

(2013) 11 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 4568 of 2011

Bapu Parwati Urmude

APPELLANT

Vs

Premier Industries

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 4 ALLMR 11 : (2014) 5 MhLj 130

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : P.V. Barde, for the Appellant; A.P. Bhandhari, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Rule. Rule made returnable forthwith by consent of the parties and heard. The contention of the Petitioner is that after having joined employment in 1981, he has put in a blot less service till 21st October, 2002, when the Respondent alleged that the Petitioner had abused one of the partners of the Respondent. Thereafter, as a retaliatory action, the Petitioner was prevented from entering the premises of the Respondent Industries with effect from 22nd October, 2002. According to the Petitioner, this amounts to oral refusal of work. The Petitioner made strenuous efforts for resumption of duty but in vain due to the adamant attitude of the Respondent.

2. Subsequently, charge-sheet dated 30th December, 2002 was issued to the Petitioner. Grievance is made that a show cause notice prior to the said charge-sheet was not given. It is an admitted position that the Petitioner was given the assistance of a practicing advocate as his defence representative. According to the Petitioner, the enquiry ought to have been completed within a period of 90 days, to be computed from the date of issuance of charge sheet.

3. Since the enquiry was not completed within a period of 90 days and the Petitioner was deprived of his wages, he preferred Complaint (ULP) No. 161 of 2003 before the Industrial Court, Ahmednagar. The Petitioner invoked Items 5, 9

and 10 of Schedule IV of the MRTU & PULP Act, 1971.

4. My attention is drawn to Paragraph 3(d) of the Complaint which is at Page Nos. 14 and 15 of the Petition paper book. It is canvassed that Standing Order 25 of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 was violated. It was specifically brought to the notice of the Industrial Court that the law mandates completion of domestic enquiry within a period of 90 days. Failure to do so, creates an obligation on the enquiry officer to draw a conclusion as to why the enquiry was not completed within the said period and thereafter take steps for completion of the enquiry.

5. The sum and substance of the submissions of the Petitioner is that, the fact that the enquiry was not completed within 90 days renders the enquiry bad in law. The Petitioner also makes a serious grievance that he was not paid any wages from 22nd October, 2002 till his dismissal from service eventually ordered on 4th April, 2005. It is clarified that the said dismissal has been challenged through Reference (IDA) No. 21 of 2012.

6. The Petitioner, thereafter, has taken me through the observations of the Industrial Court, Ahmednagar on page nos. 44, 45 and 46 of the Petition paper book, which are as follows;-

When the complainant was issued with show cause notice and his comments were called upon by providing him copy of the findings there was no reason for the complainant to file such a complaint and allege unfair labour practice. In fact, complainant ought to have waited to action on the part of the Respondent thereafter only ought to have approached the appropriate forum but by not doing so the complainant pre-maturely filed the present complaint and in my opinion the act of the complainant of filing complaint is nothing but using the process of law at premature stage and with a view to restrict management from taking action in accordance with law. When the complainant was representing by an Advocate there was no question of depriving the complainants legitimate rights of defending himself in the enquiry. The complainant was allowed to depose in the enquiry and thereby evidence was adduced by the complainant. Such facts indicates that the principles of natural justice were followed and there was no violation of the principles of the natural justice. The Standing Order do not indicate that the enquiry officer is duty bound to complete the enquiry within three months by way of mandatory directions but it is discretion and depending upon the convenience of the parties as far as possible the enquiry is to be concluded. There is not state(sic) jacket formula to complete the enquiry within period of three months. In my opinion the submissions made by learned Advocate for complainant is without any just and without considering legal provision and settled principles of law. I do not find that the provisions of M.R.T.U. & P.U.L.P. Act, 1971 or the Standing Orders Act indicates as contemplated by the complainant and his Advocate in the present complaint.

The Petitioner therefore submits that the Industrial Court had misdirected itself

in concluding that the Petitioner should have waited till the disciplinary proceedings culminated into an order and then raise a substantive challenge.

7. Shri Bhandari, the learned Advocate for the Respondent strongly supports the impugned judgment of the Industrial Court and justifies the reasons adduced as being sustainable and proper. He contends that the domestic enquiry was being conducted by a competent enquiry officer and the Petitioner was given assistance of an advocate. It is further contended that dates of the enquiry were posted in the presence of the Petitioner. Only because the enquiry was not completed within a period of 90 days, it cannot be termed as invalid or a nullity.

8. Standing Order 25 under Schedule I of the Model Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946 provides for punishment to be awarded and the manner of conducting an enquiry.

9. As per Standing Order No. 25, Sub clause (3) of the Model Standing orders, no order of dismissal can be passed without holding an enquiry. Sub Clause (4) enables the charge-sheeted workmen a right of defence and opportunity of being defended. Evidence recorded in the enquiry is required to be recorded in a concise summary form.

10. For clarity, Standing Order No. 25(4) and proviso thereto is reproduced as below:

25. (1) A workman guilty of misconduct may be,-

(a)...

(b)...

(c)...

(d)...

(2)

(3)

[(4) A workman against whom an inquiry is proposed to be held shall be given a chargesheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charges rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.]

All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.

The inquiry shall be completed within a period of three months:

Provided that the period of three months may, for reasons to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer.

11. In the light of the contentions of the respective Advocates of the parties and the provisions of law as enunciated under Standing Order 25 (4), I am unable to accept the submissions put forth by the Petitioner. It is not an anathema to conduct an enquiry beyond a period of three months.

12. Primary consideration while conducting an enquiry is adherence to the principles of Natural Justice and grant of a reasonable and adequate opportunity of defence to the charge-sheeted workman. If a deadline of three months was mandated, there was a possibility of its misuse. It could turn out to be a tool in the hands of an employer to rush through the enquiry in haste and complete it within the time frame of three months. So also, a workman could claim that the enquiry is invalid if conducted beyond three months. It would, thus, be counter productive.

13. Whether Standing Order 25(4) regarding completion of enquiry within a period of 3 months is a mandatory provision or could it be interpreted to mean a directory provision, is to be seen under the provisions of the Model Standing Orders.

14. Standing Order 25(4), read in tandem with the Proviso thereunder, leaves no room for doubt. In fact, the proviso clearly indicates that if an enquiry cannot be concluded within a period of three months, the enquiry officer can record his reasons in writing and extend the period as may be deemed necessary by him. Failure to record reasons would not be fatal to such proceedings, since what is needed to be ensured is that the parties to the enquiry are given adequate opportunity in defence and the principles of natural justice are adhered to.

15. "Enquiry Shall be completed within a period of 3 months" in Standing Order 25(4) appears to be a mandate. The word "shall" is normally interpreted to indicate a mandate. However, the proviso thereof gives liberty to the enquiry officer to extend the enquiry beyond three months for a period as he may deem necessary, but by recording reasons. Standing Order 25 (5-A) enables an employer to place the charge-sheeted employee under suspension, pending enquiry. Standing Order 25(5-A)(i) entitles a suspended workman, subject to the condition of not taking up any employment during the period of suspension, to subsistence allowance. For the first ninety days of the suspension period subsistence allowance is 50% of his normal daily wages. Under Standing Order 25(5-A)(ii), a suspended workman is entitled to subsistence allowance beyond the period of 90 days "if the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days", @ 75% of his normal daily wages. Similarly, under Standing Order 25(5-A) (iii), if the enquiry is not completed within a period for 180 days, the workman shall be entitled to

full wages as subsistence allowance. This provision of the Standing Order clearly indicates that though it is desirable to complete an enquiry within a period of 90 days, it would not be an anathema to conduct the enquiry beyond 90 days.

16. The entire scheme under the above referred provisions of the Model Standing Orders clearly indicates the intent and object of law. It emerges that an enquiry, if not completed within 3 months, would neither render it a nullity nor an illegality. The Model Standing Orders clearly provide for dealing with enquiries which are continued beyond the period of 90 days. In the light of these provisions, I am of the considered view that though the enquiry should be completed ideally within a period of three months, it is permissible for the enquiry officer to proceed with conducting the enquiry even after the completion of three months. As such, I hold that the provision of completing the enquiry within a period of three months is directory in nature and not mandatory.

17. In this view of the matter, I have no doubt that the proviso requiring reasons to be recorded for conducting an enquiry beyond three months renders Standing Order 25(4) "directory" in nature and ought not to be construed to be "mandatory". Nevertheless, it would be due compliance of the provisions, if an enquiry officer was to record the reasons for conducting an enquiry beyond three months. I am also of the view that it is desirable for the enquiry officer to record his reasons. Failure to do so however will not render the enquiry a nullity.

18. Shri Barde, the learned Advocate for the Petitioner has taken exception to the failure on the part of the Respondent in paying the Petitioner his wages from 22nd October, 2002 till the date of dismissal. There can be no justification for non payment of such wages. However, that would be an independent cause of action because the reason of non payment of wages can be multi fold. In a given case, the employer may come up with some defence to justify non-payment.

19. Shri Bhandari, the learned counsel for the Respondent has come up with a defence that the Petitioner was not attending duties of his own volition despite having not been suspended. Nevertheless, it is trite law that failure to pay wages/subsistence allowance during the pendency of an enquiry weakens the defence of the charge-sheeted workman. This could be canvassed as a strong point on the touchstone of prejudice to aver that the enquiry is vitiated on the ground of non payment of salary/suspension allowance.

20. The Petitioner is not precluded from taking all these points in a comprehensive challenge to his dismissal. Nevertheless, the Industrial Court was called upon to go into the aspect of non payment of wages. Instead of dealing with the said issue addressed to it, the Industrial Court shunted out the said challenge by drawing a conclusion that the complaint was prematurely filed. Nothing prevented the Industrial Court from going into the said issue and decide it, since it was addressed to it as an act of commission of unfair labour practices under item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.

21. However, at this juncture, the Petitioner has submitted that he has already

been dismissed by way of punishment and Reference (IDA) proceeding is pending on the file of the Labour Court at Ahmednagar. He submitted that in view of the fact that the Industrial Court has not dealt with this aspect, opportunity be granted to him to take it up in defence before the Labour Court in the Reference Proceedings. Shri Bhandari, the learned Advocate for the Respondent does not oppose this request provided his claim that the Petitioner never reported for duties on his own volition is also kept open. Liberty as prayed for is thus granted to both the sides.

22. In this view of the matter, the Writ Petition is dismissed being devoid of merits.

23. The aspect of failure to pay wages to the Petitioner as well as the defence of the Respondent that the Petitioner himself was remaining absent are kept open to be raised before the Labour Court at Ahmednagar, in the pending Reference (IDA) No. 21 of 2012, if so desired. Rule is accordingly discharged with no order as to costs.