

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.767 OF 2021

CUSTOM CAPSULES PVT. LTD.

....PETITIONER

V/S

SANJAY SADASHIV NIKAM

....RESPONDENT

...

Mr. R.V. Paranjape with Mr. T.R. Yadav for the Petitioner.

Mr. Suresh M. Sabrad a/w Mr. Vikram N. Walawalkar, Mr. Amey C. Sawant
for Respondent.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 24, 2024.

P.C.:

1 Petitioner has filed the present Petition challenging the Award dated 19 October 2018 passed by the Labour Court, Thane in Complaint (ULP) No.113 of 2014, by which the Labour Court has set aside the termination order dated 7 March 2017 and has directed Petitioner to reinstate the Respondent with continuity without backwages. Petitioner has been granted liberty to impose punishment other than dismissal or discharge from service. The Labour Court's decision was unsuccessfully challenged by the Petitioner before the Industrial Court which has dismissed its revision by order dated 21 January 2021. Respondent had also filed revision to the extent of denial of backwages by the Labour Court. The Respondent's revision is also rejected by the Industrial Court.

However only Petitioner-employer has filed the present Petition challenging the orders of the Industrial and Labour Court.

2 Briefly stated, facts of the case are that Petitioner is a Company manufacturing veterinary capsules and had employed 40 workmen at the relevant point of time. Respondent was in Petitioner's employment and had rendered 18 years of service. Respondent was suspended from service on 24 September 2013 and charge-sheet was issued to him on 16 October 2013 alleging that he refused to perform work on 21 September 2013 and instigated the fellow workers to stop the work. It was further alleged that the Respondent alongwith Mr. Sudhakar Wade barged into the cabin of the CEO and instigated other workers to stop work. Domestic enquiry was conducted into the charges and Enquiry Officer held Respondent to be guilty of the charges. At that stage, Respondent filed Complaint (ULP) No.113 of 2014 before the Labour Court, Thane. The Labour Court granted interim relief in favour of the Respondent restraining the Petitioner from imposing the penalty. The decision of the Labour Court was upheld by the Industrial Court. Petitioner filed Writ Petition No.10959 of 2016 in this Court which was allowed by setting aside the decisions of the Labour and Industrial Court. Thereafter Petitioner passed order dated 7 March 2017 imposing the penalty of dismissal from service on the Respondent. The Complaint was amended by the Respondent. The Labour Court delivered Part-I Award holding that the Enquiry was fair and proper and that the findings were not perverse. The Labour Court thereafter proceeded to deliver Part-II Award dated 19

October 2018 and partly allowed the Complaint holding that penalty of dismissal from service was shockingly disproportionate. The Labour Court also held that though same charge was alleged against Mr. Sudhakar Wade, said Mr. Wade was continued in employment on the ground of tendering apology. The Labour Court accordingly set aside the dismissal order dated 7 March 2017 and directed the Petitioner to reinstate Respondent in service with continuity and all consequential benefits, but without any backwages. The Petitioner was granted liberty to impose punishment other than dismissal or discharge from service.

3 Both Petitioner and Respondent got aggrieved by Labour Court's decision, the Petitioner filed Revision Application (ULP) No.212 of 2018 challenging the entire Part-II Award whereas Respondent filed Revision Application (ULP) No.1 of 2019 challenging denial of backwages. Both the Revision Applications have been rejected by the Industrial Court by judgment and order dated 21 January 2021.

4 I have heard Mr. Paranjape, the learned Counsel appearing for the Petitioner. He would submit that mere discrimination in the matter of punishment could not have been a reason for setting aside penalty imposed on the Respondent. That tendering of apology by Shri Wade was considered as the relevant factor for not initiating action against him by the Petitioner-Management. That Respondent did not submit such apology and therefore there cannot be any parity of treatment between

two employees. In support of his contention, he would rely upon judgments of the Apex Court in *State of Uttar Pradesh & Ors. vs. Rajit Singh*, 2022 II CLR 547 and *Obettee (P) Ltd. vs. Mohd. Shafiq Khan*, (2005) 8 SCC 46.

5 Mr. Paranjape would further submit that the Labour Court itself has stated that the charge leveled against the Respondent was of serious nature. He would submit that despite serious charge being proved, the Labour Court has erroneously held that the punishment of dismissal is shockingly disproportionate. That instigating other employees to stop work is a serious misconduct for which punishment of dismissal is commensurate. He would therefore pray for setting aside the decisions of the Labour and Industrial Courts.

6 *Per contra*, Mr. Sabrad the learned Counsel appearing for the Respondent would oppose the Petition and submit that Respondent has been given discriminatory treatment by imposing harsh punishment of dismissal whereas Mr. Wade, who has also accused of committing same misconduct, is let off without any punishment. That there cannot be such a stark difference in the treatment meted out to two workmen indulging in same conduct. That no opportunity was given to Respondent to tender apology which was procured from Mr. Wade. That therefore mere tendering of apology by Mr. Wade cannot be a reason for practicing hostile discrimination between two similarly placed workmen. That the

penalty of dismissal is otherwise harsh and shockingly disproportionate to the misconduct proved. He would submit that Respondent is not reinstated in service despite passage of order by the Labour Court on 19 October 2018. He would pray for dismissal of the Petition.

7 I have considered the submissions canvassed by the learned counsel appearing for the parties.

8 Respondent faced the charge of refusal to perform the allocated work and instigating and advising other workers to stop the work. He was also accused of barging into the cabin of the CEO and asking the workers to come out of the cabin and to stop the work. The misconduct is shown to have been committed alongwith Mr. Sudhakar Wade, who also had barged into the cabin of company's CEO. It appears that Mr. Sudhakar Wade tendered apology on 25 September 2013, stating that he indulged into the conduct out of inadvertence and assured the Petitioner-Management not to repeat such conduct in future. On account of tendering apology, it appears that the Management did not initiate further action against Mr. Wade. However, Respondent was issued with chargesheet dated 16 October 2013 and after the charge being held to be proved, the penalty of dismissal from service was imposed on him.

9 The Labour Court, in its Part-I Award, held that the enquiry is fair and proper and that there is no perversity in the findings of the Enquiry

Officer. Therefore, the only issue was about the correctness of penalty imposed on the Respondent. The Labour Court has interfered in the penalty on twin grounds of the penalty being shockingly disproportionate and discriminatory treatment being meted out to Respondent vis-à-vis Mr. Sudhakar Wade.

10 So far as the aspect of proportionality is concerned, the charge of stopping other workers from performing duty is a serious misconduct. Even the Labour Court has held that the misconduct is of serious nature. Therefore, in ordinary course, penalty could not have been interfered only on the ground of proportionality. However, when the aspect of proportionality is taken into consideration alongwith the other factor of letting off Mr. Sudhakar Wade without any punishment, the cumulative effect of the two factors would certainly have a bearing on the penalty of dismissal imposed on the Respondent. It must be borne in mind that even Mr. Wade was accused of barging into cabin of company's CEO and instigating the workers to stop work. However non-initiation of disciplinary proceedings against Mr. Wade possibly indicates that the acts of the duo did not ultimately have much impact on the other workers. Therefore cumulative effect of nature of charge and letting off Mr. Wade will have to be taken into consideration while deciding the issue about proportionality of penalty in the light of peculiar facts and circumstances of the present case.

11. Mr. Paranjape has strenuously contended that mere discrimination in penalty cannot be a reason for interference in the penalty order. There can be no doubt about the proposition that a delinquent employee needs to be punished in the context of misconduct proved against him. In that regard reliance of Mr. Paranjape on judgment of the Apex Court in ***Rajit Singh*** (supra) and ***Obettee (P) Ltd.*** (supra) is not entirely irrelevant. However, in the instant case letting off Mr. Sudhakar Wade would act as a mitigating circumstance though not only reason, for interference in the order of punishment. In the present case both the Respondent as well as Mr. Sudhakar Wade indulged in the same misconduct. However, the Management thought it prudent not to issue even charge-sheet to Mr. Wade whereas Respondent is dismissed from service. There is nothing on record to indicate that the past conduct of the Respondent was blameworthy. Therefore, considering cumulative effect of all the factors it cannot be stated that the Labour Court has committed any grave error in directing the Respondent's reinstatement without backwages. The Industrial Court has rightly upheld the decision of the Labour Court.

12 The issue therefore is whether Petitioner should reinstate Respondent in service at this stage. Much water has flown from the date of the incident leading to Respondent's dismissal. Parties have fought several rounds of litigation before different Courts. This is the second time when the dispute between the parties has reached this Court. Considering the nature of charge proved against Respondent and the fact

that he has been out of service since 7 March 2017 as well as the bitter litigation fought by the parties during the past decade, I am of the view that reinstatement of the Respondent at this stage may not be in his own best interest. The Respondent also appears to be at advance age of 52 years. In that view of the matter, grant of lump sum compensation to the Respondent would meet the ends of justice in the facts and circumstances of the present case.

13. The next issue is about quantum of lump sum compensation to be awarded to Respondent. He was directed to be reinstated without backwages by Labour Court's order dated 19 October 2018. By now period of more than five years has elapsed but the Petitioner has failed to reinstate the Respondent in service. Though backwages are denied, Respondent would be entitled to full wages from 19 October 2018 onwards. The last wages drawn by the Respondent was Rs.15,000/-. If he was to be reinstated in service on 19 October 2018, the same would have been on the revised wages as applicable as on 19 October 2018. His wages would have further increased during subsequent period of five years. In that view of the matter, amount of wages payable to Respondent after the order of the Labour Court would be substantial. Considering the wages payable after Labour Court's order and loss of wages during future period, I am of the view that award of lump sum compensation of Rs.25,00,000/- to Respondent as full and final settlement would meet the ends of justice.

14 I accordingly proceed to pass the following order:

- i) The judgment and order of the Labour Court dated 19 October 2018 and of the Industrial Court dated 21 January 2021 shall stand modified to the extent that the Petitioner shall pay to the Respondent lump sum compensation of Rs.25,00,000/- towards full and final settlement of all dues.
- ii) Beyond the lumpsum compensation so awarded, Respondent shall not be entitled to any further benefits from the Petitioner.

15 With the above directions, the Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN
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