

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5721 OF 2024

BOSCH LIMITED

75, MIDC Estate, Triymbak Road

Satpur, Nashik-422 007

} ...Petitioner

: Versus :

BOSCH EMPLOYEES UNION

75, MIDC Estate, Triyambak Road,

Satpur, Nashik-422 007

} ...Respondent

Mr. Kiran Bapat, Senior Advocate *i/by. Mr. Rahul Oak, for the Petitioner.*

Mr. Suresh S. Pakale, Senior Advocate *a/w. Mr. Nilesh Desai, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 23 July 2024.

Judgment Pronounced on : 29 July 2024.

JUDGMENT :

1) Petitioner-employer has filed this petition challenging the Award dated 13 December 2023 passed by the Presiding Officer, First Labour Court, Nashik in Reference (IDA) No. 9 of 2004. The Labour Court has answered the Reference partly in the affirmative and has directed that the members of the Respondent-Company Shri. R.R.

Kanade and Shri. S.S. Pagar are entitled for reinstatement with continuity of service from 20 January 2003 without any backwages. Petitioner is accordingly directed to reinstate the said two workmen with continuity in service from 20 January 2003.

2) Petitioner is a Company engaged in manufacturing of fuel injection equipment, such as nozzles, nozzle holders, elements etc. It has registered office at Bengaluru and factories at Bengaluru, Nagnathpur, Jaipur and Nashik. Respondent is a registered union of workmen employed with the Petitioner. On 29 September 2002, an employee of the Petitioner, Mr. S.R. Chavan suffered cardiac arrest and collapsed at Petitioner's Nashik factory. According to Petitioner, Mr. Chavan was a heart patient for a long time and had undergone a coronary bypass surgery in June 2001 and had reported for duties in August 2001 and was medically habilitated by allotting light work. Mr. Chavan was declared dead at around 10.05 a.m. after unsuccessful attempts by the doctor in Petitioner's Medical Department to activate his heart. A huge mob of workmen in Nashik factory gathered outside the Medical Department. Mr. S.B. Deshpande, Dy. General Manager (HR), President of Respondent-Union, as well as the other union members arrived at the Medical Department. According to Petitioner, provocative and instigating speeches were delivered to the mob demanding expulsion of Mr. S.B. Deshpande. As a result of such provocative and instigating speeches, the mob prevented the dead body of the deceased employee to be taken out from the factory premises for post-mortem. Police was

summoned, who was also prevented by the mob from carrying out the investigation process and the police in-charge was stopped from entering the premises. According to Petitioner, eight workmen viz. Mr. S.S. Pagar, Mr. R.R. Kanade, Mr. M.V. Rakibe, Mr. D.N. Dhattrak, Mr. N.M. Jadhav, Mr. R.T. Shinde, Mr. J.S. Ahirrao and Mr. S.K. Kale (*delinquent workmen*) instigated the mob not to accept the offer of the management for conduct of enquiry after taking out the dead body outside the factory premises and demanded Mr. S.B. Deshpande's expulsion. According to Petitioner, the mob became riotous and was on the verge of violence. That local media was escorted by the delinquent workmen and the media covered the entire episode through video shooting on account of which the instigated workmen got excited and started shouting and waving their hands. Few workmen gave bytes to the media alleging delay in settlements. To calm down the situation, Mr. Deshpande offered to have himself arrested but the delinquent workmen demanded Mr. Deshpande's custody with instigated mob. At around 13.20 hrs, Assistant Commissioner of Police took out Mr. Deshpande from the Medical Department towards the police van and while he was being taken away, Mr. R.R. Kanade and Mr. S.S. Pagar alongwith Mr. Jadhav, Mr. Kadam and Mr. Dhattrak in addition to other delinquent workmen tried to pull Mr. Deshpande from the police van with the intention of assaulting him. According to the Petitioner, if Mr. Deshpande was not to be escorted by the police, the situation would have resulted in his mob lynching. This is how the dead body of the deceased workmen was detained by the delinquent workmen for four hours in the medical department.

3) Petitioner suspended all the delinquent workmen and initiated domestic enquiry against them. On 14 October 2002, chargesheets were issued to the delinquent workmen including Mr. R.R. Kanade and Mr. S.S. Pagar. The delinquent workmen submitted replies denying the charges. Enquiry was conducted before the Enquiry Officer-Advocate Mr. R.S. Bhalekar from 30 October 2002 onwards. It appears that on 30 October 2002, the delinquent workmen accepted the charges of misconduct levelled against them and did not press the reply submitted by them to the chargesheet. The Enquiry Officer still conducted enquiry in which Management, as well as the delinquent workmen led oral and documentary evidence. Enquiry Officer submitted report dated 28 December 2002 holding charges levelled against all the delinquent workmen to be proved. Petitioner issued show cause notices dated 2 January 2003 to the delinquent workmen alongwith copies of enquiry report. The delinquent workmen filed their replies to the show cause notices. Petitioner thereafter issued termination letters dated 30 January 2003 to all the delinquent workmen terminating their services w.e.f. 20 January 2003. It appears that a dispute was pending before the Arbitrator since March 2002 relating to payment incentives and therefore application dated 30 January 2003 was made by the Petitioner to the Arbitrator under Section 33(2)(b) of the Industrial Disputes Act for approval of termination of delinquent workmen and accordingly Arbitrator approved the same by order dated 27 December 2004.

4) In November 2004, Respondent-Union raised industrial dispute relating to termination of delinquent workmen. The appropriate Government referred the dispute for adjudication before the Labour Court at Nashik, which was registered as Reference (IDA) No. 9/2004. The Respondent-Union filed Statement of Claim, which was resisted by Petitioner by filing Written Statement. The Labour Court framed preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer. On 14 March 2018, the Labour Court delivered Part-I Award holding that the enquiry conducted against the delinquent workmen was fair, proper and in accordance with the principles of natural justice. It further held that the findings of the Enquiry Officer were not perverse. The Respondent-Union filed evidence Affidavits of four witnesses out of which only two turned up for cross-examination. Petitioner led evidence of two witnesses.

5) During pendency of Reference before the Labour Court, Petitioner settled the disputes with the six delinquent workmen, namely Mr. M.V. Rakibe, Mr. D.N. Dhatrak, Mr. N.M. Jadhav, Mr. R.T. Shinde, Mr. J.S. Ahirrao and Mr. S.K. Kale. Accordingly, names of the said six workmen were deleted from the Reference and the Reference continued only in respect of the two workmen Shri. R.R. Kanade and Mr. S.S. Pagar.

6) The Labour court thereafter delivered final Award dated 13 December 2020 *qua* the two workmen, Mr. R.R. Kanade and Mr. S.S.

Pagar holding that though the misconduct was proved against them, their termination amounts to victimisation and that the punishment was disproportionate. The Labour Court has accordingly directed reinstatement of the said two workmen with continuity of service from 20 January 2003. The Labour Court has however denied backwages to the said two workmen. Aggrieved by the final Award dated 13 December 2023, Petitioner has filed the present petition.

7) Mr. Bapat, the learned senior advocate appears on behalf of the Petitioner and submits that the Labour Court has erred in directing reinstatement of the two workmen on extraneous considerations of not taking action against 400 to 500 employees. That once the misconduct was held to be proved, the Labour Court could not have gone into the issue as to whether other workmen are punished or not. That the role played by the eight delinquent workmen was totally different than the role of other 400-500 workmen who were merely present in the mob, whereas the delinquent workmen not only provoked and instigated them to also indulged in the acts of pushing and hitting Mr. Deshpande. That therefore the role of the delinquent workmen was totally different than the other workmen present in the mob. That the Labour Court has therefore erred in holding there is any victimisation on the part of the Petitioner. Relying on the judgment of the Apex Court in *Messrs Bharat Iron Works Versus. Bhagubhai Balubhai Patel and Others*¹ Mr. Bapat would submit that it is well settled position of law that proved misconduct is

¹ (1976) 1 SCC 518

antithesis of victimisation. He would also rely upon judgment of this Court in *Tata Infomedia Limited Vs. Tata Press Employees Union and Anr.*² in support of his contention that once finding of misconduct is arrived at in disciplinary proceeding was sustainable with reference to evidence on record, the Labour Court cannot transgress the limits of its own jurisdiction in interfering with the findings in exercise of jurisdiction under Section 11A of the I.D. Act. Mr. Bapat would further submit that considering the nature of misconduct alleged and proved against the two concerned workmen, it cannot be stated that the punishment of dismissal is shockingly disproportionate. Mr. Bapat would pray for setting aside the Award dated 13 December 2023.

8) *Per-contra*, Mr. Pakale the learned senior advocate appearing for the Respondent-Union would oppose the petition and support the order passed by the Labour Court. He would submit that the Labour Court has merely directed reinstatement without any backwages and that therefore interference by this Court is not warranted in the decision of the Labour Court. That the concerned workmen are actually aggrieved by the Labour Court's Award, which denies them wages for over 20 long years and merely grants reinstatement at the fag end of their service. That if this limited relief granted by the Labour Court is also interfered with by this Court, the same would amount to travesty of justice.

2 2005 (3) Mh.L.J. 105

9) Mr. Pakale would further submit that protest was held on account of death of co-worker by all workers in the factory and Petitioner deliberately singled out eight delinquent workmen for being suspended and subjected to disciplinary proceedings. That the role played by the said delinquent workmen is same as that of other 400-500 workers in the mob. That this discriminatory treatment was given to 8 workers who are dismissed from service, whereas the other 400-500 workers in the mob were merely denied salary for that particular day. He would therefore submit that the Labour Court has rightly arrived at the finding that there is victimisation on the part of the Petitioner *qua* the two concerned workmen. Mr. Pakale would rely upon judgment of Kerala High Court in *Senior Regional Manager, Food Corporation of India & Others V/s. K. Chamy*³, in support of his contention that the once the management condones and drops proceedings against some of the delinquents, its act of punishing the selected few amounts to discrimination. He would also rely upon judgment of Karnataka High Court in *Management of Shrinagar Cinema Theatre, represented by its Proprietor V/s. S. Thimmaraju Kondapalli*⁴ in support of his contention that dismissal from service is a capital punishment and has to be awarded in rarest of rare cases. Mr. Pakale would pray for dismissal of the petition.

10) Rival contentions of the parties now fall for my consideration.

3 1999 Lab. I.C. 731

4 2017 Law Suit (Kar) 533

11) Domestic enquiry was initiated against total 8 delinquent workmen. So far as the two workmen involved in the present petition are concerned, the charges levelled against them relate to their conduct after death of the deceased employee Mr. S.R. Chavan on 29 September 2002. The chargesheet alleged that the workmen were found making provocative and instigating speeches to the mob of about 250 workmen and demanding expulsion of Mr. Deshpande, DGM, Personnel and Administration. The chargesheet alleges that despite the Appeal being made by the General Manager on the request of the office bearers of the Union, the two workmen kept on instigating the mob once again shouting slogans for expulsion of Mr. Deshpande. More serious allegation is to be found in para-3 of the chargesheet where it is alleged that Mr. R.R. Kanade pushed Mr. Deshpande from back and hit him from behind in the mob and assaulted him. It was alleged in the chargesheet that the concerned two workmen detained the dead body and did not allow the same to be take away for proper investigations. It is further alleged that due to provocation and instigation by the concerned two workmen, about 250 workmen did not perform work from 10.30 hrs to 14.00 hrs thereby halting Company's production activities.

12) In Part-I Award, the enquiry is held to be fair and proper and in accordance with the principles of natural justice. Findings of the Enquiry Officer are also not held to be perverse. Respondent-Union or the concerned two workmen did not challenge Part-I Award dated 14 March 2018 and the same has attained finality. Thus, after

delivery of Part-I Award, the only issue that remained was about proportionality of penalty imposed on the two workmen against whom the charge is held to be proved. The Labour Court has recorded following findings for interfering in the punishment.

12. From the pleadings of both the parties, it is clear that there was some dispute pending between union and the company regarding the incentives. It is admitted fact that the said dispute was pending before arbitrator. On 29.02.2002 one workman died and all the workmen working in the company gathered near Medical Department. But it is seen that the company had issued chargesheets only to these eight concerned workmen. From the pleadings of the parties it is seen that there were near about 400 to 500 employees working in the company. The mob of workmen gathered after the death of one Shri. S.R. Chavan. There is nothing on record to show that the company has taken action against all the workmen who illegally gathered in the premises after the death of that workman. There are no reasons mentioned by the company why only these eight workmen were issued with the charge-sheets. It clearly shows that favouritism and partiality on part of the company. It is on record that these workmen have served the company from the year 1990 and 1992. Thus they have completed near about 13 to 14 years service with the company. But merely on the basis of one incidence the services of the workmen were terminated.

13. It is on record that the company had settled the dispute with other six workmen by giving compensation of Rs.20 Lakhs. It is argued by Ld. Advocate for the company that the benefit of those settlement can not be given to these workmen as they have not accepted the offer of the company at that time. I found substance in his arguments, the workmen cannot be given benefits of settlement of the company with the other six workmen.

14. As mentioned above the act of the part of the company is clearly amounting to victimization in colourable exercise of employer's right, not in good faith and therefore the action of dismissal is not legal and proper and is shockingly disproportionate to the misconducts. Therefore it is liable to be set aside. Considering all these facts and circumstance I come to the conclusion that the two concerned workmen viz. Shri. R.R. Kanade and Shri. S.S. Pagar are entitled for reinstatement with continuity of service w.e.f. 20.01.2003.

15. It is pertinent to note here that the enquiry conducted against the workmen as legal and proper. Thus the charges whatever leveled against the workmen are proved before the enquiry officer. For the proved misconduct it is necessary to issue some punishment to these workmen. But the punishment of termination will amount to capital punishment. Instead of this, I am of the opinion that the backwages of these workmen can be denied. It will be proper punishment for the proved misconducts committed by them. Therefore I come to the conclusion that these two workmen are entitled for reinstatement with continuity of service from 20.01.2003 i.e. the date of termination, but they are not entitled to any backwages. Hence, I answer Issue no.3 and 4 accordingly and answer to issue no.5 I proceed to pass the following Award/

AWARD

1. Reference is answered in partly affirmative.
2. The second party workmen viz. Shri. R.R. Kanade and S.S. Pagar are entitled for reinstatement with continuity of service from 20.01.2003 with the first party, but they are not entitled to any back wages.
3. First party is directed to reinstate the second party workmen viz. Shri. R.R. Kanade and S.S. Pagar with continuity of service from 20.01.2003 within 1 month from the publication of this Award.

4. Copy of this Award be setnt to the Deputy Commissioner of Labour, Nashik for information and necessary action.

13) Perusal of the above findings recorded by the Labour Court would indicate that it has clearly committed an error in recording the findings of favourtism and partiality against Petitioner. The chargesheet alleged specific role against the concerned two workmen while the other 250 workmen (number appears to be enhanced by the Labour Court to 400-500 workmen) had merely gathered at the spot and were possibly indulging in shouting of slogans. However, the concerned two workmen faced the charges of instigating and provoking other workers. Additional role is ascribed to the workmen, Mr. R.R. Kanade of assaulting Mr. Deshpande. The concerned workmen are also ascribed the role of detaining the dead body, as well as being responsible for halting all activities of the Company on account of provocation and instigation to the mob and other workmen. In my view, there cannot be any comparison between the misconduct proved against the concerned two workmen and the other 250 workers who were merely present in the mob and shouted slogans. The Labour Court has thus erred in directing reinstatement by comparing the roles of two workers with the other 250 workmen.

14) In ordinary course, this Court would have been justified in setting aside, the Labour Court's Award as the finding of victimisation or favourtism recorded by the Labour Court are clearly unsustainable. However, it is seen that Petitioner has settled the

disputes with similarly placed six other workmen by paying them compensation. It appears that the compensation paid to the said workmen is to the tune of Rs.20,00,000/- each. I therefore do not see any reason why the concerned two workmen should be given different treatment than the one offered to the said six workmen.

15) Both sides have canvassed submissions in support of their respective pleas. While according to Mr. Bapat, no interference was warranted in termination orders after serious charges were proved, it is Mr. Pakale's contention that two workmen are not just given discriminatory treatment vis-à-vis 500 other similarly placed workers who have continued to work and draw wages all these years, denial of backwages by the Labour Court itself is hard treatment meted out to them despite recording of finding of victimization. Mr. Bapat also relied upon judgment of the Apex Court in *Bharat Iron Works* (supra) in support of the proposition that proved misconduct is antithesis to victimization. He has also relied on judgment of this Court in *Tata Infomedia Ltd.* (supra) in support of scope of interference under Section 11A of the I.D. Act. On the other hand, Mr. Pakale has relied upon judgment of Kerala High Court in *Senior Regional Manager, Food Corporation of India and Ors.* in support of contention of discrimination and of Karnataka High Court in *Management of Shrinagar Cinema Theatre* (supra) for equating dismissal from service to that of capital punishment. In my view, it is not necessary to go into those issue considering the fact that the Petitioner has settled disputes by paying compensation to six other similarly placed workmen.

16) The Labour Court has directed reinstatement of Mr. R.R. Kanade and Mr. S.S. Pagar by order dated 13 December 2023 without any backwages. It appears that both the workmen are currently aged about 55 years, 60 years being the age of retirement. Thus, the end result of the order of the Labour court passed in favour of the said two workmen would entitle them to serve for five years more with the Petitioner-Company. Considering the nature of incident that has taken place, as well as unsavory relationship between the parties on account of prolonged litigation fought since the year 2004, I am of the view that it would not be in the interest of the concerned two workman to go back and work with the Petitioner. Also considering the long time gap of 20 years after their dismissal, it is also questionable as to whether the said two workmen would be in a position to discharge duties of the post occupied by them prior to the year 2003 effectively at this distant point of time. Therefore, instead of granting reinstatement, ends of justice would meet if the two workmen are also awarded lumpsum compensation in lieu of reinstatement. It appears that the other six workmen were granted compensation @ Rs.20,00,000/- sometime in the year 2021. Considering this position, in my view, award of lumpsum compensation of Rs.25,00,000/- to each of the two workers would meet the ends of justice.

17) The Writ Petition accordingly succeeds partly and I proceed to pass the following order :

(i) The Award dated 13 December 2023 passed by the Labour Court, Nashik in Reference (IDA) No.9/2004 shall stand modified to the extent of Petitioner shall pay lumpsum compensation of Rs.25,00,000/- each to the workmen, Mr. R.R. Kanade and Mr. S.S. Pagar in lieu of reinstatement, continuity or any other service or retirement benefits.

(ii) It is clarified that beyond the amount of compensation of Rs.25,00,000/-, the said two workmen shall not be entitled to any further service or retirement related benefit.

(iii) The amount of compensation shall be paid by the Petitioner to the said two workmen within a period of 6 weeks from today.

18) With the above directions, the Writ Petition is partly allowed and disposed of. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]