

(1997) 01 BOM CK 0070

Bombay High Court

Case No: Writ Petition No. 3837 of 1992

Emco Transformers Ltd.

APPELLANT

Vs

S.P. Shouche And Another.

RESPONDENT

Date of Decision: Jan. 27, 1997**Citation:** (1997) 2 LLJ 1224**Hon'ble Judges:** B.N. Srikrishna, J**Bench:** Single Bench**Advocate:** P.K. Rele, for the Appellant; Mukund L. Pendse, for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India Challenges Part 111 Award dated May 18, 1992 made by the 3rd Labour Court, Thane, in reference (IDA) No. 144 of 1978 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act")

2. The first respondent was an employee of the petitioner company working in the factory the material time, loyed as a "Group Department of the petitioner company from January 2, 1964. The workmen working in the, petitioner company were represented by a trade union known as Association of Engineering Workers. During the period October 1977 to January 1978, the workmen had resorted to a sit down strike as part of their agitation for better benefits. This strike was declared to be an illegal strike by the competent Court. The petitioner was employing about 31 workmen as temporary workmen, who also participated in the strike. For this reason, the petitioner decided to terminate their services. On December 1, 1977, at about 3.30 p.m. the temporary workmen were called to the cabin of I. M. Saxena, Manager (Personnel & Administration), and issued letters terminating their services. After about 14 workmen had been served such letters of termination, it was noticed that the first respondent and two of his co-workmen, Patil, Bhosale and several other workmen gathered outside the cabin of Saxena and collected the letters of termination served on the temporary workmen. The first respondent and Patil were also instructing the other workmen, who were yet to be served with orders of

termination not to sign on the duplicate copy of the letter in acknowledgement of the receipt of the order. The work of service of termination orders continued on that day upto about 4.30 p.m. At about 5.00 p.m., Saxena came out of his office and went near the parked car by which he was to be carried home. While waiting for his colleagues to join him he observed the petitioner twirling his moustaches and swaggering towards him. In the meanwhile, Sambus, Deputy Manager (Manufacturing), Mehta (Maintenance Engineer) and a security guard came near the car and all of them sat in the car, Saxena being seated on the rear seat. As the car started moving, the petitioner and Bhosale came in front of the car and obstructed the movement of the vehicle. In the meanwhile, a police jeep came inside the factory and upon seeing the police, Saxena got down from the car, went to the police officer and narrated the incident to him. Presumably being reassured by the police officer, Saxena came back to the vehicle, sat in it and the vehicle started moving out. Once again, the petitioner and Bhosale, obstructed the vehicle when the car came close to the main gate of the factory. Bhosale stood in front of the car while the petitioner came round the right side of the car where Saxena was sitting, inserted his hand into the, gap in the half-raised window glass, shouted obscene abuses against Saxena and said, "Unless you take back the temporary workers you would not be allowed to leave the factory alive ", all the while banging on the window glass and trying to pull it down. In the meanwhile, the police officer rushed towards the car, caught hold of the first respondent and took him away in the jeep. A criminal complaint against the -first respondent came to be registered by Saxena. For the [0"above acts of misconduct on his part, the first respondent was served with a charge sheet dated December 4, 1977 and directed to give his explanation and appear for an enquiry. An enquiry was held, but since the enquiry was sub-sequently held to be bad in law by an order of this Court, it is unnecessary to deal with the details of the enquiry. Suffice it to say that, by a judgment dated July 12, 1991 (per Kantharia, J.) in writ petition No. 151 of 1985, this Court held to that the enquiry held against the first respondent was defective and remanded the Reference to Labour Court with a direction that the petitioner and the first respondent to give an opportunity of leading evidence on the merits of case. The Is said order of remand was challenged before the Supreme Court by a Special Leave. Petition which was summarily dismissed by an order of the Supreme Court dated December 3, 1991.

3. After remand of the Reference, the Labour Court permitted the parties to lead evidence in support of their respective cases. The petitioner examined Inder Mohan Saxena, Manager (Personnel and Administration), Chandrakant Bhikarii, Sambus, Deputy Manager (Manufacturing), Yeshwant Nathoba Patil, Cashier, Kannhayalal Prabhashankar Joshi, Chief Production and Project Manager, and Tokrshi Premaji Poladia, Maintenance Engineer. The first respondent examined himself. Upon assessment of evidence, the Labour Court took the view that the evidence on record did not prove the misconduct against the first respondent and its impugned Part III Award dated May 18, 1992 directed the petitioner to reinstate the first respondent

with full back wages and continuity of service with effect from May 5, 1978. Being aggrieved, the petitioner has moved this writ petition. So

4. It is contended Mr. P. K. Rele, learned Counsel for the petitioner, that the findings recorded by the Labour Court are entirely perverse and that the Labour Court misdirected itself by trying to look for evidence which was not there and by ignoring the entire evidence a read on record. The grievance made by Mr. Rele appears to be justified. Out of five witnesses era, Joshi and Patil had no direct knowledge of the incident, since they had only heard versions of it. Poladia, for reasons known 1(to himself, maintained an attitude of amnesia and when it came to the crucial facts, feigned lapse of memory, though he sufficiently recollected that on December 1, 1977 at about 5.00 p.m. after office hours, while he, Saxena, Mehta and Sambus were proceeding in a car out of the company"s premises, Bhosale, first respondent and two or three other workmen had come in front of the car and had stopped the car. But, according to Poladia, the first respondent was present there and told Bhosale and others not to stop the car but to let the car proceed. Thereafter, his memory seems to have failed. When he was cross-examined on behalf of the first respondent workman, he feigned amnesia and said that he did not recollect whether on December 1, 1977 the car in which he was sitting was stopped or prevented. When it was pointed out to him that during the course of the enquiry he had made a statement under his signature 34 which conflicted with the toned down version of the incident which he was giving before the he maintained that his earliest testimony during the enquiry was taken under pressure. Even the Labour Court was constrained to observe that this witness had turned hostile and rightly discarded his testimony.

5. That leaves the evidence of Saxena and Sambus, who were both eye witnesses to the incident, being the victims of the incident. I have been taken through the evidence of these witnesses on record and both give a graphic account of what testimony of Saxena is corroborated in all material particulars by the testimony of Sambus. The only reason given by the Labour Court for totally discarding the evidence of Saxena and Sambus is found in paragraph 17 of the impugned Award. The Labour Court says that they were "interested witnesses" of the petitioner company and they were "some-what tutored". The evidence on record shows that Saxena was in service of the petitioner for about a year after the incident, i.e. till or about the year 1978, after which he ceased to be in the employment of the petitioner company. He gave his evidence before the Labour Court in the year 1992, i.e. a good 14 years after he ceased to be in the service of the first respondent. "Mere is nothing elicited in cross examination to suggest as to what motivation he could have to perjure himself before the Labour Court when obviously he was not under the control of the petitioner company. It is unfortunate that this aspect of the matter has been completely ignored by the Labour Court in jumping to the conclusion that Saxena was an interested witness and that he was "very much loyal to his employer". The reason given by the Labour Court to highlight the so-cared

loyalty was the to fact that Saxena had withdrawn the criminal complaint filed against the first respondent. While it is the evidence of Saxena that he withdrew the criminal complaint at the specific request of the first respondent, the first respondent denied the said fact. Irrespective of whether the criminal complaint was withdrawn at the instance of the first respondent or not, it would stand to reason that a person no longer in the service of the first respondent, would not be interested in continuing with the criminal complaint before the Criminal Court which would involve his personal presence in Court on every date of hearing. It is impossible to accept the conclusion of the Labour Court that the fact that Saxena withdrew the criminal complaint indicated that he was very much loyal to his ex-employer. The Labour Court was very much cognizant of the fact that the workmen, including the first respondent, were not on inimical term with Saxena and that the criminal complaint filed by him may have been filed on the instructions of his higher officers and not in his individual capacity. The fact that the criminal complaint was compounded has been used by the Labour Court to draw the conclusion that Saxena may not have thought that the incident was such a serious one. The issue is whether the petitioner Company thought the incident to be serious enough to warrant disciplinary action against the first so respondent and not whether Saxena considered it to be an important one, after he ceased to be in the service of the petitioner company. Even Sambus ceased to be in service of the petitioner company after 1980. Once again there was no reason shown as to why after a gap of about 12 years he would be so interested in supporting a false case of the petitioner to the extent of risking prosecution for perjury. The next reason given by the Labour Court for disbelieving these two witnesses is that there was no formal demand made by the Union of workmen nor was there any agitation for taking up the case of the temporary workers. From this fact, the Labour deduced that there was no reason for the first respondent to take up the cause of the temporary workers who were removed from service and, hence, there was no reason for the quarrel and the entire incident. From this, the learned Judge straightaway jumped to the conclusion that the whole incident was cooked up and the evidence given was false.

6. Another reason given by the learned Judge of the Labour Court for disbelieving the testimony of Saxena and Sambus is that they were "interested witnesses". 1 must say that this 2 is the least justified ground. If they were interested witnesses, so was the first respondent interested in his own case. In my view, the learned Judge proceeded to assess the evidence on record as if he was deciding the criminal case 3 where the life of liberty of an accused was at stake. Suspecting the testimony on record of being tainted because the witness happens to be connected with the incident or because a witness who was wholly unconnected with the incident 3 was available and has not been examined, may be a good ground for entertaining a reasonable doubt as to the guilt of the accused in a criminal trial, but, in my considered view, this test is not good in assessing the evidence in a civil trial, 4 much

less, in a matter before the Labour Court. The Labour Court must remember that basically it is examining the circumstances in order to ascertain whether the contract of employment between the employee must be maintained in tact, 4 even against the wishes of one of the parties. This, the Labour Court is entitled to do, if there is total lack of bona fides or a gross case of or a situation where a totally innocent person has been dismissed from service leading to an interference of victimisation. I am afraid, none of these factors appear to exist in this case. In fact, the evidence of the first respondent lends colour to the version of the incident put forth by Saxena and Sambus. Even the first respondent admits in his evidence that in 1977 the committee of the union was holding negotiations with regard to the general demands put forward by the union on behalf of the workmen and that he was an active member of the negotiating committee. It was his case that no settlement was possible because of the adamant attitude of the Managing Director and that he had taken leading role for formation of the union of Dr. Datta Samant and that he was a leader of the union. Though the first respondent put forward a case that because he was a union leader he had been victim, apart from his own testimony, no other circumstances seem to have been highlighted nor does the Labour Court treat this as important. Turning to the incident of December 1 1977, even the first respondent said that after about 4.0014.30 p.m. some of his workers had gone to the canteen add as they had left the place of work his supervisor asked him to call them and that being a leader of the union he went to the canteen to find out the workmen and call them for work. In other words, that he was absent from the place of work at the material time, is admitted by the first respondent himself. He also admits that while standing near the canteen, he saw a car of the company coming towards the main gate of the company. He had also seen a jeep with a Police Inspector inside was coming inside through the main gate. He also saw that Saxena was sitting in the car, got down and went near the police jeep and had a discussion with the police inspector by making gestures towards the first respondent. However, from here it is the testimony of the first respondent that thereafter a constable straightaway came to him and dragged him by his hair towards the jeep. Even the Labour Court does not seem to accept this version of the incident as correct.

7. Mr. Pendse, learned Advocate appearing for the first respondent, vehemently argued that there was no reliable independent testimony in support of the alleged misconduct and, therefore, the Labour Court was right in rejecting the evidence of the petitioner. He also contended that the evidence of Poladia, Maintenance Engineer, supported the case of the first respondent. Finally, he submits that no documentary evidence corroborating the version put forth by Saxena and Sambus had been produced before the Labour Court. It is not possible to accept any of these contentions. In the first place, the reasons given by the Labour Court for discarding the testimony of Saxena and Sambus is wholly unsustainable and perverse. No background material is placed before the Labour Court to show the Labour Court

that either Saxena or Sambus or both had any acute animus against the first respondent so that they would risk per Labour Court by never took place the testimony then the first respondent's testimony was also equally interested and there was hardly any reason torn choose one against the other. Poladia S evidence, as I have already pointed out was a classic instance of non speak. Perhaps, he did not desire to incur the wrath of the workmen, as much as he desired to avoid the wrath of the employer. The Labour Court has rightly rejected his testimony as that of a hostile witness. The last contention. of Mr. Pendse that there is no independent documentary evidence has no substance. In the nature of things, an incident Of 3(which the first respondent has been charged with cannot be corroborated by documentary evidence unless there was a video film taken of the incident. Though, Mr. Pendse vehemently contends that the admissions given by Saxena and Sambus that there was no action taken against, nor an explanation sought from the first respondent, nor was there a complaint made by the supervising officer about his absence from the department at the material time on the material date, the fact that the first respondent was near the canteen when the car of the officers passed through is admitted by the first respondent himself. This argument, therefore, loses its point.

8. Normally, this Court does not interfere with findings of fact. The exceptions are where factual findings have been made without jurisdiction or where they are perverse or of such character that no reasonable person reasonably instructed in legal principles would have arrived at. This Court cannot ignore its paramount duty of doing justice and has to exercise its powers under Article 226 of the Constitution of India to interfere even with findings of fact if such warranting circumstances do exist. In my considered view, this is one such exceptional case where interference with the findings of fact is must. I am of the view that the findings of the Labour Court are such that no reasonable person reasonably instructed in legal principles could have arrived at them, and hence perverse.

9. In the result, the writ petition is allowed. The impugned Part III Award of the 3rd Labour Court, Thane, dated May 18, 1992 is hereby quashed and set aside. It is held that the dismissal of the first respondent was legal, proper and justified. It is also held that the first respondent 20 workman is not entitled to any relief. However, in the circumstances of the case, there will be no order as to costs. The Registrar to encash the fixed deposits and refund the amount of Rs. 2,00,000 (Rupees Two lakhs) together with 25 interest accrued thereupon to the petitioner company.

10. An amount of Rs. 50,000 (Rupees Fifty thousand only) was already paid to the first respondent under the interim order of this Court dated September 23, 1992. Since I have held that the first respondent is not entitled to any relief from the Court, he would obviously be liable to refund the said amount to the petitioner. The first respondent shall, within a period of four months from today, refund the said amount of Rs. 50,000 (Rupees Fifty thousand only) to the petitioner, failing which it

shall be open to the petitioner to recover the said amount from the first respondent by adopting appropriate legal remedy.

11. Mr. Pendse, learned Advocate appearing on behalf of the first respondent, applies for stay of this judgment, I see no reason to stay the judgment since the first respondent has been given a period of four months to repay the amount. Application rejected.

12. Issuance of certified copy of the judgment expedited.