
(1989) 08 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 5668 of 1987 with Civil Application No. 5935 of 1988

Bharatiya Kamgar Sena

APPELLANT

Vs

M/s Consolidated Pneumatic Tool Co. (India) Ltd. and others

RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:

Trade Unions Act, 1926 — Section 28

Citation : (1990) 60 FLR 232 : (1992) 1 LLJ 112

Hon'ble Judges : M.L. Dudhat, J

Bench : Single Bench

Judgement

1. This writ petition has been filed against the order dated June 15, 1987 passed by the Member of the Industrial Court at Bombay in Complaint (ULP) No. 148 of 1986.

2. The petitioner in this case filed the complaint against respondent No. 1 Company u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It is pertinent to note that in this complaint the present respondent No. 3 the recognised union was not made party to the said complaint. The petitioner contended in the said complaint that respondent No. 1 Company committed several acts prohibited under Items 1(a), (e), 2 (a), (b), 4 (a) and (f) of Schedule II and also Items 5 and 10 of Schedule IV. It appears that before the Industrial Court the present petitioner only argued on items 5 and 10 of Schedule IV and withdrew the complaint in respect of other items. The Industrial Court, after hearing both the sides, rejected the contentions made by the present petitioner. This decision of the Industrial Court is the subject matter of challenge of this present writ petition.

3. Before this Court the petitioner's learned Counsel Shri Gadkari confined his argument to the breach committed by respondent No. 1 in respect of item No. 5 of Schedule IV of the Act and abandoned his allegations in respect of item No. 10 of the said Schedule. Shri Gadkari, learned Counsel for the petitioner Union contended that the recognise Union respondent No. 3 entered into settlement on

April 19, 1985 with respondent No. 1 Company. Under the said settlement workers who were recruited after July 1, 1983 were provided with salary scales, dearness allowance, house rent allowance and annual increment which were much less than available to the workers of the same category recruited prior to July 1, 1983. It is further contended on behalf of the petitioner that there is a vast difference in the over all pay amounting to Rs. 400/- at the time of the settlement between the employees recruited prior to July 1, 1973 and after July 1, 1983. I may further state that in para 5 at page 5 of the petition the scales for the employees employed prior to July 1, 1983 and workmen employed after July 1, 1983 are more particularly stated by the petitioner. According to the petitioner in the said settlement there is a discrimination between the employees appointed prior to July 1, 1983 and employees employed after July 1, 1983 and therefore, the present case comes within the ambit of item No. 5 of Schedule IV to the M.R.T.U. and P.U.L.P. Act of 1971, hereinafter referred to as the Act of 1971 for the sake of brevity. Item No. 5 of Schedule IV is as under :-

"5. To show favoritism or partiality to one set of workers, regardless of merits".

I have heard both the sides on this point and also gone through the Judgment given by the Industrial Court. At the outset, I am of the opinion that this complaint does not come within the ambit of item 5 of Schedule IV of the Act of 1971. A bare look at Schedule IV of the said Act of 1971 shows that the general unfair labour practices referred to in the said Schedule are acts or the practices on the part of the employers. In the present case admittedly in the settlement with the recognised Union i.e. respondent No. 3, respondent No. 1 on April 19, 1985 agreed to the terms and conditions of payment in respect of workmen employed in the Company prior to July 1, 1983 and after July 1, 1983. Whatever has been fixed is fixed in her settlement between the Company and the recognised Union. Under these circumstances by no stretch of imagination it can be said that this is an act of respondent No. 1 Company as contemplated under Schedule IV. To this it was contended by Shri Gadkari that since the member of the petitioner Union are in the employment of respondent No. 1 Company and since respondent No. 1 Company fixed these discriminatory wage scales based on the criteria of the date of appointment prior to and after July 1, 1983, this fixation of wage scales is an act of the Company i.e., the employer. As I have already pointed out, since these wage scales are fixed in the settlement with the Union and became part of the settlement, by no stretch of imagination these wage scales can be called as the act of the company in isolation. In view of this clear position the complaint filed by the petitioner Union under Schedule IV Item 5 of the Act of 1971 itself is not maintainable and, therefore, will have to be rejected.

4. Shri Gadkari has relied on a decision of the Supreme Court in P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, wherein senior draughtsmen working in Ordnance Factories divided into two groups with two scales of pay by Third Pay

Commission - Higher scale of pay granted based on seniority-cum-fitness - Government accepting the recommendations - Division of senior draughtsmen into two groups in the same department doing identical and same work. In the facts and circumstances of that case the Supreme Court held that this amounted to a discrimination and, therefore, is in violation of Article 14 read with Article 39(d) of the Constitution of India. With respect, according to me, this authority is not at all applicable in the present case. Firstly, this authority is applicable to the concerns wherein the State is party or concerns which come within the meaning of Article 12 of the Constitution of India. Secondly, in that case the existing draughtsmen were divided in pay scales arbitrarily. In the present case nothing of that sort has taken place. Thirdly, in the present case the scale are decided out of the settlement between the Union i.e., respondent No. 3 and respondent No. 1 Company. Apart from this, I have already pointed out on the first principle that on the facts contained in the complaint and the petition, the complaint does not come within the ambit of item 5 of Schedule IV of the Act of 1971.

5. Shri Deshmukh, learned Counsel appearing on behalf of respondent No. 3, has contended that this complaint should be technically thrown out on the ground that in the complaint the recognised Union was not made party. Secondly, he has strenuously contended that the complaint which is the basis of the whole proceedings was neither annexed nor produced by the petitioner Union till today. Today, while the arguments were going on Shri Gadkari, learned Counsel for the petitioner has handed over the copy of the complaint to Shri Deshmukh. Shri Deshmukh, learned Counsel for respondent No. 3 has also pointed out that the allegations of mala fide and collusion made by the petitioner against respondent Nos. 1 and 3 are de hors of the fact. In fact he has pointed out that if one turns to the settlement clauses 1 and 2 at page 22 of the petition, it is clear that the pay scales of the workers prior to June 30, 1983 were not revised in the settlement but the same earlier pay scales were maintained. On the contrary if one turns to clauses Nos. 22 and 23 at page 29 of the petition one finds that in fact by this settlement the employees who joined after July 1, 1983 were given far more than what they were getting as probationers. Shri Deshmukh contended that in fact a collective bargaining with respondent No. 1 Company, respondent No. 3 Union did its best to give the maximum advantage to the members of the petitioner Union to the extent it was possible. At this juncture I wish it point out one submission made on behalf of respondent No. 1 Company. To a specific query as to why distinction is made between the workers who joined prior to July 1, 1983 and subsequent to July 1, 1983, the learned Counsel point out with reference to reply in the written statement filed before the Industrial Court in fact these workmen were taken at the relevant time when respondent No. 1 Company intended to expand their activity at Nashik. For some reasons the said expansion was abandoned. Therefore, in fact the services of these workmen could have been terminated but in the negotiations with respondent No. 3 Union, the company decided to take them as per the terms of the settlement so that they can be absorbed in the course of time. After going through this explanation

given by the Company and after taking into consideration the contentions on behalf of respondent No. 3 Union which is the recognised Union, I have come to the conclusion that whatever has been done by the recognised Union in the package deal in the collective bargaining was in fact for the benefit of the members of the petitioners Union and in view of these aforesaid facts and also in view of the opinion expressed by me earlier that the complaint itself does not come within the ambit of item No. 5 of Schedule IV of the Act of 1971. I dismiss this petition and confirm the finding given by the Industrial court with no order as to costs. Rule discharged.

6. In view of this, the Civil Application does not survive and the same is disposed of accordingly.