

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.40 OF 2010
ALONG WITH
CIVIL APPLICATION NO.503 OF 2011
IN
LETTERS PATENT APPEAL NO.40 OF 2010

Jagdish Electronics (India) Pvt. Ltd. .. Appellants

Vs

Namdev Kondiba Shitole .. Respondent

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Mr. Anand R. Pai with Ms. Aditi Hambarde i/b M/s. Haresh Metha & Co. for the Appellants.

Mr. V.H. Shekdar for the Respondent.

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**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 07th JANUARY, 2020.

P.C:-

1. Heard learned counsel for the parties.

2. 12th July, 1996 happened to be an ill-fated day in the life of the Respondent. Working at a machine in the factory of the

Appellants he was involved in the verbal spat which resulted in a fight with one Mr. Ingale who sustained a minor injury, evidenced by the fact that after being given primary medical aid he resumed duty.

3. The Respondent as well as Mr. Ingale were charge-sheeted for riotous behaviour and we are concerned in the Appeal with the penalty of dismissal from service inflicted upon the Respondent post inquiry being held.

4. The Respondent sought a Reference before the Labour Court and at the first stage the same was answered in favour of the Respondent when vide the Award dated 22nd September, 2006 Labour Court-II, Pune opined that the principles of natural justice were violated necessitating evidence to be led before the Labour Court.

5. Before the Labour Court the Management examined three witnesses and successfully established that around 10.30 a.m. on 12th July, 1996 the Respondent and Mr. Ingale had a verbal spat followed by a physical combat at which Mr. Ingale sustained simple injuries.

6. Vide Award dated 27th May 2009, negating the stand of the Appellants that the injuries sustained by Mr. Ingale was serious

upon the evidence that Mr. Ingale resumed duty after primary medical aid, the Labour Court held that the evidence established a mutual fight between Mr. Ingale and the Respondent. The origin of the fight was not known.

7. Who provoked? Was not known.

8. Noting the argument of the Appellants that it was a case where the Respondent was involved in an act of misdemeanor for the eighth time and in the past seven times he was let off with a lenient punishment, the Labour Court held that from the evidence it emerged that the Respondent was involved in an act which attracted an offence of misdemeanor, for the first time. Fifteen years' service rendered was factored in by the Labour Court. Since it was a case of a mutual fight, the Labour Court held that the penalty of termination of service was shockingly disproportionate to the gravity of the wrong. Reinstatement with continuity of service sans back wages were awarded to the workman.

9. The Appellants marched to this Court and filed Writ Petition No.7706 of 2009 which has been dismissed by the learned Single Judge vide impugned Order dated 3rd December, 2009. The learned Single Judge has observed that the mitigating fact was that Mr. Ingale had provoked the workman and that no

inquiry was conducted against Mr. Ingale.

10. Learned counsel for the Appellants argues that both factors noted as mitigating factors by the learned Single Judge are contrary to the record.

11. We agree. There is no evidence that Mr. Ingale provoked the Respondent. Far from there being no evidence that no action was taken against Mr. Ingale, the evidence establishes that even Mr. Ingale was charge-sheeted and punished.

12. But, that would not mean that the Appellants succeed.

13. The reason is that the learned Labour Court has correctly opined that it was a case of mutual fight with Mr. Ingale receiving simple injuries evidenced by the fact that after taking primary medical aid Mr. Ingale resumed duty in the factory.

14. The plea of the Appellants that it was the eighth misdemeanor by the Respondent has rightly been negated by the learned Labour Court for the reason learned counsel for the Appellants is unable to show to us any evidence where from it could be established that on seven earlier occasions the Respondent, on being found guilty was visited with a light punishment.

15. The learned Labour Court has taken into account that the workman had worked without any blemish for 15 years.

16. Thus, the view taken by the Labour Court that the penalty was shockingly disproportionate cannot be faulted with.

17. Pertaining to the power of Labour Court, it is settled law that the purpose of the Labour Courts and Industrial Tribunals is to ensure peace and harmony in Industrial Establishments and if disproportionate penalties are inflicted upon workmen, the same invite the wrath of the fellow workmen thereby jeopardizing the industrial peace and harmony.

18. The Respondent has been directed to be reinstated with continuity of service sans back wages and the same would be sufficient penalty upon the workman.

19. The Appeal is dismissed.

20. In view of the dismissal of the Appeal, the Civil Application is also dismissed.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)