New Shorrock Mills vs Maheshbhai T. Rao on 25 October, 1996

Equivalent citations: AIR 1997 SUPREME COURT 252, 1996 (6) SCC 590, 1996 AIR SCW 4427, 1997 LAB. I. C. 158, (1996) 9 JT 635 (SC), 1996 LAB LR 1129, 1997 (1) SERVLJ 125 SC, 1996 (9) JT 635, (1997) 90 FJR 1, (1997) 2 GUJ LR 1053, (1996) 74 FACLR 2749, (1997) 1 LABLJ 1212, (1997) 1 LAB LN 69, (1997) 2 MAHLR 663, (1997) 1 SCT 338, (1997) 1 CURLR 13, 1996 SCC (L&S) 1484

Bench: J.S. Verma, B.N. Kirpal

PETITIONER:
NEW SHORROCK MILLS

Vs.

RESPONDENT:
MAHESHBHAI T. RAO

DATE OF JUDGMENT: 25/10/1996

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL, J.

The only question which arises for consideration in this appeal is whether the Labour Court, having found that the employee was guilty of misconduct in an inquiry held in accordance with law and in compliance with principles of natural justice, can set aside the order of his discharge and substitute the same with an order of reinstatement with forty per cent back wages.

The respondent was engaged as a Badli workman, by the appellant, some time in October, 1971. On 29th December,1976 the respondent entered the office of the Deputy Manager and started abusing him and threatened that the mill officers will not be safe outside the mill and that he did not care if he had to go to jail for murder of four to five officers.

In view of the aforesaid abusive behavior of the respondent a show cause notice under Clause 22(1) of the Standing Orders was served on him. This notice was based on the complaint dated 31st December, 1976 which was made by the said Deputy Manager to the management of the appellant mill.

Thereafter, a domestic inquiry was held, witnesses were examined and full opportunity was given to the respondent to defend himself. After the inquiry proceedings concluded the respondent was served with a notice by the Inquiry Officer to show cause why he should not be discharged from the service of the mill. A reply dated 30th July, 1977 was filed by the respondent. The Inquiry Officer, after considering the entire material on record and also after taking into account the explanation offered by the workman, came to the conclusion that the respondent was in fact guilty of misconduct. By order dated 2nd August, 1977 the respondent was discharged from the service as Badli worker with immediate effect. He, however, was given thirty days salary in lieu of the notice period.

The respondent then moved the Labour Court under Section 79 of The Bombay Industrial Relations Act, 1946, inter alia, praying that the order of discharge dated 2nd August, 1977 be declared as illegal and he should be reinstated with continuity in service and be paid the back wages. No oral or documentary evidence was Led before the Labour Court which considered the entire material relating to the matter as had been placed before the Inquiry Officer.

The labour Court passed an order dated 22nd June, 1980 and, inter alia, held as follows:-

(a) That the charge against the respondent was neither vague nor unclear:

(b) That the finding of the Departmental Enquiry was legal and proper;

(c) That the order of discharge was not passed by way of victimisation;

(d) That the Departmental Enquiry had been conducted legally and properly and the respondent was offered reasonable opportunity of hearing;

(e) That in passing the order of discharge, the appellant management had not acted outside the scope of the enquiry;

(f) That the respondent workman had seriously misbehaved with his superior officers and was thus guilty of misconduct;

(g) That the finding of misconduct reached in the enquiry was neither perverse nor baseless but was proved on the basis of evidence on record.

Notwithstanding the fact that it had arrived at the aforesaid conclusion the Labour Court interfered with the punishment which was awarded by observing as follows:-

" Looking to the facts of this case and the facts of the evidence of the witnesses produced in this case, on the basis of the departmental inquiry against the applicant, the allegations levelled against the applicant are proved.

But as discussed hereinabove having regard to the decisions, the punishment of discharging the applicant from the service imposed by the opponent mills company is excessive and harsh and it leads the applicant to economic destruction. On account of this the family members of the applicant may also have to suffer. The punishment of discharging from service may only be imposed when there is no alternative except to discharge the applicant. The Hon'ble High Court and the Hon'ble Supreme Court have in many cases adopted the course hat in cases of such a nature, harsh punishment of dismissal of the applicant should not be imposed. The applicant of this matter also on the basis of the decisions stated hereinabove, the applicant is entitled to be reinstated in the opponent mill company in his original post with continuity of service.

The appellant filed a writ petition before the Gujarat High Court but the same was dismissed in limine by observing that the impugned judgment was just and proper and did not require to be interfered with under Articles 226 and 227 of the Constitution. This appeal arises on the special leave having been granted against the said decision of the High Court.

It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction under Section 78 of the The Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental inquiry was legal, and proper, respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were atleast three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. An other aspect which was overlooked by the Labour Court was that on the finding of the Inquiry officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed on order of discharging the respondent from service. Lesser punishment having been given by the

management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted.

For the aforesaid reasons while allowing this appeal the order dated 22nd June, 1990 of the Labour Court, Nadiad, in so far as the order of reinstatement of the respondent is concerned, is set aside. There will be no order as to costs.