipline amongst medical staff working in hospital, the Court found that case of invoking powers of writ Court to even examine the merits of challenge to Part I Award even though there was no challenge, had to be exercised. It is in those extraordinary circumstances that the Court proceeded to examine the matter.

9. Even assuming such power has to be exercised in the present case there is hardly any case on merit. Mr.Khadapkar's contention

is that the charges are not proved. For that purpose he has tendered a compilation of deposition of witness before the Enquiry officer. He submitted that the witness Shri R.H.Chavan who deposed before the Enquiry Officer had not referred to the words used by the Respondent No.2 and has only referred to a report. He submitted that therefore the misconduct of abusing the superior is not proved. This submission cannot be accepted. This witness may have chosen not to utter the same abusive words used by the Respondent before the Enquiry officer, instead he has stated that whatever words the Respondent used have been reproduced in the report which is exhibited. Therefore, there is no merit in this contention.

10. Mr.Khadapkar then sought to point out to the evidence of the other witness to contend that the charges are not proved. In fact perusal of the depositions would show that all the witnesses have narrated the incident against the Respondent. Even otherwise, statement of Mr.Chavan who has been cross-examined is sufficient enough against the Respondent. In view of this position, matter will now have to be examined on the basis of the findings rendered by the Labour Court.

11. The Labour Court has held that charge of abusing the superior has been proved. I have seen the words used by the Respondent which have been reproduced in the charge-sheet in Marathi. They are indecent and clearly challenging the authority of the superiors. This charge of abusing superiors is proved along

with the other charges. These charges cumulatively show that the Respondent had indulged in lawless behaviour and his conduct was not in consonance with discipline which needs to be maintained in an industrial establishment.

12. The reason given by the Labour Court for interfering with the punishment is reproduced as under :

'10. Issues No.3 and 4 :- Since the punishment is not justified and proportionate, the second party is entitled to reinstatement with continuity of service. In this connection, the first party has suggested that instead of reinstatement, some relief of grant of compensation in lieu of reinstatement may be considered and awarded to the second party. In support of his contention, he relied upon the decision of Hon'ble Bombay High Court in V. Subramaniam V/s. Deepak Nitrite Limited. However, the ratio cited therein is not applicable to the present case. In that case, the enquiry was not held and the workman concerned was holding position of confidence and trust. But in the instant case, the second party is catering attendant which is not the post of confidential and trust in nature. In the present case, the enquiry against the workman is held and conducted. Moreover, I have held that the punishment imposed on the second party is disproportionate and therefore, the second party is entitled to reinstatement. The citation is not, therefore, applicable to the present case.'

The perusal of the reasons show that the Labour Court has interfered with the punishment on sympathetic considerations. It has also felt that second show-cause notice was not given and therefore, prejudice is caused however, this cannot be the position as Part 1 Award holding that enquiry was fair and proper.

Furthermore to interfere on proportionality of punishment does not mean imposing no punishment at all.

13. As regards the proportionality of punishment for indiscipline of this nature, Mr.Bapat has placed reliance on the decision of *Mahindra and Mahindra Ltd. Vs N.B.Narawade – (2005) 3 Supreme Court Cases 134* and *New Shorrock Mills Vs Maheshbhai T. Rao - (1996) 6 Supreme Court Cases 590*. In the case of *New Shorrock Mills* (supra) the Labour Court after holding misconduct of abusing the superiors on part of the workman was proved, set aside the order of discharge and directed that the workman be reinstated with continuation of wages. Writ petition filed by the employer was dismissed therefore, the employer approached the Apex Court. The Apex Court considered the fact that Labour Court had held that the misconduct was proved and observed as under :

'9. It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty percent back wages. The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the binding of the departmental inquiry was legal and proper; respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the

employee's conduct and his past record. The Labour Court completely overlooked the fact that ever prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were atleast three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted'.

The Apex Court held that the punishment when misconduct or abusing and challenging the authority of superior was proved and it was a serious misbehaviour and that the punishment for misconduct of such nature of dismissal was not shockingly disproportionate. The Apex Court also took note of the earlier conduct of the workman therein.

14. In the case of *Mahindra and Mahindra* (supra) facts were similar to the case at hand. The workmen therein used filthy language against the superior and on this ground inquiry was instituted wherein the workman was found guilty and terminated.

The Labour Court had come to the conclusion that the fact of abusing the superior was proved, however, the punishment was harsh and improper and set aside the punishment by directing reinstatement with part back wages. The Apex Court took note of the earlier decision of three-Judge bench in the case of *Orissa Cement Ltd. Vs. Adikanda Sahu – (1960) 1 LLJ 518 (SC)* wherein the three-judges bench had held that the workman who abused the Labour Officer without any provocation was capable of further indecent conduct, and could not be kept in employment and the employer was justified in dismissing him. The Apex Court held as under :

'20. *It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment In the absence of any such factor existing, the Labour Court can, not by way of sympathy alone exercise the power under Section 11A of the Act and reduce the punishment. As noticed herein above atleast in two of the cases cited before us, i.e. **Orissa Cement Ltd.** (supra) and **New Shorrock Mills** (supra), this Court held: "punishment*

of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above'. (emphasis supplied)

After observing as above, the Apex Court set aside the order of the High Court and of the Labour Court holding that the punishment was disproportionate.

15. In the present case the abuses by the Respondent No.2 are grave and serious. No employer can tolerate such misconduct which directly results in indiscipline and if it is tolerated would lead to encouraging the workforces to use the same intimidating tactics, which will not be conducive for industrial peace within the establishment. In the charge-sheet the Petitioner has referred that the Petitioner has taken into consideration the past record wherein the Respondent was punished by suspending him for four days and loss of wages, for a misconduct. Therefore, the Labour Court has not considered this aspect at all instead has proceeded to state that the services of the Respondent No.2 were blemishless.

16. In light of the clear dicta of the Apex Court, which has stressed that such conduct at workplace cannot be tolerated, the Labour Court has exercised a misplaced sympathy in favour of the

Respondent. In fact, the deprivation of 50 per cent back wages is only on the ground that the Respondent has not stated that he is not gainfully employed elsewhere. Therefore, the Labour Court has completely exonerated the Respondent. In the circumstances, the Petitioner has made out a case for interference. Accordingly, the petition is allowed. **Rule** is made absolute in terms of prayer clause (a). No order as to costs.

17. As far as the deposit of back wages is concerned, in view of disposal of the petition, it is open to the Petitioner to take appropriate steps.

(N.M.Jamdar, J.)