

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.3968 OF 1998**

Association of Engineering Workers ... Petitioner

vs

1. Kanthal India Ltd
1-A. Sandvik Asia Limited
(amended pursuant to order dated 31.1.2011
of Her Ladyship Hon'ble Mrs Justice N.N.Mhatre)

2.Presiding Officer, 1st Labour Court, Pune .. Respondents

None for the Petitioner
Ms.Anjali Purav Yajurvedi I.b Mr.V.P.Sawant
for Respondent no.1.

Coram : S.C.GUPTE, J
Date : 7th JUNE 2018

P.C

1. Heard learned counsel for respondent no.1. The petitioner is absent. It appears from the record of the case that the petitioner was absent even on a couple of occasions earlier and finally, the advocate for the petitioner sought a discharge. On 28.2.2018, a representative of the petitioner, who was himself one of the delinquent-employees, whose cause is being espoused by petitioner no.1-union, was present. He informed the Court that the petitioner would take steps to make an alternative arrangement for conduct of the matter. None, however, appears today on behalf of the petitioner. The petition is an old petition of 1998 in which Rule was issued as far back as on 14.9.1998. In the premises, I am not

inclined to grant any further time. I have accordingly heard learned counsel for respondent no.1. extensively and carefully gone through the papers and proceedings.

2. The subject matter of the petition is a dismissal order passed by the 1st respondent (now taken over by respondent no.1-A) against two of its employees, one R.K.Patil and R.B.Ovhal, after a departmental inquiry in pursuance of charge sheets separately issued to the two. The charges against both these employees were that they had acted violently in a meeting between representatives of the union and manager of the 1st respondent; they had abused the manager and threatened him with dire consequences and even attempted to assault him as well as the security officer posted outside the factory premises. On the same day, in the afternoon, they went to the office of the Production Manager of the 1st respondent and threatened him. They gheraoed him in his office and compelled him to remove a particular notice displayed on the notice board of the company. It is the case of the 1st respondent in the charge sheet that these acts on the part of the delinquent- employees amounted to riotous, disorderly or indelcent behaviour in the premises of the establishment as also wilful insubordination or disobedience of superiors under section 24 (a) (k) and (1) of Model Standing orders. In addition to these charges, fresh charges were made against R.K.Patil, one of the two delinquent employees, that he along with some other employees forced through the gate of the factory in the

course of its lockout, and abused and assaulted the security supervisor and even damaged the security cabin. It is the case of the 1st respondent that these acts on the part of the delinquent-employee amounted to fresh commission of acts covered under clauses 24 (k) and (l) of Model standing orders.

3. In pursuance of these charge sheets, departmental inquiry was held against the two delinquent employees. The Enquiry Officer held the charges to be proved. The Factory Manager of the 1st respondent, thereafter, went through the report of the Enquiry Officer and found no extenuating circumstances for taking a lenient view of the misconduct and proposed a penalty of dismissal. By an order passed by the 1st respondent on 9.12.1986, the two employees were dismissed from service. The dismissal was raised as an industrial dispute and after failure of conciliation proceedings, was referred to the adjudication of the Labour Court. The Labour Court in its Part I-award held the inquiry to be fair and proper and in Part II award held the misconduct of the workmen to be proved on the basis of evidence led before the Enquiry Officer and before the Court and the punishment by way of dismissal to be proportionate to the misconduct. The Labour Court, in the premises, rejected the reference. The award is challenged in the present petition *inter alia* on the ground that there was no adequate opportunity to the delinquent employees to show cause to the charge sheet; that on the day of the inquiry the delinquent employees were not allowed to

participate in the proceedings; that the Enquiry Officer was not present on the appointed day and time on the last day of the inquiry; and that the conclusions of the Inquiry Officer which were upheld by the Labour Court were neither proper nor supported by evidence.

4. If one peruses the award of the Labour Court, it is apparent that the Court has extensively gone into the record of the case and held that the record indicated that the inquiry was held at the same place where the delinquent employees and their representatives were present and duly participated in the inquiry, the plea that the delinquent-employees were not allowed to enter the premises did not appear to be convincing or probable. The Court accepted the evidence produced on record by the 1st respondent that there was adequate access and the delinquents were perfectly in a position to attend the inquiry, but they failed to do so at the fag end of the proceedings. The Court found that the inquiry was conducted duly and properly and after affording them adequate opportunity. The Court found that, in the premises, the act of the Enquiry Officer of concluding the inquiry on the last date in the absence of the delinquent employees, could not be termed as an act of haste so as to render it illegal or unfair. The Court accordingly in its Part I award held the inquiry to be legal, fair and proper. No fault can be found with this conclusion of the Court. The record of the case indeed indicates that by all counts, the inquiry conducted against the delinquent employees was fair and proper and full opportunity was

given to them to defend themselves. When one comes to Part II award in the case of both, even here, it is apparent that the Labour Court has extensively applied its mind to the material placed before the Enquiry Officer and the grounds and on scrutiny of oral and documentary evidence, has come to the conclusion that the incident of resorting to violence within the premises of the management on the part of the delinquent employees was sufficiently established. The Court held that substantial part of the evidence in this behalf was not seriously challenged in cross-examination. The Court noted that a contemporaneous report of the incident was made by the Production Manager of the 1st respondent and reported to the police by lodging of a complaint, and that evidence of the management witnesses was corroborated by this contemporaneous written record. Taking an overall view of the matter, in the light of the evidence adduced before the Court, together with the circumstances of the case, the Court held that the misconduct committed by the delinquent employees was serious and the quantum of punishment, namely, dismissal, was proportionate and needed no interference. The Court, accordingly, rejected the reference.

5. The findings of the Labour Court are clearly supported by evidence on record. No relevant material appears to have been disregarded by the Labour Court whilst arriving at these findings. So also, there is no irrelevant or non-germane material which appears to have been considered by the Court. The impugned order of the

Labour Court, accordingly, does not merit any interference within the writ jurisdiction of this Court. There is, thus, no merit in this petition.

6. Rule is accordingly discharged and the petition is dismissed. No order as to costs.

(S.C.GUPTE, J)

RNG

7/7

203-wp3968.98