

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

WRIT PETITION NO.2939 OF 2002

Sunil Omprakash Sharma

.. Petitioner

Vs.

M/s. Hotel Oberoi Towers & Anr.

.. Respondents

Mr. K. S. Bapat for the petitioner.

Mr. Rajesh Gehani a/w Mahendra Agawekar & Ms. Sujal Vikhare for the respondents.

CORAM : A.K. MENON, J.

DATED : 14TH FEBRUARY, 2018.

ORAL JUDGMENT :

1. By this writ petition, the petitioner challenges the order and judgment dated 27th April, 2000 passed by the Second Labour Court, Mumbai, whereby the petitioner was reinstated with continuity of service and other benefits but without back wages.

2. The facts in brief are as follows:-

The petitioner was employed with the respondent no.1 as a Music Operator and Television Technician. He was served with a charge sheet alleging that the petitioner had slapped a female member of the staff. A departmental inquiry followed. According to him, the departmental

inquiry was held exparte and in a great hurry. He has alleged that the inquiry proceeded in the predetermined manner and the petitioner was held guilty of the charge. His services were terminated by letter dated 3rd November, 1982 with effect from 8th November, 1982 and being aggrieved by the order of termination he raised an industrial dispute. As attempts at settlement failed, the matter was referred for adjudication before the respondent no.2. The Reference (IDA)no.547 of 1984 came to be rejected. In the preliminary inquiry Part-I vide order dated 25th April, 1989, the inquiry was found to have been fair and proper.

3. On the basis of the statement of claim filed by the petitioner, the Second Labour Court, Mumbai, decided the Reference(IDA)no.547 of 1984 wherein he challenged the order of termination contending that he was out of employment and that a false story have been set up due to personal grudge against him. In the written statement, the allegations against the petitioner were reiterated and it was contended that the order of termination was a natural result of the inquiry held, given the fact that the petitioner had committed serious misconduct of having slapped a fellow employee on the premises of the respondent no.1.
4. By an award dated 24th August, 1999, the Second Labour Court held

that the findings of the inquiry Officer were perverse. As a result of the award dated 24th August, 1999 having attained finality, the Reference proceeded and resulted in a final award dated 27th April, 2000. The following points of determination came up for consideration at the stage of final award:-

“(1)

(2)

(3) Does the workman prove that the punishment of the dismissal is disproportionate to the guilt and is excessive?

(4) Does the workman prove that he has been illegally terminated on 8th November, 1982 from service as mentioned in the statement of claim?

(5) Is the workman entitled to relief of reinstatement with continuity of service from 8th November, 1982?

(6) What order as to back wages?

(7) Is the workman entitled to any relief? If yes, what relief?

(8) What order?”

5. Issue nos.3 and 5 above were answered in the affirmative holding that the punishment of dismissal was disproportionate and excessive and that the workman was therefore entitled to reinstatement with continuity of service from 8th November, 1982. Point no.4 having been

answered in the negative, the question that arose was whether the petitioner workman was entitled to back wages. The award hold that the workman was only entitled to reinstatement with continuity of service but without back wages. The denial of back wages has been challenged in this writ petition. It is pertinent to note that the final award was not challenged by the respondent no.1, on the contrary it was implemented by reinstating the petitioner who has since retired. The challenge is, therefore, restricted to the aspect of liability of the respondent to pay back wages, in the event, the impugned order is found to be perverse.

6. Mr. Bapat, the learned counsel appearing on behalf of the petitioner submitted that although the inquiry was found to have been held in a fair and proper manner, the findings have been held to be perverse by the order dated 24th August, 1999. In the circumstances, the respondent did not succeed based the findings of the inquiry Officer especially since the order dated 24th August, 1999 had achieved finality in the absence of any challenge. Mr. Bapat submitted that there was no evidence led by the respondent to establish the allegations of misconduct even after the findings of the inquiry Officer were found to have been perverse. He submitted that the final award proceeded to rely upon the evidence led during the inquiry before the

inquiry Officer. He invited my attention to paragraph nos.6 and 7 of the impugned final award and pointed out that the Labour Court had relied upon the evidence recorded during the inquiry, the findings of which were held to be perverse and relying upon the said evidence, the Court found in favour of the respondent employee on the issue of back wages. In the course of his submissions, he relied upon the decisions in the case of *Bharat Forge Company Ltd. v/s. A. B. Zodge & Anr. 1996 II CLR 345 and Neeta Kaplish v/s. Presiding Officer, Labour Court and another (1999) 1 Supreme Court Cases 517.*

7. He submitted that there was no material on record to justify the action of termination of the services of the petitioner and in the present case, where the findings held to have been perverse, there was no occasion for the Court to rely upon the said evidence led during the proceedings leading upto the final award. Mr. Bapat further submitted that since the final award was found in favour of the petitioner on the aspect of his claim for reinstatement, it was appropriate that the reinstatement should have been ordered along with back wages. He therefore submitted that the impugned order to the extent of denial of back wages is liable to be quashed and set aside.
8. Mr. Gehani, the learned counsel appearing on behalf of the respondent

opposed the petition and relied upon the affidavit in reply dated 18th July, 2016 filed on behalf of the respondent and submitted that the petitioner was guilty of an act of serious misconduct and had assaulted a lady employee within the premises of the hotel resulting in the domestic inquiry being conducted. According to him, although it is admitted that there was no challenge to the Part-I award as the proceedings and findings of the inquiry Officer were held to be perverse, the respondent's contention that the petitioner was guilty of serious misconduct stood proved. He sought to rely upon the statement of the victim employee who had initially filed a complaint which appears at page 3 of the compilation and submitted that the incident complained of had actually occurred on 10th September, 1982.

9. Mr. Gehani submitted that the complainant, then known as Vaijyanti Kamlakant Deshmukh, had not denied her signature even when she was summoned to depose before the Second Labour Court. He invited my attention to the cross examination of the said witness. In view of the admission that the signature on records of the respondent company was her signature and considering the signature of the said complainant as on the date of incident, there can be no doubt that the incident had been proved. He therefore submitted that there was no case for interference inasmuch as the respondent company had

considered the denial of back wages as sufficient punishment and had reinstated the petitioner who had since served the respondent and retired from service.

10. Mr. Gehani submitted that the complainant/witness Ms. Vaijyanti Kamlakant Deshmukh alias Neha Pawar had admitted her signature on the original complaint dated 11th September, 1982. He submitted that serious misconduct had been established. Mr. Gehani invited my attention to paragraph 10 of the impugned judgment and relied upon the observations of the Court to the effect that the petitioner was gainfully employed after his dismissal since it had come on record that the petitioner was a partner in a hotel being run by his family members. My attention was drawn to copy of a Deed of Partnership dated 22nd October, 1992 which was brought on record of the Labour Court by the father of the present petitioner pursuant to summons issued to him. Exhibit C-15 before the Labour Court is a purshis filed by the father of the petitioner on 15th May, 1998 tendering the original Partnership Deed and a copy thereof with a request to take a copy on file and to return the original. Although the application was ordered to be filed, since there was no provision or procedure to file a say to the application by the witness, the fact remains that the said Partnership Deed was on record and was relied upon in the impugned judgment.

11. Having heard both sides and the rival contentions, I have observed that the only reason for denial of back wages is the fact that the petitioner was gainfully employed after termination of his service. However, I find that the Labour Court has overlooked the fact that the Partnership Deed is dated 22nd October, 1992 and the petitioner is one of the parties of the Third Party and also described as “New coming Partners”. This recital of the Partnership Deed establishes that the petitioner joined the partnership firm on 22nd October 1992. What is also to be noted that vide clause 6 the partnership business is deemed to have been commenced from 30th January, 1990. In these circumstances, it would appropriate to presume that the petitioner is deemed to have been gainfully employed in the partnership business from 30th January, 1990. This factual aspect has been overlooked by the Labour Court and as a result, what denial of back wages has occasioned only on the basis that the petitioner did not dispute that he was a partner of the firm.

12. The Apex Court in the judgment in case of Neeta Kaplish (supra) observed that the management is required to lead evidence before the Labour Court to justify its action of dismissal of a workman and when the management did not lead evidence, the workman concerned was also at liberty not to lead any evidence. Since the findings were found to be perverse and if the respondent was serious in proving the charge,

it was upto them to lead further evidence. In the instant case, there was no evidence to support the charge against the petitioner. On the other hand, the very evidence relied upon by the Labour Court to deny back wages establishes that the petitioner would have been gainfully employed effective from 30th January, 1990 and not earlier. I may observe here that the award dated 24th August, 1999 was not challenged by the respondent no.1. Thus, in my view, the petitioner would be entitled to back wages for the period commencing from the date of his termination of services viz. 8th November, 1982 till 30th January, 1990. The impugned award is to that extent is contrary to the facts and evidence on record. In the circumstances, the petition must succeed and I therefore pass the following order:-

- (i) Rule is made absolute in terms of prayer clause (a) to the extent the denial of back wages from 8th November, 1982 till 30th January, 1990 is hereby set aside.
- (ii) As a consequence, respondent no.1 shall pay back wages to the petitioner in accordance with law for the period from his date of termination to 30th January, 1990.
- (iii) Writ petition is disposed of in the above terms.
- (iv) No costs.

(A.K. MENON,J.)