
(2001) 11 BOM CK 0052
In the Bombay High Court
Case No : C.A.J. W.P. No. 2914 of 1995

Anant Babu Kharat

APPELLANT

Vs

General Manager, B.E.S.T. Undertaking and Another

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4)
Bombay Industrial Relations Rules, 1947 — Rule 53(1)

Citation : (2002) 4 LLJ 67

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The short question involved in this petition is whether an approach letter u/s 42(4) of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "BIR Act") can be sent after the period prescribed under Rule 53(1) of the BIR Rules.

2. The petitioner was employed as a Bus Conductor from February 1, 1978. He was issued a charge-sheet, inter alia, for unauthorized absence. An enquiry was held against him and he was dismissed from service on June 29, 1990. The petitioner preferred an appeal challenging the dismissal order. On July 31, 1990 the appeal was rejected. The petitioner filed second appeal which was also rejected on November 21, 1990 by the respondents. It appears that after rejection of these appeals, the union representing the petitioner approached the respondents to re-employ the petitioner. After several meetings, union was informed on December 11, 1991 that the respondents were unable to re-employ the petitioner. The petitioner then sent an approach letter on January 10, 1992. As this approach letter was not considered favourably, the petitioner challenged the order of termination of service by filing application under Sections 78 and 79 of the BIR Act. The Labour Court framed several issues and decided the issue as to whether the approach notice is within the prescribed time and whether the

application itself was maintainable under Sections 78 and 79 of the BIR Act. The Labour Court dismissed the application as the approach letter was not served upon the management within the stipulated time of three months as required u/s 42(4) of the Act r/w Rule 53(1) of the BIR Rules. Being aggrieved by this order, the petitioner filed an appeal under Sections 84 and 85 of the BIR Act. The Industrial Court dismissed the appeal and upheld the order of the Labour Court. The petitioner has impugned both these orders in the present writ petition.

3. Mr. Sawant, learned counsel for the petitioner, fairly conceded that if it is found that the approach has been made after three months, then the order of both the Courts below are correct. He submitted that in the present case, the date which would be relevant is December 11, 1991 as it was on this date the petitioner was informed through his union that the respondents were unable to re-employ the petitioner. Mr. Sawant submits that although the second appeal was decided on November 21, 1990, negotiations were proceeding between the petitioner's union and the respondents for securing employment for the petitioner. It was only on December 11, 1990, when the petitioner was informed that this was not possible that he approached the management on January 10, 1992 for reprisal of his grievance. Mr. Sawant submits that it would not be proper to take a technical view and the term "re-employment" considered by the Labour Court should be construed as "reinstatement".

4. I have perused the judgments of both the Courts below. The Labour Court has reproduced the instances when the petitioner was censured on four occasions for some minor offences and he was reinstated despite abandonment of service and reduced his grade by one step on three occasions between 1987 and 1989 for his habitual absence without leave. Obviously, this would show that the respondents, while rejecting the appeals filed by the petitioner, had no intention to reinstate him in service at all. It was because of this that the petitioner's union was attempting to get him re-employed in the service which was also refused by the respondents. The refusal on December 11, 1991 to re-employ the petitioner, therefore, cannot be related to the rejection of the appeals for reinstatement. In view of this, it has to be held that the approach ought to have been made within three months of November 21, 1990 on which date the second appeal was rejected.

5. It is a well settled position in law that there can be no condonation of delay under Rule 53(1) of the BIR Rules. The provisions of Rule 53(1) being mandatory, there is no question of condonation of delay in approaching the management u/s 42(4) of the BIR Act. Hence, in view of the judgment of this Court in the case of *Suryabhan Baburao Sathe and Others Vs. Belapur Sugar and Allied Industries Ltd.*, , this writ petition is dismissed.

6. Rule is, accordingly, discharged with no order as to costs.