(2001) 06 BOM CK 0087

Bombay High Court

Case No: Writ Petition No. 1289 of 2001

A.H. Wadia Charity Trust and Others		APPELLANT
	Vs	
Neville Jathan and Others		RESPONDENT

Date of Decision: June 25, 2001

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 30

Citation: (2002) 2 MhLj 723

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

Bench: Single Bench

Advocate: C.U. Singh and Shobhna Gopal and Ruben, instructed by Gagrat and Co, for the Appellant; S.K. Talsania and J.K. Mistry, instructed by Sanjay Udeshi and Co. and S. Banerjee, instructed by Doijade Phatarphekar and Co., for the Respondent

Final Decision: Dismissed

Judgement

R.J. Kochar, J.

The petitioner trust has impugned the judgment and order dated 6-6-2001 passed by the Industrial Court, Maharashtra at Mumbai in Revision Application (ULP) No. 2 of 2000 filed by the Trust and Trustees against the judgment and order of the 6th Labour Court in Complaint (ULP) No. 314 of 1994 filed by the respondent No. 1, concerned employee, u/s 28 of the MRTU and PULP Act, 1971 read with Item 1 of Schedule IV of the Act to challenge the order of termination dated 6-7-1994 on the ground that he was found guilty of habitual late attendance in the office.

2. The charge against the respondent employee who had put in 19 years of clean and unblemished service, was that he had attended the office late on 11 days in September, 1993, 20 days in October 1993 and 14 days in December 1993. It was

further alleged against him that in the months of April and May 1994 he had attended the office very late. By a letter dated 7-6-1994 he was called upon to show cause why he should not be terminated from employment for habitual late attendance. It was mentioned in the said letter that he was warned several times of his unpunctuality and that he was found flouting the managements instructions- It appears from the record that in his first reply dated 13-12-1994 he had admitted that his attendance was not exemplary and that he was delayed on account of difficulties of travel. In the very same letter he had however pointed out that he had put in 19 years of service and that he had taken very minimum lunch break and that he was invariably attending the Chairman''s Bungalow for official duty sometimes even beyond 8.30 p.m. reaching home late at night. He has also mentioned that he was asked to take the load of work to his residence which he did without any grudge or grumble. He has also pointed out that on account of reduction in the staff he was over burdened with extra work of other staff members who had resigned/retired and whose posts were not filled up for economy. The aforesaid reply did not satisfy the management. It thought that the respondent employee was trying to justify his habitual late attendance and that he was giving excuses which were not tenable and not acceptable to the management. By a letter dated 28th June 1994 he was called upon to attend the enquiry to find out "why he should not be dismissed from service for habitual late attendance." It appears that an enquiry was held and was finished within 40 minutes on the same day i.e. on 4-7-1994 and he was terminated from employment by an order dated 6-7-1994. It was recorded as finding in the said letter that the respondent employee had committed misconduct by habitually attending late over a long period despite several warnings given to him.

3. Being aggrieved by the aforesaid order of termination the respondent employee filed the complaint of unfair labour practice and prayed for a declaration that the said order amounted to an unfair labour practice within the meaning of Items 1(a) (b) (d) (e) (f) and (g) of Schedule IV of the Act, and he also sought affirmative orders of reinstatement with full backwages and continuity of service. It appears that his application for interim orders was not granted. The petitioners Trust contested the complaint by filing a reply. The petitioners herein had also raised a point of jurisdiction that the Trust was a Charitable Trust and it was not an industry as contemplated u/s 2(j) of the Industrial Disputes Act, 1947 and therefore the complaint was not maintainable. In a reply filed by one of the Trustees Mrs. Mary C. P. Wadia had however taken a different stand to say that the signatory of the termination Order dated 6-7-1994 had no powers to pass such orders and that no such decision was taken by the Trust and that no meeting of the Trustees was convened to take decision of dismissal of the employee. Two of the trustees have supported the case of the respondent employee that the order of termination was blatant misuse of authority and it was an illegal act. It was mentioned in the said affidavit that the respondent employee was discharging his work satisfactorily faithfully and diligently and that though he was coming late sometimes no action

was ever contemplated in view of the past performance of the employee coupled with the fact that he was sitting late and attending to the trustees/trust matters even after the scheduled office hours. The Trustees have stated on oath that they were not consulted and no consent was taken nor meeting of the Trustees was called regarding the disciplinary action to be taken against the employees. I may mention at this stage itself that both the aforesaid Trustees who are impleaded as respondents in the present petition are firmly supporting the respondent employee. They have also addressed a letter dated 31-1-2000 to Shri V. G. Mehta the advocate for the employee to inform the Court that they were ready to comply with the Labour Court''s Order dated 29-11-1999 and that they were ready to reinstate the employee.

4. The Labour Court by its order dated 29-11-1999 has held that -

(a) the enquiry conducted by the management of the trust was not fair and proper and the findings were perverse;

(b) the labour Court held that the employee had admitted in no unequivocal terms that he was late in attendance on some days and that his punctuality was not of exemplary and that the delay was caused on account of difficulties of travel on account of delay of train service which was an every day affair. The Labour Court has also considered his explanation that though he was coming late he was attending the office till very late night and was doing much extra work of which he was over burdened on account of several vacancies.

(c) In the aforesaid circumstances and for the reasons recorded the Labour Court interfered with the extreme punishment of dismissal and awarded reinstatement to the employee without any back wages from 6-7-1994 till the date of Labour Court i.e. 29-11-1999. The Labour Court has imposed punishment of denial of full backwages for almost the period of six years for the act of late attendance for some days by the concerned employee.

(d) The Labour Court has also answered the question of trust being not an industry negatively against the trust.

5. The petitioners Trust carried the order of the labour Court in Revision u/s 44 of the Act before the Industrial Court. The respondent employee however did not challenge the order of the Labour Court denying him full backwages but it appears that he accepted verdict of the Labour Court imposing the punishment of denial of backwages.

6. The learned member of the Industrial Court by his order dated 6-6-2001 in his well written and reasoned order confirmed the order of the Labour Court. In principle he agreed with the contention of the Trust that when enquiry is set aside the employer should be given an opportunity to prove the misconducts and justify the act of dismissal/termination before the Labour Court by adducing fresh

evidence/material on record of the labour Court. The Industrial Court however has approved the course adopted by the Labour Court of not giving any opportunity of adducing any evidence before the Labour Court to prove the misconduct and to justify the action of dismissal on the ground that the charge of late coming was not disputed or denied by the employee but was admitted by him in his replies to the Memos served upon him by the Trust. In these circumstances the Industrial Court agreed with the order of the Labour Court to interfere with the punishment of dismissal and granting the employee reinstatement without backwages for a period of about 6 years. The Industrial Court has considered the prayer of remand to the Labour Court made on behalf of the Trust. The learned member of the Industrial Court has rightly considered the remand of the complaint absolutely unnecessary as the result would be the same. There could have been no further evidence in respect of the late coming of the employee. The Trust had clearly mentioned in its Memos that in the month of September, October, and December and April and May how many days the employee was late in attending the office. In reply to the said Memos and the show cause notice the employee has agreed to the said charge and had admitted that he was late and that his attendance was not exemplary on account of his travel by train which were always late and that it was a daily affair. According to me, even if the petitioners were not to hold any formal enquiry the order of punishment would not have suffered from any infirmity as they were acting on the admissions of guilty or charge by the employee. Merely because a formal enquiry was held in spite of clear admissions and acceptance of the charges levelled against the employee it can be said to be a redundant and unnecessary exercise of enquiry. If such an enquiry is held to be unfair and improper it makes hardly any difference and it would be sheer waste of time requiring the parties to undergo the ordeal of enquiry before the Court as the charges which are required to be proved before the Labour Court were already admitted by the employee and nothing was left to be proved in the given circumstances. What more is required to be proved in a formal domestic enquiry? And even if such a formal enquiry is held by the employer and if such a formal enquiry is quashed and set aside by the Labour Court in such circumstances what employer would prove before the Labour Court? In my opinion both the Labour Court and the Industrial Court have acted properly and have taken a pragmatic view of the matter and both rightly did not enter into time wasting procedure of proving the so called misconduct before the Labour Court which was already admitted by the delinquent respondent employee.

7. There is one more crucial aspect in respect of the grievance made by Shri Singh for the petitioner that the Labour Court ought to have granted the petitioners to lead evidence before the Labour Court to prove the misconduct and to justify its action of dismissal of the employee. He has also made similar grievance against the order of the Industrial Court. Though Shri Singh was vociferous as usual against the Lower Courts on this issue I find absolutely no substance in his submissions even on this issue. Firstly, as I have already held that it was not all necessary to give a

so-called opportunity to lead evidence before the Labour Court in view of clear and unambiguous admissions of late coming by the employee. Secondly, no such opportunity could be given as the petitioners did not pray for such opportunity at the first earliest point of time to pray for such opportunity which was when they filed their affidavit in reply in July/August, 1994 to the affidavit filed by the employee in support of his application for interim relief application. The petitioners had not filed any Written Statement or reply to the main Complaint filed by the employee. They appear to have wholly relied on the said affidavit in reply to the interim relief application and their reply is in detail dealing with the merits of the main complaint also. In this reply the petitioners have not prayed for such opportunity to lead evidence before the Labour Court in case the enquiry was held to be not fair and proper. This was the first and the earliest point of time available to the petitioners. By another application dated 25-8-1995 they had prayed for framing of an additional issue about their being not an "industry". Even in this application no permission was sought by the petitioners to prove the misconduct and to justify the dismissal. They have made such an application as late as on 26-7-1999, at the fag end of the proceedings as the final order of the Labour Court is dated 29-11-1999. Even in normal circumstances such an application could not have been entertained in view of the latest judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation v. Smt. Laxmidevamma and Anr., 2001 AIR SCW 1981. After considering the entire case law the Supreme Court has observed as under :--

16. While considering the decision in Shambhu Nath Goyal Vs. Bank of Baroda and Others, , we should bear in mind that the judgment of Vardarajan, 5, therein does not refer to the case of Cooper Engineering, AIR 1995 SC 1900 (supra). However, the concurring judgment of D. A. Desai, J. specifically considers this case. By the judgment in Goyal''s case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it u/s 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made u/s 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal''s case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workman inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to

make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal''s case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal''s case. It is to be noted that this judgment was delivered on 27th of September, 1986. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, , is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforestated principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

This point is hopefully finally concluded, at least as far as this Court is concerned. There is absolutely no merit in this trump card of Shri Singh for the petitioners.

8. In the aforesaid circumstances only point which remain was of punishment and in my opinion the Labour Court was well within its jurisdiction to interfere with the punishment u/s 30 of the MRTU & PULP Act, 1971. The Labour Court has given cogent reasons for coming to the conclusion that the punishment was harsh and shockingly disproportionate considering the charge of misconduct levelled against the employee. The Labour Court has considered all other circumstances which were put forth by the employee in his explanation. The fact that he had put in 19 years clean and unblemished service is not disputed at all. The fact that he was sitting late at night to finish his work is also not disputed. The fact that he was required to attend the residences of the Trustees to complete the work and that he was invariably going home late in night is also not seriously disputed. On the contrary the two Trustees who are the respondents are the Seniormost Trustees and have admitted the facts which are stated by the respondent employee. These are the extenuating circumstances which must be considered and taken into account by the punishing authority and even by the adjudicating authority in general. I therefore, do not find any illegality or impropriety or infirmity in the findings and orders recorded by the Labour Court which have been rightly confirmed by the Industrial Court.

9. As far as the issue of the trust being an industry is concerned both the Labour Court and the Industrial Court have held that from the activities carried on by the trust it did not appear that it was not an industry. The Labour Court has observed that from the nature of the activities the trust was carrying on commercial activities. It cannot be said that the employment of the persons by the trust of marginal nature. The trust employed not one or two employees. The trust had employed 31 employees. Except taking the said point the trust did not adduce any cogent material to establish its point that it was not an Industry. Heavy burden lied on the trust to adduce sufficient evidence and material to prove that it was not an industry as alleged by the employee. The employee has brought on record whatever material he could to show that the activities of the trust were of commercial nature. From the scanty material produced by the Trust the Labour Court has rightly followed the celebrated judgment of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and has rightly held that the Trust was an "Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and that the complaint was maintainable under the provisions of the M.R.T.U. and P.U.L.P. Act, 1971. Shri Singh has tried to say that the definition of Industry has been amended by the Legislature has not been yet brought into force by the Executive. As far as the Courts are concerned there is no amendment to Section 2(j) which can be applied as on the date.

10.1 must mention that the charge against the employee is only that he was late in attending the office. Late attendance in office cannot be approved or condoned. Even the employee has not justified his late attendance. He has given two reasons for his late attendance. He had attributed the cause to the train services which according to him, were delayed and it was a daily affair. The second reason which he had given is that he was sitting late at night and was completing his work and was required to attend the residence of the trustees and that he had to complete the work as there was shortage of staff on account of resignation and retirement of the employees. Out of my curiosity I enquired from the learned counsel of the employee as to by which local train he travelled. I was told that the employee was staying at a Station on Harbour Line of the Central Railway. No one who is familiar with the Harbour Line services would never dismiss his employee on account of late coming as the Harbour Line Services have earned notoriety of being irregular and never in time. The Railways might have their own problems but the fact remains that the employees can be punished in this manner if they reach late in the office. There is no other charge against the employee. There is no grievance that his work was not satisfactory. There is no grievance that he was dishonest or that he indulged any act of violence or any other major misconducts. In the aforesaid circumstances in my opinion the order of the Labour Court which has merged in the order of the Industrial Court was just, fair and proper. The employee is sufficiently punished for his act of coming late to his office, which was not within his control totally. He has been deprived of full backwages from 6-7-1994 to 29-11-1999. Even the Industrial

Court has considered the said punishment of denial of backwages for last about 6 years more than sufficient.

11. Shri Talsania the learned counsel for the respondent employee in his usual fairness has made a statement under instructions from his client that he will not claim backwages which are denied to him by the Labour Court by filing any subsequent proceedings before this Court. He has made it clear that his client has accepted the punishment of denial of backwages from 6th July, 1994 to 29th November, 1999. Shri Talsania has assured this Court that the respondent employee would be punctual in attendance and he would maintain the office working hours strictly unless of course prevented by reasons beyond his control.

12. To obviate any further proceedings I deem it necessary to clarify that the employee would certainly be entitled to get wages from the date of the order of reinstatement passed by the Labour Court as that order was not implemented by the petitioner-Trust and obtained stay to that order. Even after the order of the Industrial Court the employee has not been reinstated. The petitioner Trust has been given a great relief from the huge monitory burden of back wages for about 6 years. The respondent employee cannot be continued to be punished by way of denial of wages after the order of the Labour Court as it was the Trust which did not reinstate the employee. He is lawfully entitled to that much relief and respite to get wages from the date of the order of the Labour Court which has been finally confirmed by the Industrial Court and by this Court.

13. In my opinion the punishment of denial of full back wages from 6-7-1994 to 29-11-1999 is sufficient punishment for the charge of late coming as levelled against the respondent employee. The punishment of dismissal is definitely harsh and shockingly disproportionate considering the circumstances put forward by the employee. There is absolutely no miscarriage of justice to warrant interference under the extraordinary jurisdiction of Article 226 of the Constitution of India. The Writ Petition therefore stands rejected.

14. Mrs. Shobha Gopal the learned advocate holding for Shri Singh has prayed for stay of operation of this Order. It will be a travesty and miscarriage of justice if her prayer for stay is granted. The charge is not at all serious. Punishment is harsh and disproportionate as concurrently held by both the Courts below and I do not find any infirmity in their decisions and I too, agree with them. The two trustees of the Trust are ready and willing to reinstate the employee. The employee has been sufficiently punished by denial of full back wages. Someone in the Trust feels that his empty ego is hurt. I therefore, refuse stay of my order.