

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

WRIT PETITION NO.358 OF 2000

Dinesh Chimanlal Sanghavi

.. Petitioner

vs

1. Tata Engineering & Locomotive Co.Ltd

2. Presiding Officer, Second Labour Court, Pune.. Respondents

with **WRIT PETITION NO.4349 OF 1998**

Chandrashekhar Vasant Karandikar

.. Petitioner

vs

Tata Engineering & Locomotive Co Ltd

.. Respondent

Mr.V.H.Shekdar with Mr.A.P.Vanarase for Petitioner

Mr.Kiran Kapat with Mr.A.K.Gopalan

I/b M/s Haresh Mehta & Co for Respondent no.1

Coram : S.C.GUPTE, J

Date : 7th JUNE 2018

P.C

Writ Petition No.358 of 2000

1. 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 order, the Labour Court held that the inquiry against the delinquent workman was fair and proper and the misconduct alleged against him was proved on the basis of evidence led in the

inquiry and before the Court. As regards the punishment of dismissal, the Labour Court, in the facts and circumstances of the case, modified the same and ordered a punishment by way of discharge. This order is challenged by the employee on the ground basically that the Labour Court ought to have seen that the appreciation of evidence by the Inquiry officer was perverse and the misconduct alleged against the former was not borne out by evidence.

2. The petitioner was working with the respondent-management since the year 1985 as a fitter. His status as a workman within the meaning of section 2 (s) of the Industrial Disputes Act is not in dispute. The petitioner was charge sheeted on 25.3.1989. It is the case of the respondent-management that on or about 14.3.1989, two individual employees of the respondent fought with each other in the establishment of the respondent. The fight was about alleged rumours circulated by one of the two (Ashok Shilimkar) of the other (Mohan Gujar) having been assaulted by one Rajan Nair in the premises of the Civil Court on 14.3.1989. Rajan Nair was the President of a rival trade union in the respondent's undertaking, namely, Telco Kamgar Sanghatana. Mohan Gujar accordingly questioned Ashok Shilimkar on the rumours. A fight was alleged to have ensued between the two as a result, first with a heated exchange of words and followed later by physical fight. Both Ashok Shilimkar and Mohan Gujar were injured in the fight. Ashok

Shilimkar was suspended because of this incident. It is the case of the management that the petitioner along with some others incited the employee-members of Telco Kamgar Sanghtana to retaliate the action of the management of suspending Ashok Shilimkar pending inquiry. The petitioner is claimed to have threatened them with assaults in case the employees entered the works. It is submitted that the petitioner accordingly prevented several employees from entering the work premises of the respondent-undertaking and forced 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 claimed that this riotous, disorderly and indecent behaviour on the premises of the establishment and illegal strike or abetment, incitement, instigation or action in furtherance thereof amounted to misconduct. The petitioner was, accordingly, charged 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 denying the

charges, whereupon a departmental inquiry was held into the charges of misconduct. The management examined several witnesses including two victims by the name of Prakash Mahadev Varade and Gulab Shankar Newale, Security officers present at site as also some other witnesses. The petitioner, on his part, examined two witnesses. 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 proceedings, the matter was referred to the adjudication of Labour Court.

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 led before the Inquiry officer and Court. The Court, however, held that in the facts of the case, and with a view to enable the petitioner to get his legal dues, the order of dismissal deserved to be modified to discharge. The punishment was accordingly modified in part II award. The award is challenged in the present petition 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, is perverse; the misconduct alleged against the petitioner is 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 of 15.3.1989 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 is not produced either before the Inquiry Officer or the Labour Court or even before this Court. Secondly, and at any rate, 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 two witnesses who claimed to be victims of the assault, no other witness produced by the respondent management (including its Security Officer who deposed before the Inquiry Officer) named the petitioner as one of the perpetrators of the assault. The submission is neither here nor there. The question is whether the evidence of the two witnesses produced by the respondent-management, who were themselves the victims of the assault, is believable or, in other words, whether the testimony of these witnesses 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 two victims in their testimony before the Inquiry Officer matches broadly with the testimony of the Security Officer who also claims to have witnessed the incident, save and except the particular reference

to the name of the petitioner. The evidence of the two victims has been closely scrutinized by the Labour Court. The evidence shows internal and *inter se* consistency. One of the two witnesses has named the petitioner as a perpetrator of the assault. The petitioner could not prove that there was any enmity between the two witnesses or the witness who named him on one hand and the petitioner on the other, due to which he could have been implicated in the matter. The petitioner's own case that he was not at the place of the incident at the time when it occurred was not accepted by the Labour Court. The evidence led by the petitioner in this behalf through two witnesses was not believed by the Labour Court. The petitioner's case before this Court was that he went for work to the company on 15.3.1989 but, in the light of the tense atmosphere prevailing at the site, came back to his house. It was his case that he returned home by about 8 a.m. The petitioner as well as his two witnesses deposed in this behalf. The Labour Court found that their testimonies did not match. The Court has in detail set out in its impugned award various points of incongruence or contradiction between the testimonies. The assessment of evidence in this behalf cannot be faulted as perverse or impossible.

6. As far as the petitioner's case of victimization is concerned, the Court has observed that he was neither a committee member nor a representative of the rival union, namely, Telco Kamgar Sanghtana or was in any way concerned with the committee

preparing the charter of demands of the rival union. The Court also noted in this behalf that the petitioner's case was not espoused by the rival-union. The Court observed that victimization was a question of fact to be decided on the basis of circumstances of each case and proof of victimization cannot be based merely on conjectures or surmises. The onus of showing victimization in the present case was on the petitioner and the Court was of the view that this burden was not discharged by him in his oral deposition or other evidence tendered by him.

7. The questions as to whether the petitioner was present, during the course of the incident or participated in the assault on the two witnesses and whether there was any victimization on behalf of the management in involving the petitioner in the incident, are all questions of fact. The Inquiry Officer as well as the Labour Court has extensively carried out the exercise of appreciation of evidence in this behalf, and has come to a conclusion which is a pre-eminently possible conclusion. There is no material circumstance or evidence disregarded by the Labour Court or any immaterial or non-germane material or circumstance is considered by the Court whilst arriving at its findings. There is, thus, no case for interference with the assessment of evidence by the Inquiry Officer or the Court below.

8. Incidentally, it must be mentioned that other employees, who participated in the assault on the two witnesses on 15.3.1989, have also been dismissed by the respondent-management after

conducting an inquiry. Even in their case, the incident with all its particulars was held to be proved by the Inquiry Officer and findings were affirmed by the Labour Court and respective challenges of the delinquent-employees to the orders of the Inquiry Officer and the Court were repelled by this Court by passing detailed speaking orders.

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

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10. The facts of this case are more or less similar to the facts of Writ Petition No.358 of 2000 recounted and discussed above except that the assault itself happened at a different location though on the same date, and the persons involved in the assault, that is to say, both perpetrators and victims, were different. Broadly the testimony of the witnesses on behalf of the employees and the management are also along the same lines. Even the arguments of learned counsel for both parties go along the same lines as in case of writ petition no.358 of 2000.

11. Learned counsel for the petitioner has merely referred to one particular circumstance for distinguishing the facts of this case from those of writ petition no.358 of 2000. Learned counsel submits that in this case, the witness of the management admitted a complaint filed by him before the police and despite being called upon to produce the complaint, did not produce it before the Court,

and accordingly, an adverse inference must be drawn against the respondent-management. No such adverse inference is permissible. If such adverse inference is drawn, it will be a matter of conjecture or surmise. The submission is accordingly rejected.

12. For the same reasons as are discussed in the judgement above, even in this case the impugned award of the Labour Court cannot be shown to be suffering from any infirmity requiring interference of this Court in its writ jurisdiction. As in the case of the award in writ petition No.358 of 2000, even in this case the Inquiry Officer as well as the Labour Court has extensively scrutinized and analysed the evidence in the case, and has come to a pre-eminently possible view, which is supported by evidence and there is no case of consideration of any non-germane or irrelevant material or circumstance or disregard of any relevant material or circumstance.

13. No interference is accordingly warranted. The writ petition is dismissed. No order as to costs.

(S.C.GUPTE, J)

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