

(2009) 08 BOM CK 0187
In the Bombay High Court
Case No : Writ Petition No. 4472 of 1996

A"One Paper Industries

APPELLANT

Vs

Subhash Jadhav

RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 30(1)

Citation : (2009) 08 BOM CK 0187

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : S.K. Shelke, for the Appellant; P.R. Tandale, for the Respondent

Final Decision : Allowed

Judgement

P.R. Borkar J.

1. These two writ petitions are filed by the same employer and its management against two attendants/labourers, who are the brothers and who have filed two ULP complaints bearing Nos. 6 and 7 of 1994 under Maharashtra Recognition of Trade Unions and prevention of Unfair Labour Practice Act, 1966 ("MRTU & PULP Act" for brevity.) by which they challenged oral termination of their services by the petitioner. Learned Judge, Labour Court, Latur, who decided the said two complaints by common judgment dated 19.4.1995, came to a conclusion that there was unfair labour practice indulged into by the employer and they had illegally terminated both the employees with effect from 1.1.1994. The learned Judge, therefore, directed reinstatement of both the employees with back wages and continuity of service. The said judgment is further confirmed by learned Member, Industrial Court, Solapur, in two Revision i.e. Revision (ULP) Nos. 40 and 41 of 1995 by common judgment delivered on 10.7.1996.

2. The facts giving rise to these two writ petitions are that Respondents in both the writ petitions were working as attendants/labourers in petitioner paper mill

situated at Latur. Subhash, Respondent in Writ Petition No. 4472 of 1996, joined services with petitioner paper mill in the year 1982 and was getting consolidated pay of Rs. 1300 per month; whereas Maroti, Respondent No. 4473 of 1996, joined his services with petitioner paper mill in the year 1985 and was getting consolidated salary of Rs. 1265 per month. It is the case of both the Respondents that they had rendered continuous service from the date of their employment and without any show cause notice or paying compensation u/s 25F of the Industrial Disputes Act, their services were orally terminated from 1.7.1994. They were removed in haste in order to create terror in employees and thus unfair labour practice is indulged into by the writ petitioner and hence, they may be reinstated with back wages and continuity of service.

3. Identical Written Statements are filed by present petitioner in both the complaints and it is the case of the present petitioner that the work of both the employees, who are brothers, was not satisfactory. They used to remain absent from duty without permission. They used to sleep while on duty. They were not attending the work in time. They were creating terror in the minds of fellow workers. They were not attending night duties. It is further stated that once or twice the respondents were removed but since they apologized, they were again taken back on duty. On 25.12.1993, both the respondents Maroti and Subhash went to Anchor Industry belonging to same employer and which is at a distance of 100 meters from the factory of the present petitioner. At Anchor Industry, he beat one Giridhar Birajdar and threw him on machine, but only because of timely intervention, life of Giridhar Birajdar was saved. It is also submitted on behalf of the writ petitioner that Respondents Subhash and Maroti gave threats of killing to Mahadu Devade and Kisan Chaubhe and they also abused Bhimrao Lombre and Vishnu Chavan. It is further stated that after the incident that took place on 25.12.1993, Petitioner No. 2 informed the owner of petitioner No. 1 who was then at Bombay, about misconduct of the respondents and they decided to talk with Labour Officer and begin enquiry, but the Respondents came to know of the same and they left the service. The petitioners asked the respondents to join the duties but they refused. It is further stated that so far as Respondent Maroti is concerned, he was running an autorickshaw and was earning Rs. 100/- per day and as far as Respondent Subhash is concerned, he is employed in a trading company at Latur and getting Rs. 60 to Rs. 70 per day. Under these circumstances, writ petitioner contended before the Labour Court that there is no unfair labour practice on its part and, therefore, both the applications/complaints of the complainants be dismissed.

4. Heard learned Advocate Shri S.K.Shelke, for the writ petitioner and Shri P.R.Tandale, Advocate for the respondents. Both the learned Counsel have taken me through the judgments of the Labour Court and the Industrial Court. Advocate Shri Shelke submitted that on behalf of petitioner, Rajesh Mehta, who is Petitioner No. 2 and one Giridhar Birajdar, who is said to have been injured on 25.12.1993, are examined as witnesses before the Labour Court. On behalf of Respondents, Maroti was examined and without discussing their evidence,

without even attempting to ascertain whether the alleged misconduct is proved or not, both the Courts have held that oral termination without notice, without enquiry itself is unfair labour practice and, therefore, dismissed the complaints without touching even remotely the evidence of above witnesses examined on oath.

5. Advocate Shri Shelke for the petitioner drew my attention to paragraph 14 of the judgment of the Labour Court. The learned Judge has observed thus;

14. ...It is true that, in case, if the services of a particular employees are terminated or dismissed on the ground of loss of confidence and if enquiry is not held, then respondent can be permitted to lead evidence before this Court. According to Mr. Deshpande, the evidence, which is adduced in this Court can be admitted on the point of loss of confidence and the action, which is taken by respondents can be held to be valid and legal.

Even though this proposition of law is stated, surprisingly the court did not find it necessary to consider the evidence led on record by the parties, discuss the same and then hold whether the evidence was sufficient to prove the misconduct alleged.

6. In the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , it is observed in paragraph 33 as follows.

33. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognized over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence. But, if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional

evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

Though the principle is laid down with reference to Industrial Disputes Act 1947, when evidence was allowed to be led and it is led by the parties, the court cannot shirk its responsibility from considering such evidence and its effect upon the fate of the case before it. Section 28 of MRTU and PULP which deals with procedure for dealing with complaints relating to unfair labour practices does not indicate that Legislature had any different intention and expressly and impliedly changed the law as laid down in paragraph 33 of the Workmen of Fire Stone Tyre & Rubber Co. Ltd. (supra). Section 30 of MRTU & PULP Act which lays down powers of Industrial and Labour Court in Clause (b) of Sub-section (1) gives sufficient discretion even in case of proved unfair labour practice. Reinstatement with back wages with continuity of service is not always mandatory in case of unlawful termination. Sub-section (b) is as follows;

30(a) ...(b) direct all such persons to cease and desist from such unfair labour practice, and take such 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.

7. In the case of Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., , in paragraph 2, after referring to various judgments, including the decision of the Constitution Bench in P.H. Kalyani Vs. Air France Calcutta, it has been observed to following effect:

2. ...Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the Management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court.

8. Thus, the Hon"ble Apex Court has recognized the right of the employer to adduce evidence before the Labour Court by making application in case no enquiry is held or if enquiry held is defective. In my opinion, in view of this legal position, these writ petitions must be allowed and the matters should be remanded to the Labour Court, so that it can consider the evidence placed on record by both the sides and decide the ULP complaints afresh according to law.

9. In the result, both the writ petitions are allowed. The judgments and orders passed by Labour Court and the Industrial Court are hereby set aside. The matters are remanded to the Labour Court with directions that it shall hear arguments of both the sides in the light of evidence that is already adduced and

then shall decide the complaints afresh in accordance with law. Since the matters are quite old, the Labour Court shall give precedence to dispose of the same. It is made clear that since the evidence is already recorded by the Labour Court, it shall give notice to both the sides and hear the parties and decide the matters as expeditiously as possible.

Rule made absolute accordingly.