(2001) 03 BOM CK 0134

Bombay High Court

Case No: Writ Petition No. 481 of 1996

Shri Anantnathji Maharaj Jain Temple and its Sadharan Funds		APPELLANT
	Vs	
Shri Rajan G. Pandey and Another		RESPONDENT

Date of Decision: March 15, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 11(A)

Citation: (2001) 3 BomCR 746

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: Shri K.P. Anilkumar, for the Appellant; Mr. A.A. Saraf, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.J. Kochar, J.

The petitioner is a public trust owning a Jain Temple wherein the respondent watchman was employed in the year 1983. The petitioner had Issued a charge-sheet dated 9th April, 1990 alleging two acts of misconducts i.e. assault on a co-workman Shri Ahire on 5th February, 1990 and for remaining unauthorisedly absent from 6th February, 1990 without any leave application. He was earlier suspended with effect from 23rd March, 1990 pending enquiry in the charges of assault and unauthorised absence. The respondent workman appears to have applied for leave on 20th February, 1990 which according to the petitioner, was orally rejected and the workman was informed that his leave was rejected and that he should report for work. It may be stated here that the respondent workman was provided service quarters in the premises of the temple. The respondent workman submitted his

written explanation denying the charges. The petitioners held a domestic enquiry in the charges against the respondent workman. The respondent workman participated in the enquiry and cross-examined the witnesses examined on behalf of the petitioner. The Enquiry Officer submitted his report on 10th December, 1990 finding the respondent workman guilty of the misconducts levelled against him. The petitioner acting on the findings of the Enquiry Officer passed an order of dismissal dated 17th January, 1991 dismissing him from employment.

2. Aggrieved by the aforesaid order of dismissal the respondent workman raised industrial dispute challenging the propriety and legality of the order of dismissal and praying for the relief of reinstatement with full backwages and continuity of service with effect from 17th January, 1991. The said dispute was referred for adjudication to the Labour Court, respondent No. 2.

3. Both the parties completed their pleadings and adduced documentary and oral evidence before the Labour Court. On the basis of the material on record, the Labour Court by its part I award held that the enquiry was fair and proper. The Labour Court proceeded further to decide the question of perversity of the findings of the Enquiry Officer and the proportionality of the order of punishment in exercise of its powers u/s 11(A) of the Industrial Disputes Act, 1947. The Labour Court has categorically recorded its findings that the Enquiry Officer had discussed the evidence of both the parties and had held the workman guilty of the charges by giving cogent reasons. While accepting the evidence led on behalf of the petitioners, the Labour Court has in no uncertain terms recorded that the findings of the Enquiry Officer did not suffer from any infirmity and that the evidence adduced by the petitioner was sufficient to hold the workman guilty of the charges. The Labour Court has finally concluded that the misconducts levelled against the workman were proved by acceptable evidence on record. However, the Labour Court proceeded to interfere with the punishment of dismissal being too harsh considering the gravity of the charges. The Labour Court has relied upon certain judgments. Curiously enough, the Labour Court has found that both the charges viz., unauthorised absence and slapping of the co-workman and taking his thumb impression forcibly on some papers were the misconducts not of grave nature to warrant extreme punishment of dismissal. The Labour Court has tried to justify its conclusion on the ground that human being is subject to error and that he should be given an opportunity to improve his behaviour and conduct by imposing minor penalty instead of drastic punishment of dismissal. The Labour Court has further buttressed its conclusions by saying that such quarrels between the two groups of workmen do take place. The Labour Court has further observed that the misconduct committed by the respondent did not disturb the industrial peace for running of the industry. According to the Labour Court, both the misconducts were not of grave nature warranting the extreme punishment of dismissal. The Labour Court has finally concluded that the extreme punishment of dismissal was not commensurate with the gravity of misconduct levelled against him. Finally, while interfering with the

punishment, the Labour Court has imposed punishment of denial of 50% backwages and awarded reinstatement with 50% backwages. The petitioners have challenged this award under Article 226 of the Constitution of India.

4. It is very well settled that when the misconducts are proved in a fair and proper domestic enquiry, it is for the employer to consider the question of punishment and it is not for the Court to interfere with such punishment unless il is shockingly disproportionate and unless no reasonable man would act in that manner. In the present case, according to me, there was no justification for the respondent workman to assault and to give a slap on his co-workman. The respondent workman was also not at all justified to force the co-workman to put his thumb impression on some papers. It appears that when the co-workman Shri Ahire refused to put his thumb impression on some papers, he was assaulted by the respondent. Such an act cannot be condoned by calling it not a grave act of misconduct. Assault on a co-workman is of grave and serious nature. In the present case, there was not only an assault but the respondent workman was trying to get the thumb impression of the co-workman on some papers which act is equally serious. Nobody can force anyone to put his signature or thumb impression on some papers or on some writings with which he or she does not agree. This conduct on the part of the respondent is of serious and grave nature and warrants the extreme punishment of dismissal from employment. This misconduct has been proved in the domestic enquiry and the Labour Court has recorded the finding that the enquiry was fair and proper and the findings were not perverse and the misconduct was proved from the evidence on record. The respondent workman was also found guilty of remaining absent unauthorisedly and without prior permission. This is the second misconduct alleged against the workman. He is occupying the service quarters in the temple premises. It cannot be disbelieved that the workman must have been informed that his leave was not sanctioned. In spite of this communication, the respondent workman remained absent. Had it been the only misconduct against the respondent, one could have considered sympathetically but the conduct of the respondent workman in forcing the co-workman to put his thumb impression on some writing with which he did not agree and on the refusal by the co-workman to put his thumb impression he had assaulted him on the work premises. Such behaviour or conduct cannot be tolerated by the employer who is the sole judge of the circumstances, whether the peace in the premises would be disturbed or not and what punishment should be imposed for such acts of misconduct. According to me, the Labour Court ought not to have interfered with the punishment imposed by the petitioner employer in the facts and circumstances of this case. It is for the employer to impose a suitable or reasonable punishment in accordance with law. I do not find any extenuating circumstances to interfere with the order of punishment of dismissal of the respondent workman. I, therefore, allow the petition and make the rule absolute in terms of prayer clause (a) with no orders as to costs.

5. Shri Anilkumar on behalf of the petitioner has offered by way of settlement the full amount of gratuity and retrenchment compensation and other benefits provided the respondent workman vacates the service quarters which he is still occupying unauthorisedly. It would be for the respondent workman to consider the offer and communicate the petitioner his decision within four weeks from today.