

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3143 OF 2015

M/s.William Industries Pvt.Ltd.

...Petitioner

vs.

Anil Shantaram Shinde & Ors.

....Respondents

Mr.R.S. Pai with Anand Pai I/b. T.R. Yadav for Petitioner.

Mr.K.R. Shetty with Ms.Karuna Yadav for Respondent No.1.

CORAM : S.C. GUPTE, J.

12 JULY 2016

ORDER :

The petition challenges an order passed by the Industrial Court at Mumbai in an appeal under Section 84 of the Bombay Industrial Relations Act, 1946 ("BIR Act"). By the impugned order, the Industrial Court partly allowed the first Respondent's appeal against dismissal of his application under Sections 78 and 79 of the BIR Act.

2 The first Respondent was working in the Petitioner's factory as a Jobber in the Power Knitting Department since 1983. He was made permanent since 1986. On 22 August 1997, after office hours, the first Respondent is claimed to have confronted a fellow employee, one Mr.B.V. Pillai, abused and bet him outside the premises of the Petitioner. An office

memorandum to show cause was issued to the first Respondent in relation to the incident. Finally, on 8 September 1997, a chargesheet was given to the first Respondent alleging misconduct under certified Standing Order No.20-K, namely, “drunkenness, riotous, disorderly or indecent behaviour in the premises of the undertaking”. In a departmental enquiry conducted in pursuance of the chargesheet, the Enquiry Officer found the first Respondent guilty of the charge. On the basis of the Enquiry Officer's report, on 15 September 1998, the Petitioner terminated the services of the first Respondent. The first Respondent challenged the termination in an application under Sections 77 and 78 of the BIR Act before the Labour Court at Mumbai. The Labour Court, in the first place, held the enquiry to be fair and proper and later on, by the impugned order, upheld the finding of the Enquiry Officer as also the punishment awarded as legal and proper. In an appeal filed by the first Respondent under Section 84 of the BIR Act, the Industrial Court partly allowed the first Respondent's appeal and set aside the impugned order of the Labour Court as also the order of termination passed by the Petitioner and held the first Respondent to be entitled to reinstatement of service with effect from the date of termination with full back wages and other service benefits. This order is challenged by the Petitioner in the present petition.

3 Learned Counsel for the Petitioner makes the following submissions :

(i) It is submitted that the Industrial Court, whilst exercising jurisdiction under Section 84 read with Section 85 of the BIR Act, acted beyond its jurisdiction and powers by substituting its findings in place of those of the Enquiry Officer. It is submitted that the Labour Court itself was not empowered to interfere with the findings of the domestic tribunal simply because a different view of the evidence was possible. It is submitted that since the Labour Court itself did not have such powers, the Industrial Court in an appeal from an order of the Labour Court could not have interfered with the findings;

(ii) It is submitted that the finding of the Industrial Court that the Petitioner had no jurisdiction to take disciplinary action against the first Respondent, since the alleged misconduct occurred at a place outside the Petitioner's premises, is not proper and tenable. Learned Counsel relies on judgments of the Supreme Court in the case of **Mulchandani Electrical and Radio Industries Ltd. vs. Their workmen**¹, as also of our court in the case of **Murlidhar Raghoji**

1 (1975) 4 SCC 731

Savant vs. General Manager, Nather & Platt (I) Ltd.² in support of his submission that it is not really the place where the act which is subversive of discipline or good behaviour is committed, but where the consequence of such act manifests itself, or effect of such act is felt, where the misconduct within the meaning of relevant standing order can be said to be committed;

(iii) It is submitted that in any event, since the Petitioner has already closed down its establishment at the particular place with effect from 20 June 2007, the impugned order granting reinstatement with full back wages could not have been passed. It is submitted that this court, whilst granting appropriate relief in the matter, is bound to take into account the closure of the undertaking;

4 It is not in dispute that the misconduct alleged against the first Respondent was under certified Standing Order No.20-K, which reads as follows :

“20-K - Drunkenness, riotous, disorderly or indecent behaviour in the premises of the undertaking.”

2 1991 SCC OnLine Bom 388

The allegation in the chargesheet was that after completing the first shift, the first Respondent waited outside the factory and confronted one B.V.Pillai, who was a Knitting Supervisor in the department, and started beating and abusing him in filthy language without any reason; and that this act amounted to misconduct within the meaning of the abovementioned standing order. In the report of the Enquiry Officer, the Enquiry Officer has simply held the first Respondent to be guilty of beating and abusing Mr.Pillai in filthy language on 22 August 1997 outside the factory premises. In that view of the matter, the Enquiry Officer has held the charge as proved conclusively against the first Respondent. The Labour Court, in its preliminary order dated 8 September 2005, held the domestic inquiry to be fair and proper. The court thereafter proceeded to hear the remaining issues, particularly whether the findings of the Enquiry Officer were perverse and whether the services were legally terminated by the Petitioner. The Labour Court, after considering the material on record, including evidence led before the Court, came to a conclusion that the first Respondent had assaulted Shri Pillai and that the findings of the Enquiry Officer were not perverse and accordingly held the termination to be legal. What is important to note here is that neither the domestic tribunal nor the Labour Court came to the conclusion that the alleged misconduct on the part of the first Respondent had any direct or rational nexus with the industrial relations

between the employer and the workmen in the establishment or any direct connection with the contentment or comfort of the men at work, or had any material bearing on the smooth and efficient working of the Petitioner's establishment. The first Respondent's case was that there was some monetary transaction between the first Respondent and Pillai and as a result, a fight ensued between the two and in the scuffle that followed the first Respondent had slapped Pillai in self defence. Both the domestic tribunal and the Labour Court simply relied on the first Respondent's admission that he had actually slapped Pillai without adverting to the reason of the scuffle and fight between the two and without considering the effect of the incident either on the industrial relations or on the working of the establishment. Neither has found the explanation of the scuffle and fight furnished by the first Respondent to be unbelievable or untrustworthy. Neither has dwelt on the effect of the scuffle and the fight.

5 It is true that the Supreme Court in **Mulchandani Electrical and Radio Industries'** case (supra) held that the terms used in the standing order, which terms are *pari materia* with the standing order in the present case, namely, “within the premises” or “within the precinct of the establishment”, refer not to the place where the act, which is subversive of discipline or good behaviour, is committed but where the consequence of

such an act manifests itself or the effect of the act is felt. The court held that if an act, wherever committed, has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment, such act amounts to misconduct under the relevant standing order. These observations were made in the context of a case, where the delinquent employee had actually threatened his supervisor with assault because of the latter's report against another fellow workman, who was removed from service in pursuance of the report. This threat, which was administered within the premises, was followed up by the delinquent employee by assaulting the supervisor on that very day after office hours and outside the office premises. The alleged act of misconduct, thus, though actually committed outside the premises of the establishment, had a clear nexus with the duties of the workman and the steps taken during the course of his duties to the employer by the supervisor, who was assaulted.

6 **Mulchandani Electrical and Radio Industries'** case (supra) was later considered by a learned Single Judge of our court in the case of **Murlidhar Raghoji Savant** (supra). After an extensive review of the case law on the subject, our court held that if the misconduct complained of, though committed outside the premises, had a direct connection either with the contentment or comfort of workmen and staff within the premises or a

material bearing on the smooth and efficient working of the establishment, it would still be a misconduct committed within the premises of the establishment. Even in that case, the record clearly showed that the assault committed on the fellow workman, though admittedly outside the premises, was a result of the stand taken by the fellow workman in connection with a strike within the establishment. It was not a purely personal or private matter between the delinquent workman and the assaulted fellow workman, unconnected with the industrial relations within the establishment. It had a direct and rational nexus with the contentment or comfort of the men at work and a direct material bearing on the smooth and efficient working of the establishment.

7 As I have noted above, in the present case, the act was, by all accounts, a pure personal and private matter between the first Respondent and the fellow workman, Mr.B.V. Pillai. Neither the domestic tribunal nor the Labour Court has come to the conclusion that the assault has anything to do with the industrial relations within the establishment or any bearing on the smooth or efficient working of, or contentment or comfort of the men at work within, the establishment. In other words, it cannot be said, by any stretch of imagination, that the alleged act is in any way a riotous or disorderly or indecent behaviour in the premises of the Petitioner. The

Industrial Court, in the premises, has come to a correct conclusion that the misconduct alleged did not amount to misconduct within the meaning of the relevant standing order and that the conclusion drawn by both the domestic tribunal and the Labour Court is clearly perverse and unsustainable.

8 The conclusion of the domestic tribunal and the action of termination taken by the Petitioner on its basis ought to have been termed as perverse and interfered with by the Labour Court. If the Labour Court does not do so, the Industrial Court is well within its appellate powers under Section 84 of the BIR Act to interfere with the order of the Labour Court and set things right. By doing so, the Industrial Court does not exceed its jurisdiction or exercise any power wider than the Labour Court. There is, thus, no merit in the contention that an Appellate Court under Section 85 of the BIR Act could not have passed the impugned order.

9 The alleged closure of the particular establishment was not a subject matter of inquiry before either of the Courts below. In fact, the closure, even according to the Petitioner, took place much after the BIR application was filed by the first Respondent workman. The first Respondent's case is that the Petitioner actually shifted all its operations including the manufacturing activities to its new factory at Navi Mumbai, at

the address stated in the cause title of the petition. Anyway, there was no contest on these facts before the Courts below and it will not be proper for this Court to consider these facts for the first time in the present writ petition. The reinstatement is directed by the Industrial Court as of the date of termination, i.e. 15 September 1998. Any closure post that date would be a change of circumstances and would have to be brought up in a separate proceeding before an appropriate forum and cannot be considered in a challenge under Article 226 to the orders below. This Court would have considered it, whilst moulding the reliefs, if there was no contest on the factum of closure, but not otherwise.

10 In the premises, there is no merit in the petition and the same is dismissed. No order as to costs.

(S.C. Gupte, J.)