
(1982) 01 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 2579 of 1981

Amravati District Central Co-operative Bank Ltd., Amravati

APPELLANT

Vs

Shamrao Tanbaji Ladavikar and others

RESPONDENT

Date of Decision : 22-01-1982

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 35(2)
Industrial Disputes Act, 1947 — Section 11A, 30

Citation : (1982) MhLj 434

Hon'ble Judges : R.S. Padhye, J

Bench : Single Bench

Advocate : R.V. Patil, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Padhye, J.—The three respondents, who are employees of the petitioner-Bank, filed three applications challenging the termination of their services under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (referred to hereinafter as the Unfair Labour Practices Act). These applications were registered as U.L.P. Nos. 379, 380 and 381 of 1980 in respect of the three respondents respectively and came to be decided by the final order dated 27-7-1981, directing the reinstatement of the three respondents to the original posts with continuity of service and 1/4th back wages for the period during which they were out of employment on account of termination of their service by the Bank. The Bank as well as the employees challenged those parts of this order which were against them before the Industrial Court, Nagpur, by filing revision petitions. The three revision petitions filed by the Bank were numbered as 118, 119 and 120 of 1981, while the three revision petitions challenging the payment of only 1/4th of back wages to the respondents were registered as Revision Petition Nos. 121, 122 and 123 of 1981. The Industrial Court at Nagpur disposed of these revision petitions by orders passed on 30-10-1981. The Revision Petitions filed by the Bank were dismissed

while the revision petitions filed by the respondents were allowed, by directing that full back wages be paid to the respondents. All these orders are under challenge in this petition.

2. The charges framed against the respondents during the departmental enquiry were that on 29-4-1980, the three respondents along with the Administrator Shri Kesharao R. Mahalle consumed liquor at about 5 P.M. during the office hours in the Rest House of the Bank and that the said act was against the interest of the Bank and public at large. Clauses (xv) and (xvi) of Standing Orders No. 11, settled u/s 35 (2) of the Bombay Industrial Relations Act, 1946, provide for the following two misconducts for the major punishment of termination of service and they are as follows:

(xv) If found under the influence of liquor or riotous, disorderly or indecent behaviour on the premises of the Bank and when on duty;

(xvi) Commission of any act subversive of discipline or good behaviour on the premises of the Bank.

Shri R.V. Patil, learned counsel appearing for the Bank submitted that though the Enquiry Officer's report refers to misconduct at S. No. 15, it could be held that the misconduct committed was one which is at S. No. 16 since there was no evidence that the three respondents were under the influence of liquor or they were guilty of riotous or disorderly or indecent behavior. He submitted that the charge framed against the respondents did state that their conduct of consuming the liquor was against the interest of the Bank and that therefore it should be held that it is covered by misconduct at S. No. 16. During enquiry only two witnesses were examined. They are Waman Kukde, Chief Administrative Officer and Keshao R. Mahalle, Administrator of the Cooperative Bank Employees Society. The Second Labour Court, Akola, discarded the evidence of Mahalle who is the only witness on the alleged incident of consumption of liquor by the respondents because he tried to exculpate himself by stating that he did not consume liquor but he consumed beer while trying to inculcate the respondents by stating that they had consumed liquor as also on other grounds that this witness did not remain present for cross-examination during the enquiry. The alleged incident was reported by the Chowkidar of the Bank, whose name is Tukaram. Surprisingly enough, he was not examined in Court. Second Labour Court, Akola, further found that there was difference between the versions of Mahalle and the report of the Chowkidar on the basis of which the enquiry was started, so far as the time element of the alleged incident of consumption of liquor was concerned.

3. Before referring to the contentions advanced on behalf of the petitioner, for challenging the order of the Second Labour Court, Akola, as confirmed in revision it will be necessary to deal with the preliminary objection raised by the respondents because if the objection succeeds, this petition must fail. The Second Labour Court, Akola, by order, dated 26-5-1981, held that the domestic

enquiry conducted by the Bank against the three respondents was illegal, improper and against the principles of natural justice. By the same order the Court allowed the Bank to lead evidence and to prove the charges against the three respondents because the Bank had asked in the alternative form an opportunity to lead evidence to prove the charges against the three respondents in case it was held by the Court that the domestic enquiry was illegal. When the matters reached the stage of revision, the Industrial Court, Nagpur, held that a Court deciding a complaint under the Unfair Labour Practices Act had no power to allow the employer to lead evidence in Court for establishing the charges which were the subject matter of the departmental enquiry. Shri Thakur, learned counsel appearing for the respondents, submitted that in this view of the matter, the evidence recorded at the instance of the employer Bank before the Second Labour Court, Akola, could not be read and since it was already found that the domestic enquiry was in utter disregard of the principles of natural justice, the petitioner must fail.

4. Even before the introduction of section 11-A in the Industrial Disputes Act, 1947 in the year 1971, the law laid down by the Supreme Court of India was that if it appeared to Court that the Departmental Enquiry held by the Employer was not fair, in the sense that a proper charge was not framed and served on the employee, or a proper or full opportunity to defend was not afforded, the Court would be entitled to deal with the merits of the dispute as to the dismissal of the employee itself. A number of cases were referred to by Shri R.V. Patil, appearing for the petitioner but I feel that reference to the case of the Management of Ritz Theatre (P) Ltd. Vs. Its Workmen, would be enough. On behalf of the respondents, it was contended that though that may be the position of law so far as the trial of disputes under the Industrial Disputes Act, 1947, was concerned, similar position could not obtain in cases under the Unfair Labour Practices Act. It was argued that the Industrial Disputes Act, 1947, was an Act making provisions for the investigation of settlement, of industrial disputes while the Unfair Labour Practices Act was an Act for recognition of trade unions for facilitating the collective bargaining for certain undertakings and for defining and providing for the prevention of certain unfair labour practices. If the Unfair Labour Practices Act, 1971 was passed for termination of unfair labour practices, it was submitted that the moment a Court sitting under the Unfair Labour Practices Act, 1971 comes to a conclusion that the employer is guilty of an unfair labour practice or any of the unfair labour practices within the meaning of Schedule IV of the Act, the Court has to proceed to reinstate the employee or compensate him for loss of service and after finding of commission of an unfair labour practice by the employer, no opportunity could be given to the employer to establish the merits of the charge framed against the employee in the departmental enquiry. It is difficult to agree with this contention for the reasons which will follow.

5. Though it is true that the Unfair Labour Practices Act was passed viz. for recognition of trade unions, facilitating the collective bargaining and defining and providing for the prevention of certain unfair labour practices, examination of

section 30 thereof defining the powers of the Industrial and Labour Courts, dealing with the cases under the Unfair Labour Practices Act will show that upon a finding that an employer or an employee named in the complaint has engaged in, or was engaging in, any unfair labour practice, the Court, has to give a declaration accordingly directing the defaulter to desist from further continuing the unfair labour practice in question and to take such an affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act. As was rightly submitted by Shri R.V. Patil, learned counsel appearing for the petitioner, it will not be possible to take affirmative action referred to above without examining the merits of the case. The other alternative of permitting an enquiry afresh by the same unscrupulous employer who has been found guilty of an unfair labour practice is certainly not desirable in the interest of the workman concerned and could not have been contemplated by the Legislature. It could certainly not be said with any reasonableness that an employee charged with a serious misconduct e.g. defalcation, should be allowed to go scotfree after his punishment is set aside by Court on the ground of commission of an unfair labour practice and such a result also could not have been in contemplation of the Legislature.

6. Schedule II of the Unfair Labour Practices Act, 1971, enumerates the unfair labour practices on the part of the employers. Schedule III enumerates the unfair labour practices on the part of the trade unions, while Schedule IV mentions major 10 general unfair labour practices on the part of the employers. During the course of arguments, it was pointed out to Shri Thakur that item 1(d) of Schedule IV mentions the unfair labour practice of dismissing an employee for patently false reasons and taking a hypothetical case in which the only allegation in the complaint was that an employee was dismissed for patently false reasons, without a further allegation that the dismissal was in utter disregard of the principles of natural justice in the conduct of the domestic enquiry as provided in item 1(f) of Schedule IV, the Labour Court deciding such a case will necessarily have to enter into the merits of the dispute for examining as to whether the reasons were false or true and if that be so, the result of acceptance of the preliminary objection raised on behalf of the respondents by Shri Thakur would be that in the hypothetical case referred to above, the Court sitting under the Unfair Labour Practices Act will have to enter into the merits of the charges while the same Court dealing with the case in which the charge of unfair labour practice made is to the effect that the domestic enquiry was held in an utter disregard of the principles of natural justice, the Court will have to keep the pen down the moment it finds that the domestic enquiry was vitiated on account of non-observance of the principles of natural justice. Shri Thakur submitted that such different treatment in different cases was contemplated. I am unable to agree with this contention. There is no indication in any of the provisions of the

Act, that such different treatment in cases involving different labour practices was ever contemplated.

7. The preliminary objection having failed. I shall now turn to the merits. On behalf of the petitioner, it was submitted that the Labour Court should not have discarded the evidence of Mahalle and that if evidence of Mahalle was accepted, there was sufficient evidence to establish the charge. Apart from the question that it is a finding of fact, it is difficult to accept this contention for the simple reason that a reading of the evidence of Mahalle does indicate that he has exculpated himself while inculcating the respondents and it cannot be forgotten that at the material time he was working as an Administrator at the mercy of the Bank after retirement from regular service. His deposition is annexed to this petition as Annexure-H and it appears that he has admitted during the cross-examination, that he applied for the job three years before and had started receiving work only since one month prior to recording of his evidence in July, 1981. It can hardly be said that the evidence of such a person, who is at the mercy of the Bank, could form a valid basis for finding the three employees of the Bank guilty of a major misconduct after they have put in about 7, 8 years of service in the Bank. Choukidar Tukaram, who gave the report which was the basis of the starting of the departmental enquiry against the three respondents, was not examined in Court. Shri Thakur made reference to his statement during the preliminary enquiry wherein he has admitted that he did not see any of the respondents at the Rest House but I do not think it necessary to refer to this part of the evidence because in my opinion, that evidence recorded in a departmental enquiry, which is vitiated on account of the non-observance of the principles of natural justice, cannot be taken into account while deciding the complaint under the Unfair Labour Practices Act and that is why permission was granted to employer to establish the charge on merit by adducing evidence in Court. In spite of the finding of the revisional Court that the employer could not be legally allowed to justify the charges by adducing evidence in Court in cases in which he has been found guilty of unfair labour practice, it has been found in para 8 of the judgment that the evidence adduced by the employer in Court fell short of establishing the charges.

8. Grant of full back wages in the cases in which relief of reinstatement is granted is the normal rule as held by the Supreme Court in the *The Management of Panitole Tea Estate Vs. The Workmen*, . It was pointed out on behalf of the petitioner that the Supreme Court has also held in another decision of *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, that the Labour Court is not expected to grant the relief of reinstatement blindly without considering as to whether relief of back wages would be a proper relief in a given case. Looking to the nature of the charge and the fact that the respondents have put in nearly 7 to 8 years of service, I do not think that the Labour Court was wrong in granting the relief of reinstatement and the revisional order granting full wages instead of 1/4th back wages was correct.

In the result, the petition is dismissed with costs, and the rule shall stand discharged.