

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6722 OF 2000

M/s. Carbon Everflow Ltd.	...Petitioner
<i>Versus</i>	
Shri. R.A. Hange	...Respondent

....
Mr. Atul Damle, Senior Advocate a/w. Leena Patil, for the
Petitioner.

Mr. Susheel Mahadeshwar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 22nd JUNE, 2017

JUDGMENT:

1. Heard Mr. Atul Damle, learned Senior Counsel for the petitioner and Mr. Susheel Mahadeshwar, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'first party', has challenged the judgment and award dated 20.7.2000 made by the learned Presiding Officer, Labour Court, Nashik in Reference (I.D.A.) No.19/1989. By that order, the Labour Court held that the respondent, hereinafter

referred to as the 'second party', is entitled to reinstatement with continuity of service, and one third of the back wages w.e.f. 13.10.1987. The relevant and material facts giving rise to filing of this Petition, briefly stated, are as under.

3. It is the case of the first party that the second party along with Shri G.M. Shahane were assigned the job of assembly /joinder of some "end chamber" to floating tube of shell end tube heat exchanger. They damaged the equipment costing Rs.1,30,000/-. Because of this, the first party suffered financial losses as also the job could not be delivered to the customers well in time. It is the case of the first party that the act of the second party amounted to misconduct and dishonesty in connection with employer's business, willful damage to finished equipments and commission of acts subversive of discipline. On 12.2.1987, the second party was suspended pending enquiry. On 14.2.1987 charge sheet was issued to the second party in respect of acts and omissions amounting to misconduct. Domestic enquiry was held against the second party and in pursuance thereof he was dismissed from services.

4. The Deputy Commissioner of Labour, Nashik Division, Nashik made reference to the Labour Court for adjudication of the Industrial Dispute. The second party submitted statement of claim *inter alia* contending that he was served with false charge-sheet which resulted in his dismissal. The charge-sheet was issued only with a view to victimizing him. It was further contended that in the first party there was one Nashik Workers Union, affiliated to AIDUC, but the workman took initiative in forming another union 'Sarva Shramik Sangh' because of non-payment of adequate wages and inhumane service condition prevailing in the first party. The majority of other workmen followed the workmen which had annoyed the first party. The first party, therefore, decided to take revenge against such persons involved in the activities. The second party further contended that domestic enquiry was not fair and proper. The findings recorded by the enquiry officer are also perverse. The company while dismissing the second party did not consider his past record. The punishment of dismissal was shockingly disproportionate.

5. The first party filed its written statement Exhibit C-1 and resisted the claim made by the second party. The first

party denied all the adverse allegations. It is the case of the first party that the second party had committed grave and serious misconduct which resulted in direct loss of Rs.1,30,000/-. The enquiry which was held was fair and proper and the charges were duly proved. As the charges were serious, the punishment commensurate with the guilt was awarded.

6. The Labour Court framed points. The parties led evidence. After considering the evidence on record, by the impugned award, the Labour Court has ordered reinstatement of the second party as stated earlier. It is against this order, the first party has filed present petition under Article 227 of the Constitution of India.

7. In support of this Petition, Mr. Damle has taken me through the impugned order. He submitted that the second party was employed as a skilled workman and one Shahane was employed as a semi-skilled workman. He submitted that the second party along with Shahane was on duty in general shift between 8:30 a.m. and 5:00 p.m. on 10.2.1987. At about 2:00 p.m. to 2:15 p.m., the second party and Shahane were doing

the job of Indian Dyestuff Industries. They were assigned the job of assembling the end chamber to the floating tube sheet of the job at 2:00 p.m. The job broke due to uneven tightening i.e. wrong handling by the second party. He submitted that after considering the evidence on record, the Tribunal observed in paragraph-17 that the second did not establish his defence and the inference drawn by the company about the intentional act on the part of the workman gets corroboration. Mr. Damle submitted that in fact the second party did not adduce any evidence before the enquiry officer. After holding that the intentional act on the part of the second party is proved, the Labour Court further observed in paragraph-21 that "It appears that the workman did not intend to cause willful damage." He submitted that said finding is clearly contrary to the earlier finding recorded by the Labour Court in paragraph-17.

8. Mr. Damle also relied upon the decision of ***Bharat Heavy Electricals Ltd. vs. M. Chandrasekhar Reddy and others, (2005) 2 SCC 481*** to contend that while exercising power under Section 11-A of the Act the Labour Court cannot

act an appellate Authority over the enquiry report submitted by the enquiry officer. He, therefore, submitted that the impugned order deserves to be set aside.

9. On the other hand, Mr. Mahadeshwar supported the impugned order. He has taken me through paragraphs-9, 10, 11, 12, 15, 17, 21 of the impugned order. Mr. Mahadeshwar submitted that before the enquiry officer the first party examined A.K. Kundu, Assistant Engineer. He deposed that the second party was in the general shift between 8:30 a.m. and 5:00 p.m. He had assigned the second party and Shri Shahane the assembling work of some I.D.I. Shell and Tube Exchanger, drawing No.469/86. The second party and Shahane wrongly tightened floating tube sheet and broke the floating tube sheet at 4:30 p.m. They were aware that said job was to be completed in the month of February and the target time was January. The cost of the job in question was Rs.1,30,000/-. The job was so broken that it could not be repaired and thus the first party was put in embarrassing situation besides financial loss. In the cross-examination by the defence representative, it came on record that the job was not broken by hammer but by tightening it wrongly.

10. Mr. Mahadeshwar submitted that the first party also examined Senior Engineer of the company Mr. Guha. He also substantially deposed on the lines of the witness Kundu. During cross-examination Mr. Guha admitted that he did not see the second party and Shri Shahane doing the work in a wrong manner. Mr. Mahadeshwar submitted that though both the witnesses deposed that the second party and Shri Shahane were given the job of assembling the end chamber to the floating tube sheet, action was initiated only against the second party. He submitted that the second party took initiative in forming of Sarva Shramik Sangh and with a view to victimizing him, the first party initiated the proceedings against him. He also invited my attention to paragraph-21 to contend that the Labour Court observed that the mistakes intentional or otherwise occurred at the duty place and during duty hours. In the alleged incident, the second party alone was not involved but Shri Shahane was also responsible for causing damage. However, the first party did not bring any material on record as to what action was taken against said Shahane. He submitted that under Section 11-A of the Act, the Labour Court was justified in interfering with the penalty

inflicted by the first party having regard to the nature of misconduct. He, therefore, submitted that no case is made out for interfering with the impugned order.

11. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the second party was issued charge-sheet and domestic enquiry was held against him. After considering the material on record the Labour Court held in paragraph-19 that the enquiry conducted against the second party was fair and proper and that the charges are proved. The findings recorded by the enquiry officer are neither perverse nor unjustified. In paragraph-17, the Labour Court considered the oral as well as documentary evidence on record and also considered the submission advanced by the second party that there was no direct eye witness who actually witnessed the second party wrongly performing the job. The Labour Court also considered that the second party is a skilled workman and Shahane is a semi-skilled workman. The Labour Court also considered the fact that the breakage of job occurred in 1984 and the witness had given reason for such breakage. The relevant portion of paragraph-17 reads thus :

“The witnesses are both engineers and being experts, their statements can not be ignored. The statements indicate that ordinarily if the care was taken and uneven tightening was avoided, the job would not break. Having held that the job was broken at the hands of the workman, a skilled workman and Shahane (Semi Skilled) it is for the workman to give some explanation for the damage or breakage caused. Had he given any explanation, it might have been accepted also. However, he chose to take a defence of total denial. The said defence is not proved and therefore the inference drawn by the company about the intentional act on the part of the workman gets corroboration.”

(emphasis supplied)

12. In paragraph-18, the Labour Court noted that the second party did not examine himself as a witness nor he examined any witness. After considering the material on record, the Labour Court recorded a categorical finding that “In the result, I find that charges of willful damage to property, which also amount to commission of act subversive of discipline are adequately proved. The workman who is proved to have been responsible for breakage of the article has chosen to flatly deny the mistake, which smacks of want of honesty on his part.”

13. The Labour Court thereafter considered the second

party's evidence at Exhibit U-11 before the Court. Second party stated that as he changed the Union, first party started harassing members of the sangh. He, however, admitted that there is no evidence to show that earlier union was pro management of the first party and, therefore, the first party began to harass the members like him. Second party stated in the examination-in-chief that Sangh was the union in 1988/89 which itself disproves the allegation in respect of Union as the charge sheet was issued on 12.2.1987.

14. In paragraph-19, the Labour Court observed thus:

“19. The proceeding before me are that of a domestic enquiry, where strict rules of evidence do not come into play, and even hearsay evidence is admissible. The degree of proof required is not strict proof, but only preponderance of probabilities. Having considered the material on record in the light of the well settled principles, I am inclined to hold that the charges are proved and therefore the ultimate findings arrived at by the enquiry officer as a neither perverse nor unjustified.”

15. The Labour Court thereafter proceeded to observe in paragraph-21 thus:

“21. Though the charges are proved, it is necessary to appreciate the actual allegations held as proved. The guilt proved was breaking some part of the instrument or the job. The cost of the job was Rs.1,30,000/- but then it was the cost of the entire article, when finished. The mistake, intentional or otherwise, occurred at the duty place, and during duty hours. It was not only the workman alone but one other fitter Shahane who was also held responsible for the damage. What happened to the action against said Shahane is not on record. Now, although, the workman had not honestly confessed his mistake, it appears that the workman did not intend to cause willful damage and get away this could not be possible because he could not have successfully surpriced the mistake or the fault in work. It was bound to be noticed sometime during the shift. This aspect has to be taken into account while appreciating the gravity of the misconduct.”

16. A perusal of the findings recorded by the Labour Court in paragraphs-17 and 18 clearly shows that the Labour Court categorically recorded a finding that the first party had established intentional act on the part of the second party in the case. It also recorded a finding that the charges of willful damage to property, which also amounts to commission of act subversive of discipline are adequately proved. Despite holding so, the Labour Court in paragraph-21 thereafter held that the workman did not intend to cause willful damage. In my

opinion, once the Labour Court having held that the first party has established the charges on the basis of some evidence, the Labour Court was not justified in recording contrary finding.

17. In the case of ***Bharat Heavy Electricals*** (supra), the Apex Court has considered Section 11-A of the Act as also earlier decisions. In paragraph-23, the Apex Court referred to the decision of ***Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd, (1973) 1 SCC 813*** and extracted paragraph-32(9) thereof, which reads thus:

“... Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh, indicating victimisation.”

“If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer.”

18. In paragraph-24, the Apex Court referred its decision in ***CMS Hospital Employees' Union v. Christian Medical***

College Vellore Assn., (1987) 4 SCC 691 and paragraph-14

was reproduced which reads thus:

“Section 11-A ... cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision.”

19. Applying the tests laid down in the aforesaid decisions to the facts of the present case as also the findings recorded in paragraphs-17 and 18, I find that the Labour Court committed serious error in passing the impugned award. The Labour Court having held that the enquiry held against the second party was fair and proper and the charges were duly proved, was not justified in interfering with the penalty imposed by the first party. Mr. Mahadeshwar submitted that no action was taken against Shri Shahane. I do not find any merit in this submission. It has come on record that Shri Shahane is a semi-skilled workman and the second party is a skilled workman. This aspect is considered by the Labour Court.

Obviously responsibility is more on the skilled workman than the semi-skilled workman. The impugned order, therefore, deserves to be set aside and is accordingly set aside. Petition succeeds. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)