

(2003) 06 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 1914 of 1999

Auto General

APPELLANT

Vs

Engineering Workers" Union

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30

Citation : (2004) 1 BomCR 864 : (2003) 4 MhLj 428

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Shamrao Patil, for the Appellant; P.M. Patel, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties Perused the records.

2. The petitioners are challenging the judgment, and order passed by the Industrial Court on 8-4-1999 allowing the complaint filed by the respondent making grievance of unfair labour practices under Item 9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act" on the part of the petitioners and further claiming of back wages to the tune of Rs. 69,597/-. The challenge is three-fold. Firstly, that without going into the issue as to the obligation of the workman to report to the duties pursuant to the Award for reinstatement and without any material on record disclosing attempt on the part of the workman to join the duties, the Industrial Court has arrived at the conclusion that there was refusal on the part of the petitioners to allow the workman to join to her duties on or after 1-6-1990; secondly, that the workman having joined the duties from 26-9-1990, there was compliance of the Award for reinstatement in service and once the Award was complied with, the complaint in relation to Item No. 9 of Schedule-IV of the said Act did not survive any further and, therefore, the Industrial Court could not have directed the payment of

wages beyond the said date as well as could not have gone into the issue as to whether there was adoption of any unfair-labor practice by the petitioners subsequent to the said date as the scope of the complaint was restricted to the issue of non-compliance of the Award dated 11-10-1988; and thirdly, that the direction to pay the sum of Rs. 69,597/- has been issued without considering the fact that such a claim has been disputed by the petitioners and without considering the calculations submitted by the petitioners in relation to the amount payable to the workman. Reliance is sought to be placed in the decisions in the matter of *Bombay Steel Rolling Mills Ltd., and Ors. v. Khemchand Rajkumar Steel Mills and Pahorpur Yards Labour Union, Calcutta*, reported in (1964) II LLJ 120, and *Peer Mohamed and Co. Vs. Mohamed Hussain and Another*, in support of the first ground of challenge and in the decisions in the matters of *Management, Nilpur Tea Estate v. State of Assam and Ors.*, reported in 7996 (72) FLR 79 and *State of Maharashtra Vs. Ajit Maneklal Choksey*, in support of the second ground of challenge. On the other hand, the impugned order is sought to be justified by referring to the letter dated 23-6-1990 by the Union requesting the petitioners to allow the workman to join to her duties and the due acknowledgment of the receipt thereof by the petitioners, yet the refusal on the part of the petitioners to allow the workman to join to her duties and secondly that the complaint not only relates to the non-compliance of the Award but also non-payment of the back wages and therefore nothing prevented the Industrial Court from awarding the wages for the period for which it has not been paid to the workman and viewed from this angle, according to the learned Advocate for the respondent, no fault can be found with the direction given by the Industrial Court to pay the wages in relation to the period even beyond 26-9-1990.

3. The learned Advocate appearing for the petitioners has fairly conceded that the petitioners do not dispute the entitlement of the workman for the back wages for the period from 19-2-1986 to 31-5-1990 as even though the Award was delivered on 11-10-1988, since it was an ex parte Award, attempt was made by the petitioners to get the said Award set aside but without any success and the order refusing to set aside the Award was passed on 31-5-1990 and that therefore the petitioners do not deny the claim for back wages of the workman for the period from 19-2-1988 till 31-5-1990.

4. As regards the first ground of challenge, it is not necessary for this Court to go into the issue sought to be raised on the point as to whether after the order of termination from services is set aside by the Tribunal or the Court, is it the duty of the employer to invite the employee to join the services or whether it is the duty of the employee concerned to demand implementation of the Award for reinstatement as, in my considered opinion, in the facts and circumstances of the case in hand, such an issue does not arise for consideration. The analysis of the materials on record by the Industrial Court as well as from the perusal of the records placed before this Court, it is apparent that the period for which the issue of adoption of unfair labour practices on account of the alleged non-enforcement

of the Award dated 11-10-1988 to be considered is the period from 1-6-1990 till 25-6-1990. Apart from a mere claim of the respondent that the workman tried to join the duties but she was prevented from doing so by the petitioners, there is also a letter dated 23-6-1990 by the Union, addressed to the petitioners. It is also a matter of record that the petitioners have acknowledged the receipt of the said letter. The contention of the petitioners, however, is that mere letter by the Union asking to enforce the Award is not sufficient and it must be established that the workman had in fact tried to join to her duties, yet there was obstruction by the employer and therefore she could not join to her duties. In that connection, attention is sought to be drawn to the decision in the matter of Bombay Steel Rolling Mills Ltd., and Ors. v. Khemchand Rajkumar Steel Mills and Pahorpur Yards Labour Union, Calcutta (supra) wherein it was observed that "But if after such acquittal the workmen preferred to remain away and did not ask for work, it is neither fair nor reasonable to ask the management to comply with the demand for reinstatement made months and months after such acquittal." No doubt, in the case in hand, the Award for reinstatement was dated 11-10-1988. The first letter by the Union appears to have been sent on 7-2-1989 and thereafter on 23-6-1990. At the same time, it is a matter of record that till 31-5-1990 the petitioners had been pursuing with the matter before the Industrial Court for getting the said Award set aside on the ground that the same was passed, ex parte. The said attempts on the part of the petitioners were proved futile pursuant to the order dated 31-5-1990 and thereafter the Union had sent a letter on 23-6-1990 asking the petitioners to reinstate the workman in terms of the Award. At the same time, it is also pertinent to note that the Industrial Court has nowhere arrived at any finding to the effect that during the period from 1-6- 1990 till 23-6-1990 or even thereafter till 26-9-1990 that there was any attempt on a particular day by the workman to join to her duties and that she was obstructed from joining to her duties by the petitioners. Even after drawing attention of the Advocate for the respondent to the absence of such a clear finding in the impugned Award, the learned Advocate for the respondent was not able to point out any piece of material on record which can disclose actual attempt by the workman on a particular day and yet the petitioners had obstructed the workman from joining to her duties. Apparently, there is no material on record to disclose that the workman had actually attempted to join to her duties from 1-6-1990 till 26-9-1990. The finding by the Industrial Court on the point of attempt of the workman to join to her duties reads thus:--

"Witness Smt. Suman Waghmare who was working in the Company told that Smt. Ajgoankar reported for duty one to two days in September. However, her deposition cannot be trusted in this connection because Smt. Ajgoankar might have reported for duty for several times and she must have been returned and whisked away from outside the Company."

The learned Presiding Officer of the Industrial Court, however, has not taken any care to refer to any incident from the materials on record which can help the Industrial Court to draw any such inference which the Industrial Court has drawn

regarding the attempt on the part of the workman and refusal on the part of the petitioners to allow the workman to join to her duties. It is not the mere inference without any basis which can justify to arrive at the conclusion regarding adoption of unfair labour practices by the employer vis-a-vis the employee. In order to arrive at any such finding, it is necessary for the Court to refer to the materials on record which can justify such a conclusion. In the absence of any material on record to justify the conclusion which is sought to be drawn by the Industrial Court regarding the attempts on the part of the workman to join to her duties and obstruction on the part of the petitioners, the said finding cannot be sustained. As already observed above, there is nothing on record to disclose any attempt on the part of the workman to join to her duties from 1-6-1990 till 26-9-1990. Mere letter of the Union directing the management to enforce the Award by itself cannot lead to the conclusion that in fact there were attempts by the workman to join to her duties. It is also pertinent to note that the letter undisputedly directs the employer to enforce the Award and allow the workman to join to her duties. It does not make any grievance about refusal on the part of the management to allow the workman to join to her duties on a particular day. Being so, a mere request by the Union to the management to enforce the Award and allow the workman to join to her duties cannot lead to the conclusion that the workman had actually attempted to join to her duties and that she was obstructed from doing so by the management. Being so, the materials on record do not disclose that the workman had attempted to join to her duties during the said period and therefore there cannot be any justification to arrive at the conclusion that the petitioners had adopted unfair labour practices vis-a-vis the workman for the period from 1-5-1990 till 26-9-1990.

5. The above conclusion is also inevitable from the fact that even the reporting to the duty by the workman on 26-9-1990 is not on account of any voluntary act on the part of the workman but it is pursuant to the order dated 25-9-1990, passed by the Industrial Court appointing Commissioner to supervise the proceedings regarding the joining of the workman to her duties. Undisputedly, there was no obstruction to the workman when she had gone to join her duties on 26-9-1990. In the circumstances, therefore, the finding of the Industrial Court regarding adoption of unfair labour practices by the petitioners as well as that there is cause for complaint under Item 9 of Schedule-IV of the said Act in relation to the relevant period cannot be sustained and are to be set aside.

6. Considering the view that I am taking in the matter, it is not necessary to refer to the decision of the Madras High Court in the matter of Peer Mohamed & Co., Madras v. Mohamed Hussain and Anr. (supra).

7. As regards the second ground of challenge, it is a matter of record that pursuant to the order dated 25-9-1990, Commissioner was appointed to supervise the proceedings regarding the joining of the workman to her duties and accordingly the workman joined to her duties on 26-9-1990. Undisputedly, the Award dated 11-10-1988 was to the effect that the workman was required to

be reinstated in service with effect from 19-2-1986 with full back wages. At the same time, the complaint of the petitioners was only in relation to non-compliance of the said Award. The grievance made in the complaint and the relief prayed therein was to the effect that the petitioners have not complied with the said Award and have not paid the back wages, as ordered to be paid under the said Award. In the back ground of these facts, it will be necessary to refer to the decisions relied upon before arriving at any conclusion regarding the contentions canvassed on behalf of the parties.

8. The Apex Court in the matter of Management, Nilpur Tea Estate v. State of Assam and others (supra), while dealing with the matter u/s 33-C(2) of the Industrial Disputes Act, 1947, in a case where the services of the employee were terminated after enforcement of the Award for reinstatement, it was observed that:--

"As no step had been taken by the respondent to question the legality or otherwise of the order of termination dated 19-4-1988, the said order could not have been ignored by the Labour Court or the High Court, for purposes of calculating the amount which remained due and is payable to the respondent. To put it in other words, the Labour Court or the High Court could not have directed payment to the respondent for period after 19-4-1988 when the services of the respondent were terminated afresh. The counsel for the respondent could not take a stand that respondent had challenged the aforesaid order dated 19-4-1988 terminating his services after being reinstated. Unless the said order of termination is held to be invalid, it cannot be ignored in a proceeding u/s 33-C(2) of the Act."

9. The learned single Judge of this Court in the matter of State of Maharashtra v. Ajit Maneklal Choksey (supra), while dealing with the matter arising out of the order of the Magistrate dismissing the criminal complaint against the employer for non-implementation of the Award on the ground that it was barred by limitation, had observed thus:--

"An award directing the employer to reinstate a workman who had been earlier dismissed, as any other award, becomes enforceable under the provisions of Section 17A on the expiry of 30 days from the date of its publication u/s 17. The act of reinstatement is to be made at one time and it is not a liability imposed upon the employer which is to be carried on his shoulder from day-to-day. If, for example, a workman who is directed to be reinstated on a particular day and is reinstated on that day and thereafter the workman is again discharged or dismissed, there is no breach of the direction of the reinstatement, because that direction has been complied with. The subsequent discharge or dismissal may give rise to a fresh industrial dispute. In other words, the act of reinstatement has to be performed only once and not to be repeated from day-to-day."

10. Considering the facts of the case in hand, and applying the law laid down, as quoted above, it is apparent that on 26-9-1990, in the presence of the

Commissioner, the workman was reinstated in the services in terms of the direction under the Award dated 11-10-1988. Admittedly, thereupon the workman had filed an application for leave along with medical certificate. Her own witness has stated that she had worked for one or two days in the month of September. It is, therefore, apparent that in terms of the direction under the Award dated 11-10-1988 for reinstatement of the workman, the same was enforced on 26-9-1990. Being so, as far as the relief of reinstatement under the Award is concerned, nothing more was left to be done by the petitioners vis-a-vis the workman in whose favour the Award was passed. Whatever acts the petitioners might have done, or committed, even assuming that the contention in that regard of the respondent is correct for the sake of argument, then also it cannot be said that cause for proceeding of the complaint of non-compliance of the Award for reinstatement dated 11-10-1988 would still subsist beyond 26-9-1990. In the words of Justice Jahagirdar in Ajit Maneklal Choksey's case "The act of reinstatement is to be made at one time and it is not a liability imposed upon the employer which is to be carried on his shoulder from day-to-day. "The act of reinstatement in terms of an Award has to be, therefore, performed only once and once it is performed by the employer, the question of repeating such act in terms of the Award which has already been enforced, cannot arise. Once it is an admitted position that on 26-9-1990 the workman had been reinstated in terms of the Award dated 11-10-1988, the grievance of the respondent, as far as non-compliance of the said Award in relation to the reinstatement is concerned, did not subsist thereafter.

11. The other direction under the Award dated 11-10-1988 was pertaining to the payment of back wages. It is not in relation to the future wages. It was sought to be contended that nothing prevents the Court to give such direction for payment of wages which may accrue subsequently. It is not necessary for this Court to go into the said issue as the fact remains that under the Award dated 11-10-1988, what was awarded was only the back wages. The liability of the employer was therefore to pay the back wages with effect from 19-2-1986 till the date of reinstatement. Once this position in law being clear, and the Award being clear in relation to the back wages, the question of directing the petitioners to pay the future wages cannot arise in a complaint u/s 28 of the said Act, wherein the grievance of the complainant pertains to the fact of non-compliance of the Award passed by the Tribunal, and the Award pertains only to the issues of reinstatement and payment of back wages.

12. In relation to the back wages, it was sought to be contended on behalf of the petitioners that no back wages could have been awarded beyond 31-5-1990 as the complaint did not refer to the said period. The claim of the workman for back wages and the liability of the employer for the payment of back wages cannot depend upon the relief claimed in the complaint filed u/s 28 of the said Act but it would depend upon the relief granted under the Award. Undisputedly, the Award directs payment of back wages till the date of reinstatement from 19-2-1986. Being so, the liability of the employer to pay the back wages till the date of

reinstatement cannot be disputed. Besides, the complaint was necessarily regarding the period prior to the filing of the complaint. Undoubtedly, the complaint refers to the period upto 31-5-1990. The complaint was filed on 9-7-1990. Under the Award it being the liability of the employer to pay the back wages till the date of reinstatement, in fact it was not necessary for the complainant to specify the date of 31-5-1990 in the complaint as being the date on which the amount is due and payable to the workman. However, mere mention thereof or a relief disclosing the said date, that would not debar the Industrial Court from passing appropriate order in the matter of payment of back wages and the provisions of Section 30 of the said Act are very clear in that respect.

13. As regards the third ground of challenge, the analysis of the materials on record and the findings arrived at by the Industrial Court in respect of the amount due and payable to the workman, apparently it discloses that the Industrial Court has proceeded on the basis that the petitioners are not disputing the statement of calculation submitted by the respondent. However, the materials on record brought to the notice of this Court by the learned Advocate for the petitioners and not controverted by the respondent's Advocate, disclose that the petitioners on their part had also submitted calculations and they differ from those submitted by the respondent. Being so, it was necessary for the Industrial Court to analyse both the statements of calculations and considering the number of days for which the wages were payable, it was necessary to ascertain the exact amount due and payable to the workman. The Industrial Court having not done this exercise, and merely on the assumption that the petitioners have not contended that the calculations submitted by the respondent are not correct, has directed the petitioners to pay the sum of Rs. 69,597/- to the workman. It also appears from the records that the petitioners had deposited a sum of Rs. 45,472.79 ps. with the Industrial Court. However, credit has been given only to a sum of Rs. 40,000/-, which was withdrawn by the respondent. It is also necessary for the Industrial Court to take into account the said amount while calculating the amount which is payable by the petitioners to the workman. In this regard, it is to be noted that the Award was passed on 11-10-1988. Undoubtedly, there was an attempt to get the same set aside and the order in that regard was passed on 31-5-1990, rejecting the prayer for setting aside of the Award. However, the fact remains that during the proceedings sought to be initiated by the petitioners to get the Award set aside, the execution of the said Award was not stayed. Since the liability of the petitioners to execute the Award was subsisting during the period even prior to 31-5-1990, in that regard certainly it was necessary for the Industrial Court to apply its mind and to arrive at the finding as to whether the same amounts to unfair labour practice on the part of the petitioners vis-a-vis the workman and thereupon to calculate the exact amount due from the petitioners to the workman. Having failed to do so, and having arrived at the amount of Rs. 69,597/- as being due, without undertaking the above exercise, the finding regarding the said amount to be due and payable

to the workman needs to be set aside and the matter needs to be remanded to the Industrial Court to deal with the said aspect of the matter.

14. In the result, therefore, the petition partly succeeds. The impugned order is quashed and set aside. However, the matter is remanded to the Industrial Court to deal with the contention of the respondent regarding the non-compliance of the Award resulting in unfair labour practice being adopted by the petitioners for the period prior to 31-5-1990 and also to arrive at the correct amount due and payable to the workman, in accordance with law and bearing in mind the observations hereinabove. The rule is made absolute accordingly with no order as to costs.