

(2001) 08 BOM CK 0023

In the Bombay High Court

Case No : O.O. C.J. W.P. No. 864 of 1998

Bombay Transport and Dock Workers Union

APPELLANT

Vs

Aryadoot Transport Ltd. and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2002) 93 FLR 1016 : (2002) 4 LLJ 71

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Judgement

A.P. Shah, J.—This petition under Article 226 of the Constitution takes exception to the order dated January 7, 1998 passed by the Industrial Court in Complaint (ULP) No. 1051 of 1993 dismissing the said complaint on the sole ground that illegal termination of services attracts Item No. 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "said Act") and not Item 9 of Schedule IV of the said Act and, hence, the complaint was within the jurisdiction of the Labour Court.

2. The facts leading to the petition are few and may be shortly stated. Complaint (ULP) No. 1051 of 1993 has been filed by the petitioner-union espousing the cause of workman by name Bhagat The concerned workman was engaged as a Crane Operator by respondent No. 1 company in October 1989. The concerned workman was initially appointed at Kandla and, thereafter, was posted at Delhi and in November 1991 he was transferred to Mumbai. It is the case of the Union that in the 3rd week of March 1993, the workman was instructed to operate Crane No. BLF/5221 who while attempting to operate the same noticed serious mechanical defects and on making enquiries learnt that respondent No. 1 had earlier dumped the crane as unfit for operation when it was in use at Kandla. The workman also allegedly-noticed that the crane was fitted with spurious spare-parts and opined that it was not advisable to operate the crane. Respondent No.

2 who is the Director of the Company, however, disapproved the well-meaning suggestion of the workman and the workman was orally informed on March 24, 1993 that his services were no more required. The petitioner-union challenged the termination of the workman by filing Complaint, (ULP) No. 1051 of 1993 in the Industrial Court under Item no. 9 of Schedule IV of the said Act. The defence of the company was that the concerned workman was not employed by them and was only a contract worker. The Industrial, Court has categorically rejected the case of the company that there was no privity of contract between the company and the workman and he was merely a contract worker, but ultimately dismissed the complaint on the ground that it had no jurisdiction as the complaint would fall under Item no. 1 of Schedule IV.

3. Ms. Gopal, learned counsel appearing for the petitioner, contended that the Industrial Court has completely misconstrued Item no. 9 of Schedule IV of the said Act. Ms. Gopal urged that the term "agreement" occurring in Item 9 of Schedule IV of the Act has to be construed in a wider sense so as to include within its ambit any statutory provision. She submitted that in the present case, the termination of the concerned workman was in breach of the statutory provisions contained in Sections 25-F and 25-G of the Industrial Disputes Act, 1947, and hence, amounts to an unfair labour practice within the meaning of Item 9 of Schedule IV of the said Act. She placed heavy reliance on the decision of Division Bench of this Court in D. S. Kharde and Ors. v. Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur and Anr., reported in 1994 1 CLR 1022 . She also referred to a recent decision of the Division Bench in R.P. Sawant and Others Vs. Bajaj Auto Ltd. and Another, .

4. On the other hand, Mr. Pathak, learned counsel appearing for respondent Nos. 1 and 2, submitted that the termination of the employee would be covered by Item No. 1 of Schedule IV and not Item 9 of Schedule IV and, therefore, only the Labour Court is empowered to hear the complaint.

5. Having considered the rival submissions, I am satisfied that the impugned order of the Industrial Court cannot be sustained. In D.S. Kharde's case (supra), the Division Bench, following the decision of the Supreme Court in S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals Dyes Trading Ltd. and Anr., reported in 1986 (2) SC 624 has expressly held that the word "agreement" in Item 9 of Schedule IV will have to be construed in a wider sense so as to include not only the awards and settlements but also the statutory provisions like Sections 25-F and 25-G of the Industrial Disputes Act. It was observed that the obligations created under Sections 25-F and 25-G, though contained in an enactment, in truth and substance partake the character of contractual terms. They are, therefore, superimposed upon the terms of contract of employment or the provisions of Standing Orders regarding the same. They are thus treated as implied terms of contract and, therefore, the provisions of Sections 25-F and 25-G would form implied terms of contract of service and if there is failure to comply with the same, the action would amount to failure to

implement the agreement within the meaning of Item 9 of Schedule IV of the said Act. It was observed that as the Act has a social objective and it therefore needs to be construed purposively to prevent the mischief and advance the remedy. The law laid down in D. S. Kharde's case (supra) was followed in the case of R. P. Sawant and Ors. v. Bajaj Auto Ltd. and Anr., (supra) wherein the Bench held that the contravention of Model Standing Orders is also an unfair labour practice within the meaning of Item 9 of Schedule IV in respect of which the Industrial Court is competent to grant the relief.

6. In the light of the law laid down by the Division Bench in the above mentioned two cases, the impugned order of the Industrial Court dated January 7, 1998 is quashed and set aside. So far as the issue of jurisdiction is concerned, it is declared that the Industrial Court has jurisdiction to try the complaint. The matter is remitted back to the Industrial Court to decide the complaint on merits, in accordance with law. It is clarified that the findings of the Industrial Court that there is a privity of relationship between the employer and employee i.e. between the petitioner and respondent No. 1 are not disturbed by this Court. The Industrial Court is directed to decide the complaint within a period of six months from today.

7. Rule is made absolute on the aforesaid terms. No order as to costs.

8. Copy of this order duly authenticated by the Associate/Personal Secretary of this Court be supplied to the parties.