
(2015) 09 BOM CK 0299

In the Bombay High Court

Case No : Writ Petition No. 1532 of 2009

Bhandara District Central Co-operative Bank Ltd.

APPELLANT

Vs

Member, Industrial Court

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2015) 6 ABR 272

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : A.M. Ghare, for the Appellant; V.K. Paliwal, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—The labour Court allowed Complaint (ULP) No. 82 of 2001 filed under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (for short "MRTU and PULP Act") read with Item 1 of Schedule IV therein, by its judgment and order dated 08.08.2007. The retrenchment of the respondent No. 2 from service by an order dated 19.07.2001 has been set aside on the ground that the complainant has established that preceding the date of his retrenchment, he had rendered continuous 240 days service and there was violation of Section 25F of the Industrial Disputes Act (in short "I.D. Act"). The Labour Court set aside the termination and directed reinstatement with continuity in service and full back wages. The Industrial Court in Revision (ULPA) No. 81 of 2007 filed under Section 44 of the MRTU and PULP Act reduced the amount of back wages to 25% by its judgment and order dated 31.03.2008. Hence, the employer is before this Court in this writ petition. This court while admitting the matter on 14.08.2009, refused to grant interim relief and directed the petitioner to comply with the orders of the courts below within a month from today. Shri Ghare, the learned counsel for the petitioner submits that the respondent No. 2 has not turned up

for attending the duties, whereas Shri Paliwal, the learned counsel for respondent No. 2 has urged that the respondent No. 2 has been reinstated in service and is working on the post. It is not necessary for this Court to enter into such controversy as to whether the ultimate orders passed by the Courts below have in fact been implemented or not and the matter can be decided on its own merits.

2. The question as to whether the employee has completed 240 days continuous service preceding the date of his retrenchment is necessarily a question of fact. Both the Courts below have recorded the finding that the complainant has worked continuously from 22.08.2000 to 19.07.2001 and had thus completed 240 days continuous service preceding the date of retrenchment. The findings are based upon the vouchers of salary produced by the complainant at Exhs. 43 to 89 and the attendance register at Exh. 14. The finding of fact is based upon the relevant and admissible evidence on record and there is no perversity in recording such findings brought to my notice by the petitioner. The further undisputed factual position is that there was non compliance of Section 25F of the I.D. Act. The view taken by the Courts below to this extent does not call for any interference.

3. Shri Ghare, the learned counsel appearing for the petitioner-employer has invited my attention to para 29 of the decision of the Gangadhar Pillai Vs. Siemens Ltd., , which is reproduced below.

"It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status."

The another decision of the Apex Court relied upon by Shri Ghare, the learned counsel for the petitioner, is in the case of The Chief Soil Conservator Punjab and Others Vs. Gurmail Singh, , for the proposition that at the most the employee would be entitled to compensation and not the reinstatement and continuity in service. It is also urged by him that merely because the employee has completed 240 days continuous service, he is not entitled to regularization in service.

4. It is not the law laid down by the Apex Court that in all and every situation, the only relief for violation of Section 25F would be that of compensation only and not the reinstatement with continuity in service. It depends upon the facts

and circumstances of each case. In a given case, the Court may direct reinstatement with continuity in service with or without back wages or part of back wages or in another case, the Court may direct payment of compensation in lieu of reinstatement and continuity in service. In view of this, the proposition of law laid down by the Apex Court relied upon by Shri Ghare cannot be disputed and the cases are distinguishable on facts. If the complainant has not joined the services and has not worked on the post, he would not be entitled to salary for such period. Merely because the Courts have granted reinstatement and continuity in service after setting aside the order of retrenchment on the ground of violation of Section 25F of I.D. Act, it does not follow that the complainant gets regularization in service. It is always open for me employer to retrench me services of a daily-wager after following the procedure prescribed by law. There is no ground raised to challenge the award of 25% of the back-wages by the Industrial Court. In view of this, no interference is called for in the orders impugned.

In the result, writ petition is dismissed.