MANU/MH/0544/1993

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IN THE HIGH COURT OF BOMBAY

W.P. Nos. 2366/1989 and 641 to 651 and 868/1990

Decided On: 23.07.1993

Appellants: **Sadhana Textile Industries Pvt. Ltd.**
Vs.
Respondent: **Gulabchand Gayadin and Ors. etc.**

Hon'ble Judges/Coram:
Dr. B.P. Saraf, J.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu and Y.C. Naidu, Advs., i/b., C.R. Naidu & Co.

For Respondents/Defendant: N.M. Ganguli, Adv.

Case Note:

Labour and Industrial - power of Court - Sections 78 and 84 of Bombay Industrial Relations Act, 1947 - under Sections 78 and 84 Courts are restricted from to decide - propriety or legality of order passed by employer acting under standing orders - Court can decide whether action challenged before it is in accordance with standing order or not - 'Order of employer' mean and includes all facts of that Order - Labour Court empowered to examine orders pertaining to punishment and to modify the same if not satisfied about its propriety or legality.

ORDER

B.P. Saraf, J.

1. This batch of writ petitions is directed against the judgment and order dated May 30, 1989 of the Industrial Court, Bombay on appeals under Section 84 of the Bombay Industrial Relations Act, 1946 ("the Act"). First 12 petitions have been filed by the employer individually against each of the workmen who were parties to the proceeding before the Industrial Court and one writ petition viz. Writ Petition No. 868 of 1990 has been filed jointly by all the 12 workmen.

2. As the facts and issues involved are common and the controversy arises out of the common order of the Industrial Court, all these writ petitions were taken up together for hearing and are being disposed of by this common judgment and order. The facts giving rise to these petitions, briefly, stated are as follows:

> Sadhana Textile Mills Private Limited, the petitioner in the first 12 writ petitions, is the employer. The principal respondents in all these above petitions are the workmen. Sadhana Textile Mills Private Limited (hereinafter

referred to as "the employer") charge-sheeted its 12 workmen, under Standing Order 20(b), 20(1), 20(r) and 20(k) for committing various misconducts. It was alleged that the workmen were on illegal strike from November 23, 1984 to November 26, 1984. It was further alleged that they not only took part in the illegal strike but also abetted and instigated other workmen to take part in the same. Such action on the part of the workmen, according to the employer, was subversive of the discipline or good behaviour. It was further alleged that these workmen held a meeting inside the premises of the mill without the previous permission of the Manager; geared the Chief Manager (Works) and other officers in the office; threatened them with dire consequences and prohibited the officers of the company from going out of the mill premises etc. An enquiry was conducted on these charges. Various witnesses were examined. On consideration of the deposition of the witnesses and other material on record, all the workmen were found guilty of misconduct. On the basis of the finding of the Enquiry Officer, they were discharged from service by the employer by order dated February 15, 1986. The order of discharge was challenged by the workmen by filing applications under Section 78 of the Bombay Industrial Relations Act, 1946 ("the Act") before the Labour Court. Before the Labour Court, a preliminary issue was raised by the workmen that the enquiry was not fair and proper. This issue was decided by the Labour Court in favour of the workmen and the employer was granted liberty to prove misconduct by adducing further evidence. Accordingly, further evidence was adduced before the Labour Court by the employer to prove the alleged misconduct. The Labour Court, after considering the evidence on record, held that the employer failed to prove the alleged charges and, accordingly, set aside the order of discharge passed by the employer and directed reinstatement of the workmen with continuity of the service and full back wages.

3. Against the order of the Labour Court, the employer company filed appeals under Section 84 of the Act before the Industrial Court, The Industrial Court formulated the following points for decision:

(i) Whether the appellant company could establish beyond all reasonable doubt that on November 23, 1984 in between 3.30 p.m. and 4.30 p.m., the concerned workers and others gheraoed the Chief Manager and other officers of the company and threatened them with dire consequences?

(ii) Whether the appellant company further proved beyond all reasonable doubt that the striking workers, at the instance of these workers had prohibited the officers of the company from going out of the mill premises?

(iii) Whether the appellant company has further proved that without taking the permission from the management, these workers and others had held a meeting within the premises of the company?

(iv) Whether the appellant company further proved that at the instance and instigation of these workers all other workers remained on illegal strike from 3.30p.m. on November 23, 1984 till 3.30 p.m. on November 26, 1984?

(v) What punishment should have been awarded to these workmen on account of their participation and instigation of an illegal strike?

The finding of the Industrial Court on the first three points was in the negative. The

finding on the fourth and fifth issues was in the affirmative. Before referring to the finding on the fifth issue, it will be worthwhile to mention the reasons for findings of the Industrial Court on the four issues stated above. The finding on the first three issues was arrived at by the Industrial Court against the employer as, according to it, the evidence of the various witness of the employer in that regard was vague. The Industrial Court was of the opinion that the employer could not specifically prove as to who, out of the 12 workmen, did what. On that basis, it came to a conclusion that the alleged acts mentioned in the first three points against these 12 workmen could not be proved by the employer. So far as the allegation of participating in the strike and instigating the illegal strike is concerned, the Industrial Court held in favour of the employer. For that purpose too, it, perused the relevant evidence and on consideration thereof, held that the finding of the Labour Court in that regard was not correct. Thus, having arrived at a finding that all the 12 workmen had participated in and instigated the illegal strike, the Industrial Court took up for consideration the question whether they deserved the punishment of dismissal or not. On this count, the Industrial Court was of the opinion that though the charge of participating in and instigating the illegal strike was proved against the concerned workmen, somewhat lenient view should have been taken and they should not have been awarded the extreme punishment of discharge from the service. The Industrial Court, therefore, modified the punishment to reinstatement with continuity of service without back wages for a period of six months. In other words, the punishment of discharge was converted into punishment of loss of back wages for a period of six months.

4. The learned counsel for the employer submits that the finding of the Industrial Court on the first three points in regard to the failure of the employer to prove its charge of misconduct is preverse in as much as there is sufficient material on record which clearly goes to show be-yond all reasonable doubt that the alleged acts were committed by the workmen concerned. The contention of the learned counsel is that there is no vagueness in any of the allegations or in the evidence of the witnesses. The Security Officer, who is witness No. 1, has categorically named these persons. Seven of them have also been named by another witness who was a co-workman. The learned counsel submits that when the allegation is of abusing the Manager or other staff, it is well nigh impossible in any case to identify each person individually to say who said what. The submission, in other words, is that when such acts are done jointly by a group of persons, each one of whom is identified and named, the Courts, while appreciating the evidence, have to take a practical and realistic approach. The learned counsel read the evidence the various witnesses and submitted that the Industrial Court failed to take note of the relevant materials before it and arrived at a cryptic finding which is not based on facts and material on record. According to him, this finding is rather contrary to the facts on record and is, therefore, liable to be set aside.

5. So far as the modification of punishment is concerned, the submission of the learned counsel for the employer is that the Industrial Court totally misdirected itself in modifying the punishment and converting the same from discharge from service to loss of back wages for six months. His submission is that the powers of the Labour Court under Section 78 of the Act and of the Industrial Court under Section 84 of the Act are limited and these Courts have to act within the scope and ambit thereof. The learned counsel brought to my notice the provisions of Section 78 which empowers the Labour Court to decide disputes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders. That being so, the Labour Court's power is restricted to examination of the propriety or legality of the order in the light of the Standing Orders. The power of the Industrial

Court, on appeal under Section 84 of the Act, according to the learned counsel, cannot be wider than the power of the Labour Court under Section 78. The submission of the counsel is that the Industrial Court failed to take note of these relevant provisions and the scope and ambit of their powers while deciding the question of quantum of punishment and acted beyond its powers. According to the learned counsel, the Industrial Court should have considered the various options in the Standing Order in the matter of punishment and in the light of such options, it should have decided whether the punishment of dismissal or discharge from service was a proper punishment or any other punishment specified therein would be commensurate with the gravity of the misconduct of the workmen.

6. Reference was made to a number of decisions of the Supreme Court in support of the contention that participating in an illegal strike or inciting strike is a very serious offence and it cannot be taken as a minor offence which can be dealt with lightly. My attention was also drawn to Standing Order No. 21 which is applicable to the establishment of the employer to show that out of the various punishments mentioned in Clauses (a) to (e) of Sub-clause (1) thereof, the punishment of dismissal and discharge was the only proper punishment for the misconduct of the workmen in the instant case.

7. Mr. Ganguli, learned counsel for the workmen, on the other hand, submits that the finding of the Industrial Court which is also the finding of the Labour Court in regard to the misconduct mentioned in the first three points is fully justified and no fault can be found with the same. According to Mr. Ganguli, the other finding of the Industrial Court that the workmen concerned participated in and instigated the illegal strike for which they have been punished with loss of back wages for six months, is preverse and the same is liable to be set aside. In regard to the punishment, the learned counsel submits that discharge or dismissal from service is a very harsh punishment because it amounts to economic death of the workmen and, as such, the same should not be awarded in such cases. According to him, the workmen were not liable to any punishment at all. Mr. Ganguli, however, submits that even if the order of the Industrial Court wherein the workmen were found guilty of participating in and inciting illegal strike is upheld, the punishment of discharge is too harsh. The Industrial Court had the power to modify the same, in such manner as it thought fit and in that view of the matter, no fault can be found with its order, modifying the punishment.

8. So far as the rival submissions in regard to the various findings of the Industrial Court in regard to misconducts - three against the employer and one against the workmen - are concerned, on a careful perusal of the order of the Industrial Court and the evidence of the witnesses, I find no perversity in the same. The findings appear to have been arrived at on a proper appreciation of the evidence on record, I am, therefore, not inclined to reappreciate the evidence and arrive at independent findings of my own in exercise of the extraordinary powers under Articles 226/227 of the Constitution. I do not find any cogent reason or justification to interfere with the various findings of fact arrived at by the Industrial Court.

9. The only point that survives for consideration, therefore, is whether the order of the Industrial Court in regard to the modification of punishment is tenable in law or not. On this count, as earlier indicated, the submission of the learned counsel for the employer is that the Labour Court can decide only the propriety or legality of the order of the employer in the light of the Standing Orders. It cannot go beyond that. Similarly, the Industrial Court, sitting in appeal over the order of the Labour Court,

can also do what the Labour Court itself could have done under Section 78 of the Act. It cannot go beyond that. I have considered this submission.

Section 78 of the Act which deals with the powers of the Labour Court, so far as relevant, reads:

> **78.** Power of Labour Court:
>
> (1) Labour Court shall have power to -
>
> A. decide -
>
> (a) disputes regarding -
>
> (i) the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders;
>
> (ii) the application and interpretation of Standing Orders;

Section 84 of the Act provides, inter alia, for appeal to the Industrial Court against a decision of the Labour Court in respect of matters falling under Clause (a) or (c) of paragraph A of Sub-section (1) of Section 78.

10. Evidently, the power of the Labour Court is to decide the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders. Against his decision or determination, appeal lies to the Industrial Court under Section 84 of the Act. The Appellate Court, hearing the appeal, can examine only the correctness of the decision of the Labour Court. The scope of the powers of the Industrial Court under Section 84 is conterminous with that of the Labour Court under Section 78 of the Act. It can do what the Labour Court could do. But its powers are not wider in scope than that of the Labour Court. As a natural corollary, it cannot do what the Labour Court could not have done. So far as the Labour Court is concerned, it may decide the propriety or legality of the order of the employer. If on perusal of the same, no impropriety or illegality is found therein, it cannot interfere with the same with a view to substitute its own opinion in pace of the employer. In the instant case, there is no dispute that the employer was working under the Standing Orders. The charge-sheet was under various clauses of Standing Order No. 20. The punishments that can be awarded for those misconducts are specified in Standing Order No. 21 which reads as follows:

> "21. Punishment:
>
> (1) Subject to the provisions of Standing Order 22 an operative found guilty of misconduct may be punished in one of the following ways-
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> (a) warned, or (b) subject to and in accordance with the provisions of the Payment of Wages Act, 1936, fined, or (c) by an order in writing signed by the Manager, suspended for a period not exceeding four days, or (d) by an order in writing signed by the manager discharged by giving 14 days notice or by payment of 13 days' wages in lieu of notice, or (e) by an order in writing signed by the Manager dismissed without notice.
>
> (2) The Manager in awarding punishment for any misconduct, shall take into account the gravity of the misconduct, the previous record, if any, of the

operative and any extenuating or aggravating circumstances that may exist."

11. From a reading of Standing Order 21, it is clear that the various punishments that can be awarded by the employer to a workman found guilty of misconduct have been specified. It starts with the lightest punishment of warning and ends with dismissal without notice. Lesser than dismissal are punishments specified in Clauses (c) and (d) i.e. suspension for a period not exceeding four days and discharge by giving 14 days' notice or by payment of 13 days' wages in lieu of notice respectively. Punishment of the type awarded by the Industrial Court i.e. loss of wages for six months does not find place in Standing Order No. 21. The question that arises for consideration is whether the employer, while deciding the question of punishment to be awarded to a workman found guilty of any misconduct under Standing Order No. 20, could have awarded any punishment other than one of those specified in Standing Order No. 21. It is an agreed position that the employer's power does not extend beyond the punishments specified in the Standing Order. That being so, the question that falls for determination is whether the power of the Labour Court under Section 78 or the Industrial Court hearing an appeal under Section 84 against the order of the Labour Court is wider or different than the power of the employer. In other words, whether the power of the Court is restricted or limited to decide which of the punishments specified in the Standing Order would be proper punishment for the misconduct in question or it can modulate the punishment in any manner it thinks fit and proper.

12. I have carefully considered this aspect of the matter in the light of the powers of the Courts under Sections 78 and 84 of the Act. The powers of the Courts are restricted to decide the propriety or legality of the order passed by an employer acting under the Standing Orders. It can only examine and decide whether the action challenged before it is in accordance with the Standing Order or not. It cannot go beyond it. It may, however, be made clear that the expression "order of the employer'' means and includes all facets of that order. The Labour Court, therefore, has the power also to examine the orders in so far as it pertains to punishment and to modify the same, if it is, not satisfied about its propriety or legality. But that again will be limited to determination as to which of the punishments specified in the Standing Order would be the proper punishment keeping in view the nature and gravity of the misconduct proved before it. In the instant case, the admitted position is that the Industrial Court did not apply its mind to the relevant Standing Order and did not decide the quantum of punishment in the light thereof. This action, in my opinion, is not in accordance with law.

13. I am of the clear opinion that the Industrial Court should have examined the propriety or legality of the punishment in the light of provisions of Standing Order No. 21 and to decide whether the punishment awarded by the employer was proper punishment for the proved misconduct or any of the other punishments specified therein would be more appropriate in view of the nature and gravity of the misconduct. Under the circumstances, it becomes necessary to remand this matter to the Industrial Court.

14. Mr. Ganguli, learned counsel for the workmen, submits that instead of remanding the matter to the Industrial Court, this Court, may itself decide the question of punishment in the light of Standing Order No. 21 because no new evidence will be required for that purpose. I do not feel that it will be proper for this Court to take up for determination for the first time the question of adequacy of punishment, which has to be decided on consideration of the totality of the facts and circumstances of

the case. True it is that there is no rule as such prohibiting this Court from giving a final direction in regard to punishment and thereby substituting its own finding for that of the Labour Court, but as a matter of practice, such directions are not ordinarily given. The High Court, in exercise of its powers under Article 227 of the Constitution, does not act as a Court of Appeal and, as such, ordinarily it does not substitute its own finding regarding punishment in place of the one arrived at by the Labour Court or the Industrial Court. In such cases, matters are generally remitted to the Labour Court or the Industrial Court. I, therefore, remand the matter back to the Industrial Court to decide the question of punishment afresh in the light of the above discussion.

15. As the matter is very old, it is desirable that the Industrial Court should decide the same and pass afresh order expeditiously. I, therefore, direct the Industrial Court to decide the question of quantum of punishment as expeditiously as possible preferably within a period of six months from today.

16. In the result, the impugned order is set aside to the above extent. All the writ petitions are disposed of accordingly.

17. Under the facts and circumstances of the case, I make no order as to costs.

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