
(2003) 09 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No's. 3042 and 3043 of 1999

Ceat Limited

APPELLANT

Vs

Dayaram Kishorelal Yadav and Another

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : (2004) 1 ALLMR 615 : (2004) 1 BomCR 521 : (2004) 101 FLR 717 : (2004) 2 MhLj 523

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

Bench : Single Bench

Advocate : S.K. Talsania, instructed by Sanjay Udeshi and Co, for the Appellant; K.S. Bapat, for the Respondent

Final Decision : Allowed

Judgement

R.M.S Kandeparkar, J.—Heard the learned Advocates for the parties. Perused the records. Since common questions of law and facts arise in both the petitions, they were heard together and are being disposed of by this common judgment.

2. The short point for consideration which arises in both the petitions is whether the Industrial Court in exercise of its jurisdiction under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act" while dealing with a complaint under the said Act, is empowered to consider the justifiability of the suspension of an employee during the pendency of the enquiry against him.

3. The respondent No. 1 in both these petitions came to be suspended on different dates on the allegation of charges of serious misconduct and continued to be under suspension during the enquiry which prolonged beyond 180 days from the date of commencement of suspension. Both the respondents filed complaint alleging adoption of unfair labour practice under Item 9 of Schedule IV of the said Act by the petitioners and allowing the said complaints, the Industrial Court ordered quashing of the suspension orders and holding that the

respondents would be entitled for full wages for the period of suspension i.e. from the date of order of suspension till the date of termination in the case of the respondent Dayaram Kishorelal Yadav (in Writ Petition No. 3042 of 1999) and from the date of suspension till 27th March, 1998 in the case of the respondent Manoj B. Mhatre (in Writ Petition No. 3043 of 1999).

4. Placing reliance in the decision of the Apex Court in the matter of State of Orissa Vs. Bimal Kumar Mohanty, and of this Court in Modistone Limited Vs. Modistone Employees Union and another, and Billion Plastics Pvt. Limited v. Dyes and Chemicals Workers' Union and Ors., reported in 1983 Mh.L.J. 572, the learned Advocate for the petitioners submitted that justifiability of the suspension orders was beyond the scope of powers of the Industrial Court in the proceedings initiated by the employees on the allegation of adoption of unfair labour practice by the employer under the said Act. He further submitted that the Industrial Court has not arrived at any finding about the absence of sufficient ground being disclosed in the orders of suspension nor that the charges levelled against the employees were either frivolous or were not of serious nature. It was also submitted on behalf of the petitioners that the allegation in relation to non-justifiability of the suspension orders can in no way relate to the alleged unfair labour practice under Item 9 of Schedule IV of the said Act, as the said Item pertains to non-implementation of the agreement as such, in other words, it relates to breach of the terms of the agreement. On the other hand, the learned Advocate for the respondent (No. 1 in both the petitions), placing reliance in the decisions of this Court in Dr. Tukaram Yeshwant Pawar v. Bhagwantrao Gaikwad and Ors., reported in 1988 (2) CLR 283 and 5. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals and Dyes Trading Limited and Anr., reported in 1986 (I) CLR 360, submitted that the action on the part of the employer being contrary to the terms of the agreement inasmuch as that the right of the employees to employment in terms of the agreement having been denied consequent to the suspension orders issued against them, there was unfair labour practice adopted in terms of Item 9 of Schedule IV of the said Act. He also submitted that none of the judgments relied upon relate to the issue pertaining to justifiability of the suspension orders and they are in relation to the strike or the lock-out and considering the ruling of the Apex Court in S. G. Chemicals and Dyes Trading Employees' Union v. S. G. Chemicals and Dyes Trading Limited and Anr. (supra), the rights of the employees cannot be taken away otherwise than in accordance with the terms of the agreement and being so, the findings based on the assessment of the materials on record arrived at by the Industrial Court cannot be found fault with.

5. Perusal of the impugned judgment discloses that the findings relating to adoption of unfair labour practice by the petitioners have been arrived at solely on the ground of non-justifiability of the suspension orders against the said respondents and based on the said finding, it has been concluded that the petitioners are guilty of adoption of unfair labour practice in terms of Item 9 of Schedule IV of the said Act.

6. Perusal of Item 9 of Schedule IV of the said Act discloses that it relates to "failure to implement award, settlement or agreement." The Section 3(16) of the said Act defines the expression "unfair labour practices" to mean unfair labour practices as defined in the Section 26 of the said Act, and the Section 26 provides that unless the context requires otherwise, "unfair labour practices" mean any of the practices listed in the Schedules II, III and IV of the said Act.

7. The Division Bench of this Court in *Modistone Limited v. Modistone Employees' Union and Ors.* (supra) while dealing with the issue as to whether the Industrial Court dealing with the complaint under the provisions of the said Act can go into the question as to whether the lockout was justified or not in the said case and taking into consideration the provisions of the said Act, and particularly the Rule 23 of the M.R.T.U. and P.U.L.P. Rules, 1975 and the ruling of the Apex Court in *General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another*, held that the Industrial Court can decide whether the lockout is legal or illegal i.e. whether it is in accordance with the provisions of the said Act, and can also decide whether the reasons stated in the notice of lockout are non-existing or sham or irrelevant i.e. not germane to the employer-employee relationship or not relating to the industrial relationship, however, it cannot go into the question of sufficiency or adequacy of the reasons and it cannot go into the issue whether the lockout is justified, but the same can be agitated before the appropriate Court under the provisions of the Industrial Disputes Act, 1947. It was clearly ruled that:--

"While considering Item 9 of Schedule IV i.e. failure to implement award, settlement or agreement, the Industrial Court has no jurisdiction to go into the justifiability of the lock-out."

8. In *Billion Plastics Pvt. Limited's* case, the learned Single Judge of this Court had held that while deciding the question of unfair labour practice what the Court has to see is whether the strike is deemed to be illegal under the Act or not and the Court cannot adjudicate upon its justifiability or propriety and the said area is not covered by Section 30 of the said Act which confers a limited power upon the Court to deal with complaints regarding unfair labour practices.

9. In *Dattatraya Shankarrao Kharde and Others Vs. Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur and Another*, the Division Bench of this Court relying upon the judgments in *Kamani Tubes Ltd.*, reported in 1987 Mh.L.J. 861, *Executive Engineer, Electrical Division, Nagpur v. Prakash Devidas Kalasit*, reported in 1955 Mh.L.J. 338, *Mafatlal Engineering Industries Ltd. v. M.E.I. Employees Union*, reported in 1992 (1) CLR 418, had held that the presence of motive or mens rea in regard to the unfair labour practice covered under Item No. 9 of Schedule IV of the said Act is not necessary for constituting the said unfair labour practice and, in fact, the proceedings under the said Act primarily provides for civil consequences on commission of an unfair labour practice. Once the order is passed giving specific directions pursuant to declaration of the adoption of unfair labour practice by the employer, it is only on failure to comply

with those directions, that the penal consequences could follow.

10. In *Kamani Tubes Ltd. v. Kamani Employees Union and Ors.*, reported in 1987 Mh.L.J. 861 ; 1988 56 107, it was clearly held that the phraseology of Item 9 of Schedule IV of the said Act affords no scope for taking into account of motive or reason or cause for the failure. In *Premier Automobiles Employees' Union and Ors. v. Premier Automobiles Ltd. and Ors.*, reported in 1987 (55) FLR 46, while relying on the decision in *Executive Engineer v. P. D. Kalasit* (supra), it was observed that irrespective of whether or not the employer acts with mens rea or mala fide, if it fails to implement the agreement, he is to be held guilty of unfair labour practice set out in Item 9 of Schedule IV of the said Act and the motive or mens rea is not an essential ingredient for holding the employer responsible for indulging in or having indulged in unfair labour practice under Item 9 of Schedule IV of the said Act.

11. The above rulings apparently disclose that the consistent view taken by this Court is that, for the purpose of holding the employer to have indulged in unfair labour practice under Item 9 of Schedule IV of the said Act, it is sufficient to establish the fact of failure on the part of the employer to implement the award for settlement or the agreement and justifiability in that regard cannot absolve the employer from being held responsible for the act of failure to implement such award or settlement or agreement. Being so, justifiability of the action being kept out of the scope of adjudication on the complaint that the employer is indulged in unfair labour practice within the meaning of the said expression under the said Act, justifiability of the suspension orders while dealing with the complaints in relation to the unfair labour practices under Item 9 of Schedule IV of the said Act is to be held as beyond the scope of the inquiry while dealing with such complaint. Once the Industrial Court is not entitled to go into the issue as to the justifiability of the action, which can be called as unfair labour practice on the part of the employer within the meaning of the said expression under the said Act, it cannot be said that the Industrial Court was justified in going into the issue of justifiability for the issuance of orders of suspension against the respondent No. 1. The learned Advocate for the petitioners therefore is justified in contending that the justifiability of suspension orders is. beyond the scope of the powers of the Industrial Court in the proceedings initiated by the respondents in both the petitions on the allegation of adoption of unfair labour practice in terms of Item 9 of Schedule IV of the said Act.

12. The learned Advocate for the petitioners is also justified in contending that the Industrial Court has nowhere held that the suspension orders did not disclose any reason for passing the said order or that the charges levelled against the respondents were either frivolous or were not of serious nature. It is pertinent to note that the orders of suspension did disclose a clear observation to the effect that the charges levelled against the respondents were of serious nature and the Industrial Court had taken a specific note of the same. The Industrial Court has not pointed out any material on record which can disclose that the charges

levelled against the respondents were not of serious nature, or that they were sham or bogus.

13. The contention of the learned Advocate for the petitioners that non-implementation of the agreement does not relate to the breach of the terms of the agreement and, therefore, would not be covered by Item 9 of Schedule IV of the said Act, is to be rejected. Item 9 of Schedule IV of the said Act clearly provides that the failure to implement the award would constitute an unfair labour practice on the part of the employer, and, therefore, non-implementation as well as breach of the terms of an agreement would be covered by Item 9 of Schedule IV of the said Act. However, the learned Advocate is justified in contending that non-justifiability of the suspension orders cannot constitute an unlawful labour practice on the part of the employer within the provisions of law contained in Item 9 of Schedule IV of the said Act for the reasons stated above.

14. The contention of the learned Advocate for the respondents that the orders of suspension amount to denying the right to employee, which they are otherwise entitled to in accordance with the terms of the agreement, and that therefore it constitutes an unfair labour practices under Item 9 of Schedule IV of the said Act, is devoid of substance, and more particularly in the facts and circumstances of the case. Undisputedly, the Standing Order No. 25(5) provides that a workman against whom any action is proposed to be taken Sub-clauses (b), (c) or (d) of clauses may be suspended pending the inquiry or for the period, if any, allowed to him for giving his explanation. The order of suspension may take effect immediately on its communication to the workman. Apparently, therefore, the power to suspend the employees is available with the employer. Simultaneously, Section 10A of the Industrial Employment (Standing Orders) Act, 1946 ensures the payment of subsistence allowance to the employees during the period of suspension. Sub-section (1) of Section 10A thereof provides that where any workman is suspended by the employer pending the investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance -- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman. Sub-section (2) thereof empowers to raise dispute before the Labour Court constituted under the Industrial Disputes Act, 1947, in case there is any lapse on the part of the employer in the matter of payment of subsistence allowance payable to the workman under Sub-section (1) of Section 10A. It is, therefore, clear that the provisions of law, by which the parties are governed, empowered the petitioners to suspend the respondent No. 1 during the period of inquiry.

15. It cannot be disputed that in terms of the agreement, the employer cannot deny the opportunity to the employee to work and render his service therein. At

the same time, considering the power of the employer to suspend the employee, albeit subject to the payment of subsistence allowance, during the period of inquiry, it cannot be said that the exercise of such power by the employer within the framework of law would amount to adoption of unfair labour practice under Item 9 of Schedule IV of the said Act, irrespective of the fact that the result of exercise of such power could be that the employees would be kept away from performing their duties which they would be otherwise entitled to perform in terms of the agreement. The decision of the Apex Court in *S. G. Chemicals and Dyes Trading Employees Union's case* (supra), no way helps the respondents in that regard. In the said case, the Company had effected closure of the Marketing and Sales Division at Churchgate and, in that regard, the Union of India had filed the complaint accusing the employer of having adopted the unfair labour practice under Item 9 of Schedule IV of the said Act. That was a case where the accusation was that the closure was contrary to the provisions of Section 25(O) of the Industrial Disputes Act, 1947 and that, on that count, the employees were said to have continued in the Company, notwithstanding the notice of closure, and that they were entitled for full backwages and allowances, as specified in the Settlement dated 1st February, 1979 entered into between the Company and the Union of its employees. The Apex Court in that regard had observed that "if the services of the workmen are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workmen would ordinarily be entitled to reinstatement and payment of full back wages "With these observations and referring to the facts of the case before it, the Apex Court had held therein that "there was a settlement arrived at between the Company and the Employees" Union under which certain wages were to be paid to its workmen. The company failed to pay such wages from September 18, 1984 to the 84 employees whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, it was illegal as it was in contravention of the provisions of Section 25(0) of the Industrial Disputes Act." Apparently, it was in totally different set of facts and on account of contravention of statutory provisions, that the closure was held as illegal, the alleged termination of the workmen was held to be contrary to the provisions of law as well as the agreement between the parties, and therefore, the workmen were held to be entitled for the necessary benefits in terms of the agreement. That is not the case in hand. Undisputedly, the order of suspension is not in the absence of powers to suspend the employee. On the contrary, a specific power is assured to the employer under the Standing Orders. It even specifies that it can be during the period of inquiry. Being so, it cannot be said to be in contravention of any provisions of law or agreement between the parties and, therefore, the action cannot be termed as unfair labour practice under Item 9 of Schedule IV of the said Act.

16. Attention was drawn to the decision of the Division Bench of this Court in *Dr. Tukaram Yeshwant Pawar v. Bhagwantrao Gaikwad and Ors.* (supra), while contending that the prolongation of suspension would amount to unlawful denial

of right of the employee to his duties, and therefore, the employer indulged in unfair labour practice under Item 9 of Schedule IV of the said Act. In Dr. Tukaram's case, the Division Bench had held that "it is not disputed before us that the Government does not propose to examine any witness in the inquiry and they desire to rely only upon the documentary evidence. The Inquiry Officer is no other than the Divisional Commissioner, Pune, and Shri Mehre, the learned counsel for the Government is unable to tell us as to when he will find time to start the inquiry and complete it in view of his numerous duties. Taking into consideration the fact that the petitioner is to retire from service within another six months and that no witness is going to be examined on behalf of the Government and that the documents which the Government wants to produce before the Inquiry Officer are all in their possession, we feel that any further suspension of the petition is both unwarranted and unjustified. Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise it is a waste of public money and an unavoidable torment to the employee concerned." Apparently, the observations were in peculiar set of facts as well as in relation to the Government employees, bearing in mind that the salary paid to the Government Employees is out of public money and the same is not to be permitted to be wasted. Further that, alternative arrangement by way of transfer to other post or place could have also been resorted to.

17. The Apex Court in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, had clearly ruled that "the general principle is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is a power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay." It was also ruled in *V. P. Gidroniya v. State of Madhya Pradesh*, reported in 1971 Mh.L.J. 188 (SC); 1970 (7) SCC 362 that "the general principle is that if the master has a power to suspend his servant pending an inquiry into his misconduct, either in the contract of service

or in the statute or rules framed thereunder governing the service, an order of suspension passed by the master has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay any wages during the period of suspension."

18. The Apex Court further, after taking note of various decisions, has held in the matter of State of Orissa through its Principal Secretary, Home Department v. Bimal Kumar Mohanty (supra), that it is settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority, and that it should be on consideration of the gravity of the alleged misconduct or the nature of the allegation imputed to the delinquent employee. It was ruled that "The suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witness or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc." It was further observed by the Apex Court therein that :--

"The suspension must be a step in aid to the ultimate result of the investigation or inquiry."

19. Bearing in mind above referred decisions, and considering the orders of suspension passed by the petitioners against the respondents, it is apparent that considering seriousness of the misconduct, the respondents were suspended during the period of inquiry. Being so, and considering the powers of suspension assured and available to the employer under the Standing Order 25(5) and there being no illegality in the act of passing of the orders of suspension nor the materials on record disclose violation of any provision of law or agreement between the parties on account of passing of the said order, the petitioners are justified in contending that there was no case made out against the petitioners of indulgence in unfair labour practice under Item 9, Schedule IV of the said Act. The Industrial Court having totally ignored this aspect and having passed the impugned judgments and orders without taking into consideration the above aspect, has clearly erred in quashing the suspension orders issued against the respondents, and therefore, the impugned judgments and orders to that extent

cannot be sustained and are liable to be quashed and set aside.

20. Both the petitions therefore succeed. The impugned judgments and orders so far as they quash and set aside the suspension orders issued against the said respondents are hereby quashed and set aside and the complaints against the petitioners of having indulged in unfair labour practice under Item No. 9 of Schedule IV of the said Act are dismissed. Rule is made absolute in above terms with no order as to costs.

21. In view of the fact that the suspension orders are held to be legal and in view of setting aside of the impugned orders, the amount deposited in the Court at the time of admission of the petitions should be refunded to the petitioners with interest, if any, accrued thereon. The Registry to do the needful in that regard.