

(1981) 09 BOM CK 0052

In the Bombay High Court

Case No : Misc. Petition No. 496 of 1978

A. Raman and another

APPELLANT

Vs

K.N. Vani and others

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 23, 24, 25

Citation : (1982) 2 LLJ 1

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filed under Art. 226 of the Constitution of India, the petitioner union is challenging the legality of the Award dated November 9, 1977 passed by the Industrial Tribunal in a reference made by the Government of Maharashtra, under S. 10(1)(d) of the Industrial Disputes Act (hereinafter referred to as the Act).

2. The dispute referred for adjudications was between the respondent mills and five other associations and companies and their workers who were not allowed to resume duty. Respondent Nos. 2 to 7 are Private Limited Companies and form group with common directors and shareholders. The factories of this group of companies are situated at Saki Vihar Road, Powai, Bombay. The head offices of the companies are in Thakarsi House, Ballard Estate, Bombay. The companies have employed 700 workers in the factory, while the staff, both at Powai and the Head Offices consisted of about 170 workers. The dispute, which was referred for adjudication, was in respect of 57 employees of the staff, working both at the Head Office and Factory. The members of the staff had joined the union in January 1974. On January 30, 1974, the Companies retrenched the services of four employees on the ground of scarcity of furnace oil and raw materials. That naturally led to a protest from the union and the management was informed that unless the retrenched workers are taken back in employment, the staff will go on a day's token strike on February 28, 1974. The management did not accede to

the demand and the strike followed for a day.

3. On March 18, 1974 the union served a Charter of Demands on behalf of the members of the staff. The demands were in respect of conditions of service and also for reinstatement of three workers of the staff who were retrenched in January, 1974. On receipt of the Charter of Demands, the management proceeded to transfer 46 members of the staff from the factory to the Head Office. The distance between the factory and the Head Office being a considerable one, the staff members protested but were ultimately compelled to join the duty at the Head Office. On April 22, 1974, the management proceeded to terminate the service of Shri Francis Vincent, who was a leading member of the Union. The Union protested and demanded withdrawal of the retrenchment notice, but the Company having taken adamant attitude, the staff members went on a pen-down and sit-down strike from April 24, 1974 onwards. The strike continued till May 1, 1974 when the management declared a lock-out from May 2, 1974. Though the union protest against the lock-out, the lock-out continued till May 11, 1974. On that day, the management published a notice on the Notice Board inter alia stating that some of the workers had approached the management requesting to lift the lock-out and permit the workers to enter the factory and the office and the management proposes to do so provided the workers give undertaking in writing duly signed by them. On the lock-out being lifted, the 700 workers joined the duty, but the staff persisted in the demands and claimed that they would join the duty but would not give any undertaking. The management thereupon issued another notice on May 14, 1974, calling upon the staff members to join the duty after giving the undertaking. The third notice was published on May 21, 1974 and the last notice on May 31, 1974. The last notice inter alia stated that if the staff members fail to respond to the notice they shall be treated as having left their services of their respective companies. The Union did not comply with the desire of the management and the Union addressed a letter on June 11, 1974 to the management pointing out that the management was not allowing the members of the staff to join the duties. The notice made a demand on the management that all the members of the staff should be permitted to join the duties forthwith. As the management declined to permit the members of the staff, who were numbering about 170 to resume the duties, the Union approached the Conciliation Officer. At the intervention of the Conciliation Officer, the management took back about 68 employees. Some of the employees had given undertaking and joined the duties. Ultimately in conciliation proceedings 110 members of the staff were taken back in employment. As the Conciliation Officer reported failure in respect of the remaining members of the staff, the reference was made by the Government of Maharashtra in respect of claim of 57 employees. The reference required the Industrial Court to answer the question as to whether the employees, whose names are specified in Annexure A attached to the reference, should be immediately allowed to resume duties without attaching any stigma to them and whether all of them should be paid their full wages with effect from May 7, 1974

till the date they are allowed to resume their duties.

4. The Union filed its statement of claim and complained that though the members of the staff were willing to resume their duties, the management refused to allow them unless an undertaking was given. The members of the staff were demanding that they should be allowed to resume duty without attaching any stigma. The Union also claimed that the management permitted certain members of the staff to join the duties without securing any undertaking. The management, according to the Union, had discriminated between the workers and refusal to permit 57 employees amounted to victimization. In regard to the claim of petitioner No. 1. A. Raman, it was pointed out that he was on sanctioned leave from April 22, 1974 till May 25, 1977 and in spite of that he was not allowed to resume after return from leave on May 26, 1974. The respondents Companies filed separate written statements and the main thrust of the defence was that the reference was bad as there existed no industrial dispute. The employers also claimed that the employees themselves had abandoned the service and the claim that the employees were discriminated was without any merit. The management also claimed that some of the workers, who were not allowed to resume, were rowdy elements and had created trouble for the management. The employers denied that petitioner No. 1 was not permitted from resuming duty after return from his leave.

5. With these pleadings the parties went for a trial, and the Tribunal recorded oral evidence and also took on record the relevant documents. The Tribunal, came to the conclusion that there was no merit in the contention of the management that the reference was bad because there did not exist any industrial dispute. The Tribunal also recorded a finding in favour of the employees that they had not abandoned the service as claimed by the employers. The Tribunal, after recording this finding, proceeded to inquire as to whether the conduct of the employees was justified and whether the strike resorted by them was legal. The Tribunal felt that the strike was illegal and the conduct of the employees in insisting upon settlement of demand before resuming the work was not justified. The Tribunal felt in these circumstances that the management was entitled to press into service the final notice and to treat the employees as have abandoned the service of the Company. The Tribunal further held that on perusal of evidence of Shri Gupta examined on behalf of the management, the claim of the employees that the management had discriminated in permitting some of the employees to rejoin had no basis. The Tribunal finally held that the demand for resumption of work cannot be granted and the employees would be entitled only to the retrenchment compensation. The award is under challenge.

6. Shri Cama, the learned counsel appearing in support of the petition, has raised three contentions to challenge the legality of the award. The learned counsel urged that the Tribunal very rightly held that the reference was maintainable and the employees had not abandoned their service and on the strength of that finding ought to have straightway granted the relief sought by

the employees. The learned counsel submitted that the Tribunal travelled beyond the jurisdiction conferred by the order of reference in considering whether the strike was legal or otherwise. Shri Cama further urges that even assuming that it was open for the Tribunal to consider the legality of the strike, the finding recorded that the strike was illegal is totally contrary to the provisions of law and the decisions of the Court. The next submission was that the management was guilty of discrimination in permitting some of the employees to resume service while declining that advantage to other employees without any rationale. Shri Cama urges that the Tribunal has totally misread the evidence of Gupta and the evidence clearly indicates that the employees were victimized for joining the Union. Shri Presswala, the learned counsel appearing on behalf of the management, on the other hand argues that the strike resorted by the employees was illegal and has been in contravention of provisions of Section 23 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The learned counsel further argued that the conduct of the employees was entirely unjustified and the management had no option but to treat them as having abandoned the service. The learned counsel relied upon the letter dated May 23, 1974 addressed by the union to the management and claimed that the contents of the letter would indicate that the employees were not willing to resume duties unless all their demands were met. On the question of discrimination, Shri Presswala submits that it is open for the company to choose any worker who should be taken back after having abandoned the work. In my judgment, the submission of Shri Presswala are totally devoid of any merit and the Tribunal was clearly in error in not granting relief sought by the employees.

7. The first submission of Shri Cama that the Tribunal travelled beyond the scope of reference deserves acceptance. As mentioned hereinabove, the reference required the Tribunal to consider whether the employees should be immediately allowed to resume duties without attaching any stigma and whether all of them should be paid their full wages till the day they are allowed to resume duties. The scope of reference was limited and it was not open for the Tribunal to consider the question whether the strike resorted to by the employees was legal or otherwise. The Tribunal recorded a finding that the employees had not abandoned their service as claimed by the management and on arriving at that conclusion the Tribunal should have straightway proceeded to grant the relief sought by the employees. The criticism leveled by Shri Cama that the Tribunal assumed the jurisdiction and proceeded to consider whether the strike was legal or illegal is appropriate. The Tribunal was not concerned with the question as to whether the employees had resorted to an illegal strike. Even assuming that the reference enabled the Tribunal to consider the legality of the strike, in my judgment in view of the clear-cut provisions of Sections 23, 24 and 25 of the Act, the finding recorded by the Tribunal is totally incorrect. The Tribunal probably had in mind the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 which was enacted on December 15, 1971. The provisions of that Act were not available when the employees went

on strike and the Tribunal could not have declared the strike as illegal. The Tribunal overlooked that collective bargain for securing the improvement of matter like basic pay, dearness allowance, etc., is a primary object of a trade union and when demands like this are put forward and thereafter a strike is resorted to in an attempt to induce the Company to agree to the demands or at least to open negotiations, the strike must prima facie be considered justified. The reliance by Shri Cama in this connection on the judgment of the Supreme Court reported in 1960 2 L.L.J. 78 in the case of *The Swadeshi Industries Ltd. v. Its Workers*, is appropriate. The employees were demanding improvement of conditions of service and have given their Charter of Demands on March 18, 1974. As the charter of demands were not even entertained by the management, but on the other hand steps were taken to create problems for the employees, the union was perfectly justified in resorting to the strike.

8. Shri Presswala submits that the strike was not because the employees resorted to the strike during the pendency of Conciliation proceeding and therefore the strike was illegal u/s 23 of the Act. In support of the submission, reliance is placed on the notice of strike given by the Union on April 24, 1974 copy of which is annexed as Ext. C to the petition. The notice opens with a complaint that Shri Francis Vincent, an active member of the Committee of the Union was retrenched and further recites that some of the members were also retrenched on false grounds. In respect of those workers the dispute was pending before the Conciliation officer. The management was called upon to withdraw the notice of retrenchment issued to Francis Vincent and if that is not done, the employees would resort to the strike. From the bare reading of this notice, it is clear that the strike was resorted to not in respect of retrenchment of Shri Nair and two other active members of the Union, but in respect of retrenchment of Shri Francis Vincent only. It is no doubt true that the conciliation proceedings in respect of retrenchment of Nair and two other workers were pending, but the strike was not on that count. In view of this position, the submission of Shri Presswala that the strike was prohibited due to pendency of conciliation proceedings and was therefore illegal cannot be accepted.

9. Shri Cama then submits that the Tribunal was clearly in error in recording a finding that the management was not guilty of discrimination. It is not in dispute that some of the employees were taken back in service during the conciliation proceedings. The 57 employees were not taken back and their grievance is that the management had discriminated without any rational reason. The Tribunal proceeded to turn down this contention by observing that there was no discrimination, but even otherwise once the employees left the service it was open for the management to take back whichever employees they desire. In my judgment, the approach of the Tribunal was totally misconceived. The Tribunal relied upon the deposition of Gupta to hold that the employees not taken back were the trouble makers. Shri Cama very rightly complained that the Tribunal has totally misread the evidence. The learned counsel invited my attention to the cross-examination of Shri Gupta and the contents of paragraph 8 of the

deposition. This is what the deponent has said :

"Mr. Ovid had a list of the members of the staff which might have been supplied by Union or even by our office. It is possible that I may have selected 110 out of 170. There was no special basis on which the selection was made but I must have omitted those who were giving creating troubles. We had not charge sheeted any of the members of the staff."

From this evidence it is obvious that the Tribunal was in error in holding that the 57 employees were not taken back because they were indulging in creating troubles for the management. The bare statement of Gupta should not have been accepted and the fact that the management failed to produce any memos and none of the employees were charge-sheeted should have been taken into consideration in holding that the management was guilty of discrimination in selecting some of the workers joining back in service. Shri Cama very rightly relied upon the decision of this Court in the case of *M/s. Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. v. F. H. Lala and others*, 1978 L. I. C. 31. In that case also 30 workmen were treated with different treatment and the Division Bench held that it was for the Company to justify the different treatment and simply because the workmen participated in an illegal strike that necessarily and in every case cannot be visited with the order of dismissal. In absence of any positive evidence from the management, it must be held that the finding of the Tribunal that the management was not guilty of discrimination was totally perverse.

10. Shri Presswala urges that the conduct of the employees was unjustified and as laid down by the Division Bench of this Court in the case of *Engineering Mazdoor Sabha and Others Vs. S. Taki Belgrami and Another*, , the management was justified in treating the service as abandoned and the Tribunal was right in not granting re-instatement. It is not possible to accept this submission on the facts and circumstances of the present case. The dispute is in respect of staff workers against whom there is no allegation of violence and their only misdemeanour was that they went on a strike for enforcing their demands. Shri Presswala claims that the management has come out with the case before the Tribunal that certain violent acts were done like gheraoing their officers and with that back ground the Tribunal was justified in not reinstating the employees. In my judgment, the submission is misconceived, because none of the employees were charge-sheeted for the violence, not any memos were produced to sustain the charge. It was not established by the management that any of the 57 workmen, whose claims were considered by the Tribunal, has indulged in any violence. In these circumstances, and with finding that the employees had not abandoned their service, the Tribunal ought to have granted reinstatement of the employees.

11. Shri Presswala urges that the employees were not willing to resume their duties unless all their demands were conceded and therefore the Tribunal was justified in not awarding the relief of reinstatement. In support of this submission, reliance is placed on the letter dated May 23, 1974 addressed by the

Union to the employer and a copy of which is annexed as Annexure-I to the petition. It is undoubtedly true that the Union was insisting upon the compliance of demands, but the Union was also complaining that the management was issuing notices, the contents of which were false. Merely because a union writes a letter insisting on their demands, it is not possible to conclude that the employees were not willing to rejoin the duties. The objection of the employees for resuming duties was that the management should not insist on securing undertaking because such undertaking was clearly an insult to their integrity. In my judgment the employees were perfectly justified in insisting that no undertaking should be secured before they are allowed to resume the duties. The management was not at all willing to permit any of the employees to resume without giving undertaking. In such circumstances, it is impossible to hold that the employees were not willing to resume their duties.

12. Shri Presswala finally submits that it was open for the management to choose any of the employees for the purpose of resumption of service and such discrimination is not sufficient warrant to grant reinstatement to the remaining employees. The submission only deserves to be stated to be rejected. Fortunately we are not living in an age of hire and fire and once it is found that the employees had not abandoned their services it is not open for the management to select any employees in whom they have fancy and keep out other employees without any rationale. Such conduct on the part of the management would clearly amount to victimization and the Tribunal should not have refused the relief to the petitioners. The observations of the Tribunal that the retrenchment compensations would be sufficient relief to the employees is totally incorrect and ignores the hardship suffered by the employees. In my judgment, each of the employee in respect of whom the reference was made, is entitled to immediately resume the duties without attaching any stigma, and is also entitled to the payment of full back wages with effect from May 7, 1974, till the date they are allowed to resume the duties.

13. Shri Presswala invited my attention to the order passed by Mr. Justice Rege on June 22, 1978 at the time of admission of the petition. It reads under :

"Some of the workers concerned have, according to the learned counsel for the second respondent, accepted the compensation from the Company as awarded. The second petitioner has filed this petition representing even those workers.

Rule in terms of prayers (a) and (b) returnable on November 20, 1978 as regards the petitioner No. 1 and those workers whom petitioner No. 2 represents as having not accepted the compensation or have accepted without prejudice."

Shri Presswala submits that in view of this order, the order of reinstatement and back wages would not be available to those workers who had accepted the compensation. In my judgment, the submission is not correct. Merely because the counsel for the employer made a statement that some workers have accepted compensation, the statement cannot be accepted as a gospel truth. The

award does not indicate that any of the workmen had accepted the compensation, and therefore, in my judgment each of the 57 workmen whose claim was considered by the Tribunal is entitled to the relief of reinstatement and full back-wages.

14. Accordingly, the petition succeeds and the rule is made absolute, and the award passed by the Industrial Tribunal on November 9, 1977 is set aside and it is declared that each of the 57 employees, whose claim was considered by the Tribunal, is entitled to resume duties without attaching any stigma and each of them should be paid their full wages with effect from May 7, 1974 till the date they are allowed to resume their duties. In case any of the worker had completed the age of superannuation, than such worker would be entitled to the back-wages till the date of his superannuation.

15. Respondents 2 to 7 shall pay the costs of the petition.