Bombay High Court
Holy Spirit Hospital & Anr vs Benjamin Fernandes on 7 September, 2012
Bench: A.A. Sayed

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1646 OF 2011

Holy Spirit Hospital & Anr. .... Petitioners.

vs.

Benjamin Fernandes. .... Respondent.

Mr. S.C. Naidu i/by C.R. Naidu & Co. for the Petitioners.

Mr. M.D. Nagle for the Respondent.

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WRIT PETITION NO. 2225 OF 2011

Benjamin Fernandes. .... Petitioner.

vs.

Holy Spirit Hospital. .... Respondent.

Mr. M.D. Nagle for the Petitioner.

Mr. S.C. Naidu i/by C.R. Naidu & Co. for the Respondent.

CORAM : A.A. SAYED, J.

JUDGMENT RESERVED ON: 8 MAY, 2012 JUDGMENT PRONOUNCED ON: 7 SEPTEMBER, 2012 JUDGMENT:-

1. Rule in Writ Petition No. 2225 of 2011. Learned Counsel waives service on behalf of Respondent. Since Rule is already issued in Writ Petition Dmt 2 wp1646-11 & 2225-11 No. 1646 of 2011, on the request of the learned Counsel, both the Petitions are heard finally.

2. These two cross Petitions impugn an award dated 10 May 2011 passed by the Labour Court in Reference (IDA) No. 107 of 2008. Writ Petition No. 1646 of 2011 is filed by the Petitioner-Hospital (hereinafter referred to as 'the Hospital') aggrieved by that part of the impugned award whereby the punishment awarded by the management was altered and instead of dismissal from service, two increments of the workman were ordered to be withheld permanently and the workman was directed to be reinstated with continuity of service. Writ Petition No. 2225 of 2011 is filed by the Petitioner-workman (hereinafter referred to as 'the workman') aggrieved to the extent of denial of back wages and the withholding of two increments permanently.

3. The Hospital is established and managed by 'The Society of the Servants of the Holy Spirit' which is registered under the Bombay Public Trust Act, 1950. The Hospital is a modern hospital offering medical services in various specialties including super specialties and offers subsidised rates to poor persons. The Hospital staff strength is about 800 employees including doctors and managerial staff.

4. The workman was working as a helper and was attached to Laundry Dmt 3 wp1646-11 & 2225-11 Department of the Hospital since 1991. According to the Hospital, the workman committed grave acts of misconduct for which he was issued charge-sheet dated 19 March 2005. The said charge-sheet was replied to by the workman by his reply dated 22 March 2005. The reply was not found satisfactory and the Hospital decided to hold a domestic enquiry against the workman by an independent Enquiry officer. The Enquiry Officer submitted his Report and findings dated 19 January 2007. The workman replied to the said Report and findings by his letter dated 5 February 2007. The Enquiry Officer held the workman guilty of the charges levelled against him. On the basis of the Enquiry Report, the management by its order dated 13th February, 2007 awarded punishment of dismissal from service to the workman and further directed his gratuity to be forfeited.

5. The workman thereafter raised a dispute vide his letter dated 3 April 2007 and submitted his Justification Statement dated 18 June 2007 to the Office of the Commissioner of Labour, Mumbai. The Hospital replied to the same. The Conciliation Officer, after hearing both the sides, opined that

the dispute could not be resolved and proceeded to report failure of conciliation under Section 12 (4) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') vide his Report dated 2 February 2008. The Deputy Commissioner of Labour (Conciliation) on consideration of the Report made a Reference under Section 10(1)(c) read with Section 12 (5) of the I.D. Act to the Labour Court by an order of Dmt 4 wp1646-11 & 2225-11 Reference dated 3 April 2008. The workman thereafter filed his Statement of Claim dated 23 July 2008 in support of his demand for reinstatement with full back wages and continuity of service. The Hospital filed filed its Written Statement dated 9 July 2009.

6. Two preliminary issues were raised :

(a) Whether the enquiry was fair, proper and legal? and

(b) Whether the findings recorded by the Enquiry Officer are not perverse?

7. After the evidence was recorded on the preliminary issues and after hearing the parties, the Labour Court passed Award Part I dated 22 June 2010 and concluded that the enquiry was fair and proper and the findings were not perverse.

8. The said Award Part I was not challenged by the workman. In respect of the issue of proportionality of punishment, evidence was adduced. The Hospital examined Sr. Reena, Director - HRD and Mrs. Anita Rodrigues, Supervisor, Head of Laundry Department as witnesses. The workman adduced evidence by examining himself and his colleagues Mr. Felix Rodrigues and Mr. Prakash Bhoir.

Dmt 5 wp1646-11 & 2225-11

9. The Labour Court passed the impugned Award Part II on 10 May 2011 and held that the punishment awarded to the workman was disproportionate to the charges of misconduct and directed reinstatement with continuity of service.

The Labour Court ordered withholding of two increments permanently. The prayer of the workman for back wages was rejected. Hence, the above cross Petitions.

10. The misconduct alleged by the Hospital was on the following lines- that on 16 March 2005 the workman was working in the morning shift in the Laundry Department. Around 2.30 p.m. the Supervisor, Mrs. Anita Rodrigues heard Ms. Johana and Mr. Felix having a loud altercation / dispute due to which the whole working of the department was disturbed. Mrs. Anita Rodrigues went upto them and enquired from Mr. Felix as to the cause of the altercation and as to why he was shouting so loudly. It is alleged that the workman unwarrantedly and unsolicitedly intervened and demanded from Mrs. Anita Rodrigues as to why she was questioning Mr. Felix and that she has no right to do so.

11. When Mrs. Anita Rodrigues told the workman not to intervene, the workman lost his temper and shouted "I will show you". Thereafter he began assaulting her with punches and kicks dropping her down to the ground. Even as she fell on the ground, the workman continued to brutally assault her on her face, arms and torso by punches and kicks.

Dmt 6 wp1646-11 & 2225-11 The other colleagues of the workman Mr. Felix Rodricks and Mr. Prakash Bhoir stood as mute spectators. The other employees from the neighbouring department heard the fracas and rushed to the Laundry Department and pulled the workman away and police was also summoned. It was alleged that due to the workman's rude and riotous behaviour the working in the Laundry and surrounding departments was disturbed and the workman was issued an order of suspension dated 16 March 2005 immediately by the Personnel Officer.

12. The charge-sheet dated 19th March 2005 issued to the workman contained the following charges:

> "a) Engaging in riotous, disorderly and indecent behaviour on the premises of he Hospital,
>
> b) Commission of acts subversive of discipline and good behaviour on the premises of the establishment,
>
> c) Wilful insubordination and disobedience of lawful orders of Superiors,
>
> d) Assaulting Superior officer on the premises of the Hospital,
>
> e) Outraging the modesty of a woman."

13. I have heard Mr. Naidu, the learned Counsel for the Hospital and Mr. Nagle, learned Counsel for the workman.

Dmt 7 wp1646-11 & 2225-11

14. Mr. Naidu, learned Counsel for the Hospital made the following submissions :

> (i) that the Labour Court ought not to have disturbed the punishment awarded to the workman when there was a finding of fact arrived at that the workman had assaulted Mrs. Anita Rodrigues within the premises of the Hospital while on duty which was an extremely grave misconduct and the punishment of dismissal was completely justified;
>
> (ii) that having come to a finding that the misconduct was grave and serious, the Labour Court had no jurisdiction to substitute the punishment awarded by the management with any other punishment and under Section 11 A of the I.D. Act, the power exercised by the Labour Court can be exercised only if the punishment

awarded by the management in respect of the proved misconduct was shockingly disproportionate;

(iii) that the question of considering the past record or the length of service ought not to have been taken into Dmt 8 wp1646-11 & 2225-11 consideration looking to the gravity of the misconduct of the brutal assault by the workman on Mrs. Anita Rodrigues.

That in the case of serious misconduct, the length of service is not an extenuating circumstance;

iv) that the management of the Hospital had in its speaking order, given reasons as to why the punishment of dismissal was imposed upon the workman and the Labour Court ought not to have interfered with the same by showing unwarranted sympathy;

(v) that the finding of sudden provocation as observed by the learned Labour Court was erroneous as there was no such plea in the Statement of Claim and the workman's case was of denial of the acts of any misconduct and, therefore, the finding of the Labour Court was perverse;

(vi) the medical reports which have been produced by way of Compilation of documents would show the injuries which have been caused to the said Mrs. Anita Rodrigues;

15. Mr. Naidu in support of his submissions, relied upon the Dmt 9 wp1646-11 & 2225-11 following judgments:

(i) Chandrakant k. Patil v. Union of India & Ors., 1995 II CLR 445 .

(ii) U.P. State Road Transport Corporation v. Subhash Chandra Sharma and others, AIR 2000 SC 1163.

(iii) Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,). Etc. v. Secretary, Sahakari Noukarara Sangh, etc., AIR 2000 SC 3129 .

(iv) Breach Candy Hospital and Research Centre and B.B.

Pardeshi and another, 2001(91) FLR 1185.

(v) Mahindra and Mahindra Ltd. v. N.B. Naravde, etc. AIR 2005 SC 1993.

(vi) Hombe Gowda Edn. Trust and another and State of Karnataka and others, 2006 (108) FLR 584 .

(vii) State Bank of Mysore and others etc. and M.C. Krishnappa, 2011 (130) FLR 1082.

16. Mr. Nagle, learned Counsel for the workman, on the other hand, submitted as follows :

(i) that the impugned Award so far as denial of back wages Dmt 10 wp1646-11 & 2225-11 and withholding of two increments of the workman permanently was unjust and arbitrary;

(ii) that while denying back wages as well as withholding two increments permanently to the workman, the Labour Court has in fact awarded double punishment which is contrary to law;

(iii) that the Labour court had failed to appreciate that during the cross-examination of the workman the Hospital had failed to establish that the workman was gainfully employed nor was any evidence to that effect adduced on behalf of the Hospital;

(iv) that once the dismissal was set aside by the Labour Court, the workman was entitled to reinstatement with full back wages and continuity of service;

(v) that the punishment of denial of back wages and withholding of two increments permanently to the workman Dmt 11 wp1646-11 & 2225-11 awarded by the Labour Court was shockingly disproportionate. The same was also contrary to the principle of double jeopardy as it amounted to awarding double punishment;

(vi) that the workman was having clean and unblemished record;

(vii) that the Hospital was guilty of discrimination between the workman and Mr. Prakash Bhoir and Mr. Felix Rodrigues to whom a common charge-sheet was issued and the said persons were let off and are still in service.

17. Mr. Nagle placed reliance upon the following judgments :

(i) Sengara Singh v. State of Punjab, (1983) 4 SCC 225.

(ii) Palghat BPL & PSP Thozhilali Union v. BPL India Ltd. & Anr., 1996 I CLR 368.

(iii) Cadbury India Ltd. v. V.B. Save & Ors., 1996 I CLR 846.

(iv) Regional Manager R.S.R.T.C. v. Ghanshyam Sharma, 2002 Dmt 12 wp1646-11 & 2225-11 I CLR 150.

(v) Mysore Paper Mills Limited, Bhadravathi v. G. Shekar alias Gyana Shekharan, 2002 II CLR 160.

18. I have given my anxious consideration to the rival contentions.

19. At the outset, it is required to be noted that there is no challenge to the Award Part I of the Labour Court even in the present Petition filed by the workman. By the Award Part I it was held that the enquiry was fair and proper and the findings were not perverse. These findings have therefore, attained finality. The question that essentially remains to be considered is about the proportionality of the punishment viz - whether the punishment of dismissal awarded by the management to the

workman was shockingly disproportionate to the charges of proved misconduct and whether the Labour Court ought to have altered the punishment by exercising powers under Section 11-A of the I.D. Act. If it is found that the Labour Court ought not to have interfered and altered the punishment, the order to be passed in the Petition of the workman would be only a consequential order.

20. The medical papers of Mrs. Anita Rodrigues were produced before Dmt 13 wp1646-11 & 2225-11 the Enquiry Officer. They disclose the injuries suffered by Mrs. Anita Rodrigues for which she was required to be admitted to the hospital for 6 days before she was discharged. The injuries suffered by Mrs. Anita Rodrigues recorded at the time of her admission to the Hospital are as follows:

> "(i) Contusion around left eye-Black eye 3X 2 cm. bluish black colour with sub-conjuntinal haemorrhage left eye medial aspect vision. Slightly blurred- hand vision test.
>
> (ii) Blunt trauma over back and chest. No external injuries seen. Tenderness over spinal region.
>
> (iii) Contusion over forehead & frontal area 4X2 cm Tenderness.
>
> (iv) Abrasion over forehead centrally 1cm. X 0.5cm.
>
> (v) Blunt trauma over Rt. Wrist jt. Movement swelling Tenderness.
>
> All the injuries are caused by hard and blunt object and fresh in nature."

21. The Labour Court has arrived at a finding of fact by observing in the impugned order that it was crystal clear that the workman had 'hit' the supervisor Mrs. Anita Rodrigues and that there was no reason to discard her evidence and the treatment papers produced during the enquiry. The learned Counsel on behalf of the workman has not pointed out any perversity in this finding of fact arrived at by the Labour Court. In these circumstances, the fact that Mrs. Anita Rodrigues was severally assaulted by the workman stands established.

22. It is also noticed that the Labour Court, in the impugned order, has Dmt 14 wp1646-11 & 2225-11 observed - "no doubt the proved misconduct against the second party is serious and grave". Curiously however, the Labour Court has further observed that the assault by workman was due to sudden and grave provocation. The latter observation of the Labour Court was clearly unwarranted and was merely an ipsi dixit of the Labour Court as it was dehors the pleadings and evidence of the workman. Pertinently, the stand of workman was that of denial simplicitor.

23. Mrs. Anita Rodrigues was a Supervisor and was superior in rank to the workman and belonging to the fairer sex. The incident of assault by the workman was in the precincts of the hospital where patients undergo medical treatment. Both were on duty at the relevant time when the incident took place. Clearly, the Labour Court has shown undue leniency to the workman and only as a matter of

misplaced sympathy interfered and altered the punishment of dismissal to that of reinstatement and permanently withholding two increments. The fact that the workman was serving in the hospital for several years and his past record was not adverse, was in my view, not an extenuating circumstance warranting interference with the punishment of dismissal awarded by the management considering the gross facts of the case.

24. Looking to the nature of misconduct, it certainly cannot be said that Dmt 15 wp1646-11 & 2225-11 no reasonable person could inflict the punishment of dismissal nor can it be said that the dismissal order was so disproportionate as to shock the conscience of the Court. Discipline and congenial atmosphere is required to be maintained in any institution. To show leniency in a case such as the present one and to allow the workman to be reinstated would send a wrong signal to the other employees that one can get away lightly even with gross misconduct of assault on his superior. Even assuming for a moment that it was permissible to take a lenient view of the matter, it is of significance to note that at no point of time the workman has shown any remorse or afforded any apology either to Mrs.Anita Rodrigues or to the Hospital and his stand has all along been that of denial simplicitor.

25. The Labour Court, it is well settled, exercises limited jurisdiction under Section 11-A of the I.D. Act. In my view, the Labour Court ought not to have disturbed the order of punishment of dismissal imposed by the management, considering the gravity of proved misconduct. In so far as the contention of the learned Counsel for the workman that there was discrimination between the workman on the one hand and Mr. Prakash Bhoir and Mr.Felix Rodricks (to whom charge-sheets were also issued) on the other hand, who were let off, it is required to be noted that there was no charge of assault on the said two persons and therefore, the case of the workman cannot be equated with them. A contention was also Dmt 16 wp1646-11 & 2225-11 raised by learned Counsel for the workman that there were two charge-

sheets issued to the workman, which was impermissible. This contention however was not raised before the Labour Court, nor is it found in the present Petition filed by the workman and is raised for the first time before me. In any event, it is not disputed before me that the other charge-sheet did not contain the charges relating to assault by the workman. There is thus no merit in the aforesaid submissions urged on behalf of the workman.

26. In Chandrakant K. Patil v. Union of India & Ors., 1995 II CLR 445, his Lordship Mr. Justice S.H. Kapadia (as he then was) sitting singly in this Court, held that the past service record is required to be considered as a mitigating circumstance, but it is well settled that where the delinquent is guilty of serious misconduct, then one single misconduct like theft or connivance therein may warrant dismissal.

27. In U.P. State Road Transport Corporation v. Subhash Chandra Sharma and others, AIR 2000 SC 1163, it was held by the Hon'ble Supreme Court in paragraph 9 as follows :

> "9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent,

> from the service. The charge against the respondent was that he, in drunken state, Dmt 17 wp1646-11 & 2225-11 along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous, order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."

28. In Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,). v. Secretary, Sahakari Noukarara Sangh, AIR 2000 SC 3129, it was held by the Hon'ble Supreme Court that in a case of proved misappropriation there was no question of considering past record and it was the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

29. In Beach Candy Hospital and Research Centre and B.B. Pardeshi and another, 2001 (91) 1185, a learned Single Judge of this Court held that to adopt the test which has been laid down by the Supreme Court, the Industrial Court while determining as to whether its interference with Dmt 18 wp1646-11 & 2225-11 penalty imposed by the employer is called for has to have regard to the question as to whether the punishment which has been imposed is highly disproportionate to the degree of guilt of the workman concerned.

30. In Mahindra and Mahindra Ltd. v. N.B. Naravde, etc. AIR 2005 SC 1993, the Hon'ble Supreme Court held that the Labour Court cannot by way of sympathy alone exercise power under Section 11-A and reduce punishment.

31. In Hombe Gowda Edn. Trust and another and State of Karnataka and others, 2006 (108) FLR 584, the Hon'ble Supreme Court held in paragraphs 12 to 15 as follows :

> "12. The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

13.This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment

The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of Dmt 19 wp1646-11 & 2225-11 quantum of punishment.

14.Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal.

Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.

15. A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important....."

32. In State Bank of Mysore and others etc. and M.C. Krishnappa, 2011 (130) FLR 1082, it was observed by the Hon'ble Supreme Court that it was well settled that punishment is primarily a function of the Management and the Courts rarely interfere with the quantum of punishment.

33. In so far as the judgments relating to punishment cited by the learned Counsel for the workman are concerned, I do not find any ratio decidendi having been laid down in the said judgments as regards the powers of the Labour Court in interfering with the punishment imposed by the management and the findings therein would be confined to the facts in those cases. The said judgments would therefore not be of any assistance to the workman.

Dmt 20 wp1646-11 & 2225-11

34. The upshot of the aforesaid discussion is that in the passing of the impugned award, the Labour Court had clearly exceeded its jursidiction under Section 11-A of the I.D. Act and the impugned award cannot be sustained and deserves to be set aside. Hence, the following order :

(i) Writ Petition No. 1646 of 2011 filed by the Hospital is allowed and Rule is made absolute in terms of prayer clause (a).

(ii) For the self-same reasons, Writ Petition No. 2225 of 2011 filed by the workman is dismissed and Rule is discharged.

(iii) No order as to costs.

35. The learned Counsel for the Hospital, after taking instructions from Sr. Reena, Director, HRD, states that the gratuity amount of the workman which was forfeited by the management shall be paid to the workman within 4 weeks from today. The statement is accepted.

(A.A. SAYED, J.)