
(2008) 08 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 4604 of 2003

Ashok Kelwadeand Others

APPELLANT

Vs

Vidarbha Gas Vessels Pvt. Ltd.

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 81
Industrial Disputes Act, 1947 — Section 25F, 25G, 25H, 25N
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2), 44

Citation : (2008) 6 ALLMR 253 : (2008) 5 BomCR 18 : (2008) 110 BOMLR 2679 : (2008) 119 FLR 347 : (2009) 1 LLJ 83

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : C.V. Jagdale, for the Appellant; M.R. Pillai, for the Respondent

Judgement

A.B. Chaudhari, J.—By the present petition, the petitioners workmen have challenged the judgment and order dated 24.2.2003, made by the Member of Industrial Court, Nagpur in Revision ULPN No. 156/2002, by which the learned Industrial Court reversed the judgment and order made by the Labour Court, Nagpur and dismissed the complaint filed by the petitioners.

FACTS :

2. The petitioners ? workmen who are the original complainants filed Complaint ULP No. 752/1998 in 3rd Labour Court, Nagpur. In the complaint they averred that the respondent ? industry manufacturers LPG accessories etc. in the factory at M.I.D.C., Nagpur since 1984. On 28.7.1998 the respondent issued an order retrenching the complainants for the reasons that there was severe recession in the market on accumulation of stock putting the respondent in financial difficulties. On 30.7.1998 when the workers reported for duty, they were told that they were retrenched. They approached the labour Court vide Complaint U.L.P. No. 452/1998, in which the Labour Court after hearing both sides on

31.8.1998 allowed the application u/s 30(2) of the Maharashtra Recognition Of Trade Unions And Prevention of Unfair Labour Practices Act, 1971, directing their reinstatement in service and complaint remained pending. Accordingly, the complainants were allowed to attend the duties in the premises of the respondent ? Company, but were kept idle nor were paid any wages. On 18.9.1998 the respondent issued second retrenchment notice and affixed the same on the notice board of the Company, stating therein that all the petitioners were being retrenched w.e.f. 18.9.1998 and that the retrenchment compensation and dues were kept ready with the accounts office and should be collected forthwith on that day itself. This retrenchment notice was admittedly not served on all complainants individually on or before 18.9.1998 nor the retrenchment compensation was paid on the same day. The respondent ? employer stated in the retrenchment notice that seniority list was displayed but there was no mention about the withdrawal of the earlier retrenchment order dated 28.7.1998 nor any permission was sought from the Labour Court to take action of retrenchment for the second time. The respondent has contravened the provisions of Section 25F and 25G and Rule 81 of the Industrial Disputes Act and Rules. The respondent was estopped from issuing second retrenchment order in the above background. It was then averred in the complaint that the reason alleged by the respondent was that there were no orders from Indian Oil Corporation with the Company and that there was financial crisis. On the contrary, new workers were engaged and those who were working were granted over time and additional shift for extra four hours was commenced. This clearly demonstrated that work was available. It was then stated that there were 135 employees working with the respondent since one year and therefore the provisions of Chapter V-B were applicable but before issuing retrenchment order three months notice was not given and the retrenchment was in violation of Section 25N of the Industrial Disputes Act. The respondent appeared before the Labour Court and filed its written statement. The material allegations made in the complaint were denied. It was stated that all the dues of the workers were duly paid even for the period from 28.7.1998 till the date of second retrenchment on 18.9.1998. The seniority list was properly published. There was compliance of Section 25F, Section 25G and Rule 81 of the Industrial Disputes Act and Rules. The respondent ? Company never engaged 100 workers as alleged and the provisions of Chapter V-B were not applicable. There was a genuine reason for retrenchment inasmuch as there was decrease in the supply orders from Indian Oil Corporation, who was the prime consumer of L.P.G. valves because of their change in policy of purchasing valves on pre-settled rate from the established companies, which situation became piquant and there was hardly any orders with the Company. The petitioners examined C.W. 1 Devendra Gopalrao Ballad, C.W.2 Mohan Dhakare and C.W.3 Rajendra Dhole ? Labour Officer. The respondent examined Raju Hukumchand Jain, its Director. The learned Labour Court heard parties and after appreciation of evidence came to the conclusion that there was no compliance of Section 25F of the Industrial Disputes Act and the reason given for termination was patently false. He held

that the respondent did not engage 100 workers and, therefore, Chapter V-B of the Act did not have application. As a sequel he held termination dated 18.9.1998 to be the result of unfair labour practice and directed reinstatement of the petitioners with continuity of service and full back wages. The respondent ? employer challenged the said judgment and order in Revision U.L.P. No. 156/2002 which was heard by the Industrial Court which ultimately allowed the same holding that the employer had made all compliances of the mandatory provisions and the termination was legal and proper. Hence, this writ petition.

ARGUMENTS :

3. Advocate Shri C.V. Jagdale for the petitioners made the following submissions :

(i) The Industrial Court clearly overstepped in exercising jurisdiction u/s 44 of the M.R.T.U. and P.U.L.P. Act which has been held to be in the nature of mere power of superintendence over the Labour Court. In doing so, the Industrial Court recorded the findings which are totally perverse and thereby it has upset a detailed and well reasoned judgment made by the Labour Court. The perversity is clear from the fact that the Industrial Court went to the extent of accepting the statement at bar that the respondent ? factory was closed and, therefore, no reinstatement could be granted.

(ii) Without withdrawing the earlier termination order, dated 28.7.1998, which was subjudiced in U.L.P. Complaint No. 452/1998 or without obtaining the leave of the Labour Court, the respondent ? employer was estopped from issuing second retrenchment order and on that count alone the termination in question was liable to be set aside. He placed reliance on the decision of Rajasthan High Court in the case of Sehkari Upbhokta Wholesale Bhandar Ltd. Vs. Pannalal Bordia and Another, .

(iii) There was non-compliance of Section 25F of the Industrial Disputes Act because no payment from the date of first termination i.e. 28.7.1998 till 18.9.1998 i.e. second termination was made and further during this period the workmen were kept idle without allotting any work and, therefore, not allotting the work is as good as not reinstating them. On the date of retrenchment, the notice of termination was not served on any individual workmen nor the compensation was paid on the day of retrenchment and no evidence was brought on record that the entire money was kept ready on the same day with the accounts office of the respondent for being collected by the workers assuming that any such notice was displayed on the notice board. Subsequent sending of retrenchment compensation by registered Post A.D. is in the first place of no consequence as requirement is payment at the time of retrenchment. Even otherwise the receipt of that payment subsequently has not been established as found by the Labour Court.

(iv) There was violation of the provisions of Section 25G of the Industrial Disputes Act as immediately after retrenchment of the petitioners other workers were engaged and the fact that 96 employees were found working in the factory

as per the inspection report of the Labour Officer subsequent to the retrenchment clearly indicates that the workers, juniors to the petitioners were working numbering 96 and, therefore, there was violation of Section 25G of the Act and that the reason for termination was clearly false.

(v) The termination was in violation of Section 25N of the Act which contemplates issuance of three months notice. Finally, learned Counsel for the petitioners prayed for restoring the order of the Labour Court by setting aside the judgment and order of the Industrial Court. In addition, he relied on the following decisions :

(1) 2003 I CLR 409 (Alumina Mazdoor Sangh etc. v. Ratna Construction Co. and Ors.).

(2) 2003 (I) Bom. LC 83 (Ramchandra Narayan Rao v. Sub-Divisional Officer, Mandur Madhameshwar Project and Ors.).

(3) 1992 II CLR 1106 (Suptg. Engineer, Urdhwa Painganga Project Circle and Anr v. Yavatmal Zilla Raste, and Ors.).

4. Per contra, Advocate Shri Manoj Pillai for the respondent employer made the following submissions :

(i) In the revisional jurisdiction u/s 44 of the M.R.T.U. and P.U.L.P. Act, the Industrial Court is entitled to set aside the perverse findings and also correct the errors of law committed by subordinate Labour Court and, therefore, in the instant case it exercised the jurisdiction within the parameters laid down by this Court.

(ii) At the time of second retrenchment, the entire payment from the date of first retrenchment in addition to the retrenchment compensation was offered to the petitioners but they refused to accept and, therefore, those payments were sent by R.P.A.D. and many of them have accepted the same. There was thus full compliance of Section 25F of the Act. There was no need for the respondent to withdraw the earlier retrenchment order because of payments as aforesaid were kept ready and made and merely because earlier complaint is pending, the employer is not prevented from taking action in accordance with law. 12

(iii) The seniority list was duly published inviting objections on 4.9.1998 (Exh.176), but no objections were received. There was thus full compliance of Rule 81 of the Industrial Disputes Rules.

(iv) There was no violation of Section 25G of the Industrial Disputes Act because it was not the case of the petitioners that any juniors were retained at the time of their retrenchment. Their case was that subsequently other workers were engaged but then that does not attract the vice of Section 25G of the Industrial Disputes Act.

(v) The report of the Labour Officer itself indicated that less than 100 workers were working in addition to the fact that the petitioners did not at all prove by

satisfactory evidence that 100 or more workers were working in one year. The Labour Court therefore rightly recorded a finding that there was no violation of Section 25N of the Act.

(vi) There was enough evidence on record to show that no work was available at the relevant time of retrenchment and the respondent had no other alternative but to retrench the workers. The financial position of the Company was bad and no work orders were forthcoming from its customers due to change in the policy of those Oil Companies. Issuance of second retrenchment order amounts to revocation of the first retrenchment order.

(vii) After the present retrenchment, more persons were retrenched subsequently and all these facts were brought to the notice of the Industrial Court which appreciated the fact that there was no work available and therefore the retrenchment was bonafide.

(viii) Refusal of interim relief during the pendency of the complaint to the petitioners up to the Supreme Court with finding about non availability of the work and compliance of provisions of law clearly shows that the order of the Industrial Court cannot be faulted. He relied on the following decisions.

(1) 2002 L.I.C. 2762 (Narayan Poojari v. The Labour Court, IIInd Floor, Chandra Vihar, and Anr.).

(2) 2004 II CLR 309 (Engineering and Ancillary Manufacturers v. Salim Khan). 14

CONSIDERATIONS :

5. I have gone through the records and proceedings of the lower Courts. I have heard learned Counsel for the rival parties at length.

6. A careful reading of the judgment rendered by the Labour Court, pleadings of the parties and evidence on record lead me to say that the judgment of the Labour Court is in necessary details with proper appreciation of evidence but with wrong application of law on some points. In so far as judgment of the Industrial Court is concerned, it is perverse. The Industrial Court has wrongly interfered with the findings of facts based on evidence recorded by the Labour Court on some important issues and then it recorded perverse findings. For example, when the parties produced such evidence as they felt necessary, the Industrial Court erred in saying that the Labour Court ought to have directed the employer to produce evidence. It observed thus in paragraph 13 as under :

It is crystal clear from the order that the Labour Court did not bother to direct the applicant to produce all concerned record as to sell of products and orders placed with it by the respective companies within the span of relevant period.

None had prevented the employer from doing so before the Labour Court. In fact the employees as well as the employer had tendered their respective evidence even on the point of availability/non-availability of work. It is, however, not possible for me to lay down a proposition in general about exercise of powers u/s

44 of the M.R.T.U. and P.U.L.P. Act by the Industrial Court, but in this particular case, I find that the Industrial Court acted with total perversity.

7. The Labour Court has recorded a finding that second termination could not have been issued without revocation or withdrawal of orders of first termination. The Industrial Court has recorded a finding that issuance of second termination amounts to automatic revocation of first termination. In my opinion, both the Courts have erred on this point. Perusal of provisions of M.R.T.U. and P.U.L.P. Act or the Industrial Disputes Act do not prohibit issuance of second termination without withdrawing the first termination if the employer wants to comply with the provisions of law at the time of second termination. Under M.R.T.U. & P.U.L.P. Act the Courts have a jurisdiction to prevent the employer from committing unfair labour practice by issuing second retrenchment order and in that case if the prevention order is issued and still the second termination is made the same would be bad in law. But if there is no such order as in the instant case, I do not think that the second retrenchment order would become bad either for want of leave from the Labour Court where first complaint was pending or for not withdrawing the first termination. The validity of second retrenchment as unfair labour practice can however be decided independently and even such second termination can be declared as a result of unfair labour practice, but to say that an employer cannot at all issue the second retrenchment order is to prevent the employer from exercising his right to act according to law. I, therefore, hold that the Labour Court went wrong in holding that second termination could not have been issued without the first termination being withdrawn. The reliance placed by learned Counsel for the petitioners on the decision of Rajasthan High Court in the case of *Sehkari Upbhokta Wholesale Bhandar Ltd. Vs. Pannalal Bordia and Another*, is misplaced because in that case neither the workers were reinstated nor paid. In so far as the submission regarding non-compliance of Section 25N of the Industrial Disputes Act is concerned, relying on the finding of fact concurrently recorded by the Courts below that there were total number of employees being less than 100 in one year, the provisions of Section 25N were not attracted. Hence, I reject the submission made by learned Counsel for the petitioners on that point.

8. The further submission made by Advocate Shri Jagdale that there was violation of Section 25G of the Act because new workers were engaged post retrenchment is also rejected inasmuch as the same would be a subject matter of reemployment and it has nothing to do with violation of Section 25G of the Act. All the more so because it is not the case of the petitioners nor they have proved that at the time of their retrenchment any juniors were retained. Similarly, there is ample proof on record to say that seniority list was published well in advance on 4.9.1998 and no objections were raised to the same and, therefore, there was compliance of Rule 81 of the Rules.

9. From perusal of the evidence on record and having regard to the findings recorded by the Labour Court, I have no difficulty in coming to the conclusion

that the respondent/employer had offered the amount under the second retrenchment order, the retrenchment compensation as well as the wages for the period from the first termination till second termination i.e. from 28.7.1998 to 18.9.1998. The Labour Court, however, found that since the petitioners were not actually allotted the work, but were asked to sit idle for the said period, which in my opinion would make no difference because wages were offered by the employer for that period and, therefore, whether the work was allotted or not is of no consequence.

10. While considering the question regarding validity of the retrenchment, I find that the Labour Court recorded a finding of fact that it was difficult to accept the case of the respondent/employer that there was compliance of Section 25F of the Act by merely displaying the notice on the notice board about retrenchment. For this purpose the Labour Court has gone through the muster roll and wage register which show that many complainants were absent on 18.9.1998. No proper evidence was tendered by the employer that individually the complainants were served with the retrenchment orders but the employer merely preferred to rely upon the display of notice on the notice board of the Company. In my opinion, Section 25F of the Act requires service of individual notice on individual workman of the retrenchment order at least in the present case because there is no positive reliable evidence on record to show that all those proposed to be retrenched were present and had personally seen the notice of their retrenchment. That apart, if according to the employer the retrenchment compensation was to be collected along with the wages for the period from first termination to second termination from the accounts department, the employer ought to have adduced documentary as well as oral evidence about the funds being kept ready on the date of retrenchment with the accounts section of the Company. There is absolutely no evidence to this effect and, therefore, it cannot be immediately believed that the retrenchment compensation etc. were ready for payment to the retrenched workers at the time of retrenchment because in the absence of proof there will be violation of the mandatory provisions of Section 25F of the Industrial Disputes Act, which requires payment of retrenchment compensation to a workman at the time of retrenchment. What is required is the satisfactory evidence regarding after for retrenchment compensation and its readiness to pay the same on the date of retrenchment. The decision cited by Advocate Shri Pillai in 2004 II CLR 309 (supra) has no application on the facts of the present case. I, therefore, hold that there is violation of Section 25F of the Industrial Disputes Act which is a mandatory provision, as has been repeatedly held by the Supreme Court.

11. The Labour Court has on evidence found that the reason for termination of the petitioners was patently false. Now according to me this finding is based on evidence. The respondent ? employer failed to bring proper evidence before the Labour Court to show that the factory was closed or there were hardly any orders or that it was in financial crisis. The Labour court has rightly found that the respondent/employer made an attempt to prove the said fact but the same was

based on vague pleadings and vague evidence. Not only that there is strong evidence on record to show that the employer/respondent engaged new workers after the retrenchment. I quote the following observations from paragraph No. 28 of the judgment of the Labour Court instead of discussing the evidence myself. "I have gone through this report which goes to show that on the day of inspection there were 93 workers as found working in the factory of respondent. Moreover Exhibit 185 goes to show that the persons at serial No. 1, 4, 7 and 8 in Valves section, and serial No. 1 in Piston Section, and other 1 to 6 from I.T.I. Training Centre and at serial No. 15 in Valve Section. Ravindra Raut has been appointed on 28.1.2000. Subhash Nimje, Sunil Sambare, Balaji Barapatre have been appointed prior to 3 months. Moreover, the documents which are filed vide Exhibit 184, 185 and 188 have been duly signed by witness of respondent Shri Raju Jain. In the said list the workers of contractor have also been show so this clearly shows that the respondent has engaged new employees, after retrenchment of complainants without following the provision of Section 25H of the I.D. Act." I further quote the relevant evidence on this point from paragraph Nos.27 and 42 of the judgment. "The learned Counsel Shri Jagdale argued before the Court that the respondent started two shifts of 12 hours from 7.00 A.M. to 7.00 P.M. and that 7.00 A.M. to 7.00 P.M. also pay incentives to concerned employees and thereby made excess payment of near about 1,00,000/- to the employees, and to this extent the witness of complainant M.S. Gakare in the cross during evidence deposed that due to excessive work he has been given the incentive, he came in the category of Income Tax payee. The copy of permanent Account Number Card is filed at Exhibit 171 and the copy of Muster Roll-cum-wage card is filed vide Exhibit 172. The complainant has filed the copy of incentive vide Exhibit 12. The reason mentioned in retrenchment notice is also not genuine since respondent failed to file on record, the documents to the extent of its loss."

12. The submissions made by Advocate Shri Pillai about the orders made by this Court or the subordinate Courts on the interim matters hardly impress me as those were all prima facie findings.

13. Now coming to yet another important question relating to the award of back wages, I find that the petitioners are away from employment with the employer since 18.9.1998 i.e. almost for a period of about 10 years. The Labour court has made the award of full wages. The award of full back wages at this juncture, in my opinion, is bound to have total adverse impact on the very existence of the respondent/factory. Undoubtedly, the petitioners/workers have suffered but it cannot be said that for the last 10 years they have not earned anything for their survival and of their families. Therefore, in order that the factory is not closed due to burden of back wages and the workmen are deprived of any amount by way of back wages, I hold that payment of Rs. 50,000/- to each petitioner/workman would meet the ends of justice instead of awarding them full back wages for the last 10 years. Hence, I make the following order.

14. Writ Petition is partly allowed. The impugned order made by the Industrial Court, Nagpur, dated 24.02.2003, in Revision (ULPN) No. 156/2002 is quashed and set aside. The order made by Labour Court, Nagpur, dated 30.4.2002, in Complaint (ULPA) No. 752/1998 is restored, but with a modification that in place of award of full back wages there shall be payment of Rs. 50,000/- (Rupees Fifty Thousand Only) per petitioner within a period of three months from today. The respondent-employer shall pay costs of Rs. 1,000/- (Rupees One Thousand Only) to each petitioner i.e. total Rs. 24,000/- (Rupees Twenty Four Thousand Only) in addition.

15. Rule is made absolute in the above terms.