

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

WRIT PETITION NO. 7016 OF 2002

Shri Dattatraya Dagadu Gaikwad	...Petitioner
Vs.	
M/s.Tata Engineering and Locomotive Co.Ltd.	...Respondent

Mr.V.H. Shelkar I/b. Atul Vanarase for Petitioner.
Mr.Kiran Bapat with M. Mehta I/b. Mulla & Mulla & C.B.C. for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 4 JULY 2018

P.C. :

This petition, filed by a workman dismissed by the Respondent management, impugns an award of the Labour Court at Pune in a reference made to it under the Industrial Disputes Act. By the impugned award, the Labour Court held the inquiry against the delinquent workman to be fair and proper and the misconduct alleged against him as proved on the basis of evidence led in the inquiry and before the court. The court, accordingly, answered the reference in the negative. This order is challenged by the Petitioner workman principally on the ground that the Labour Court ought to have seen that the appreciation of evidence by the Inquiry Officer was perverse and the misconduct alleged was not proved.

2 The Petitioner joined the services of the Respondent company as an auto mechanic on 22 January 1979. His status as a workman within the meaning of Section 2(s) of the Industrial Disputes Act is not in dispute. He was chargesheeted on 13 May 1989. It is the case of the Respondent management in the chargesheet that on or about 14 March 1989, two

individual employees of the Respondent fought with each other in the establishment of the Respondent. The fight was about an alleged rumour circulated by one of the two (Ashok Shilimkar) that the other (Mohan Gujar) had been assaulted by one Rajan Nair in the premises of civil court on 14 March 1989. Rajan Nair was the President of the rival trade union in the Respondent's undertaking, namely, Telco Kamgar Sanghatana. Mohan Gujar questioned Ashok Shilimkar about the remour. Thereafter, a fight ensued between the two. There was heated exchange of words followed by a physical fight in which both Ashok Shilimkar and Mohan Gujar were injured. Ashok Shilimkar was suspended. It is the case of the management that the Petitioner herein along with some others incited the employee-members of Telco Kamgar Sanghatana to retaliate the action of the management of suspension of Ashok Shilimkar pending inquiry. The Petitioner is claimed to have threatened the employees with assaults in case they entered the works. It is, accordingly, claimed by the management that the Petitioner prevented several employees from entering the work premises of the Respondent undertaking and forced them to abstain from work for the entire period of their shift. It is also claimed in the charge sheet that when some of the employees attempted to enter the works for reporting on duty disregarding the Petitioner's instructions, the latter loudly asked the striking workers around him to assault them. It is claimed that with the help of these employees, the Petitioner also assaulted and hit the employees wanting to report for duty one after another with fists and by pelting stones at them. It is claimed that as a result of these assaults, some employees wanting to report for duty suffered multiple injuries. It is also claimed that the Petitioner on 17 March 1989 threatened one M.P. Mane, an employee of the Respondent, on shop floor at ERC Development shop and extorted money from him on the pretext of supporting union

activities. It is also claimed that on 29 April 1989, when Mane went to the canteen during lunch interval, the Petitioner deprived him of his food; Mane lodged the complaint on the following day concerning these acts of harassment. It is claimed that this riotous, disorderly and indecent behaviour on the premises of the industrial establishment and illegal strike or abetment, incitement, instigation or action in furtherance thereof amounted to misconduct. The Petitioner was, accordingly, chargesheeted under Clauses 24(k), (b) and (l) of the Model Standing Orders applicable to the workmen of the Respondent.

3 The Petitioner submitted his explanation on 10 June 1989, and denied the charges, whereupon a departmental inquiry was held into the charges of misconduct. The management examined seven witnesses including the victims of the Petitioner's acts, whilst the Petitioner examined one witness in his defence. The Inquiry Officer, in his report, held the charges to be proved. The Respondent management thereafter proceeded to dismiss the Petitioner. An industrial dispute was raised in respect of the dismissal and upon failure of conciliation, the matter was referred to the Labour Court for adjudication.

4 In its Part I award passed in the reference, the Labour Court held the inquiry to be fair and proper. In Part II award, the Labour Court held the misconduct alleged against the Petitioner to be proved by the evidence before the Inquiry Officer and the court. The award is challenged in the present petition, as noted above, mainly on the ground that appreciation of evidence as well as findings of the Inquiry Officer, in the first place, and the Labour Court, in the other, are perverse and that the misconduct alleged against the Petitioner was not proved by the evidence

on record.

5 Whilst commenting on appreciation of evidence by the Inquiry Officer and the court, learned Counsel for the Petitioner submitted that the name of the Petitioner was not particularly mentioned in the complaint filed before the police in respect of the incident alleged or in the statements made by the Respondent's witnesses before the police in pursuance of the complaint. In the first place, the complaint itself was not produced either before the Inquiry Officer or before the Labour Court or even before this court. This fact was not mentioned before the Inquiry Officer or the Labour Court. In the premises, it is not permissible to this court to go into this aspect for the first time. Secondly, it is submitted that save and except the witnesses, who claim to be the victims of the assault, no other witness produced by the Respondent management, including the security officers who deposed before the Inquiry Officer, named the Petitioner as the perpetrator of the assault. The submission has no merit. The question is not whether there is any other evidence. The question is whether the evidence of the witnesses produced by the Respondent management including those who were themselves the victims of the assault, is believable or not or, in other words, whether the testimony of these witnesses, which was believed by the Inquiry Officer and the Labour Court, is adequate to prove the Petitioner's role in the assault. The evidence on record shows that the incident as such narrated by the victims in their testimony before the Inquiry Officer broadly matches with the testimony of the security officers who also claim to have witnessed the incident, save and except the particular reference to the name of the Petitioner. The evidence of the victims as well as others has been closely scrutinized by the Labour Court. It shows internal and *inter se* consistency. The Petitioner could not prove

that there was any enmity between any of the two witnesses or the witness who named him on the one hand and the Petitioner on the other, due to which the Petitioner could have been wrongly implicated in the matter. The Petitioner's whole case that he was not at the place of the incident when it occurred, was not accepted by the Labour Court. The lone witness produced by him was not believed by the Labour Court. The assessment of evidence in this behalf cannot be faulted either as perverse or impossible.

6 As far as the Petitioner's case of victimization is concerned, since he was neither a committee member nor a representative of the rival union, namely, Telco Kamgar Sanghatana, or was anyway concerned with the committee preparing a charter of demands for the rival union, there was no case in support of victimisation. Victimisation is always a question of fact to be decided on the basis of circumstances in each case and its proof cannot be based merely on conjectures or surmises. The onus of proving victimisation in the present case was on the Petitioner and that burden not having been discharged by him through evidence, no infirmity can be found with the impugned order of the Labour Court.

7 Most of the facts, which are commented upon by learned Counsel for the Petitioner, namely, the Petitioner's presence during the incident and/or his participation in the assault or his alleged victimisation, are all questions of fact. The Inquiry Officer as well as Labour Court has extensively carried out the exercise of appreciation of evidence in this behalf and has come to a conclusion which is clearly a possible conclusion. There is no material circumstance or evidence disregarded by the Labour Court or any irrelevant or non-germane material or circumstance considered by the court whilst arriving at its findings. There is, thus, no

case for interference with the assessment of the evidence by the Inquiry Officer or the court below.

8 Some other employees, who participated in the assault along with the Petitioner, have also been dismissed by the Respondent management after conducting an inquiry and even in their case, the incident was held to be proved by the Inquiry officer and the findings were confirmed by the Labour Court. Their challenge to the orders of the Inquiry Officer and the court were dismissed by this court by passing detailed speaking orders.

9 The petition has, thus, no merit and is dismissed. No order as to costs.

(S.C. GUPTE, J.)