

(1988) 02 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2449 of 1986

Chandraman H. Upadhyay

APPELLANT

Vs

Rajasthan Co-operative Housing Society Ltd.

RESPONDENT

Date of Decision : 09-02-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1993) 3 LLJ 356

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : Calin Gonsalves and M.J. Miranda, for the Appellant; F.D. Damania, instructed by H.V. Mehta and Co., for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J.—The petitioner was in the employment of the Respondents M/s. Rajasthan Co-operative Housing Society Limited (hereinafter referred to as "the Society"), as a watchman. He was retrenched with effect from 1st June 1982. He raised a demand for his reinstatement with continuity of service and back wages as according to him his services were illegally terminated. After the conciliation proceedings in his demand failed and a failure report was submitted in that behalf, the Deputy Commissioner of Labour referred his dispute to the First Labour Court, Bombay u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The said reference was registered in the Labour Court as Reference (IDA) No. 613 of 1983. At the hearing of the reference the workman adduced his oral evidence and two witnesses were examined on behalf of the Society. On appreciating the oral as well as documentary evidence produced before him the learned Labour Judge, presiding over the First Labour Court, Bombay by his Award dated 22nd July, 1986 rejected the reference of the workman with regard to his demand for reinstatement and full back wages with continuity of services but granted him retrenchment compensation and notice pay. In substance, the workman was

ordered to be paid Rs. 1,165.50 paise by way of retrenchment compensation and one month's notice pay. The workman has impugned the said award in this writ petition under Article 226 of the Constitution of India to the extent of not granting him the relief of reinstatement with full back wages and continuity of service.

2. Mr. Damania, learned counsel appearing on behalf of the Society, submitted that two points arise for consideration by this Court in this writ petition. Thus, the submission of the learned counsel is that the Society in question cannot be termed as an Industry and even if it is held that the Society was an "Industry", the facts of the case is against the workman and there is no reason why a well reasoned award made by the learned Labour Judge be interfered with on facts. The submission of Mr. Damania, therefore, is that this matter may be remanded back to the Labour Court to find out whether on facts the Society in question is an "Industry" and the matter may be kept open for both the parties to canvass their points on merits before the Labour Court. I am afraid, I am not able to persuade myself, to agree with this submission of Mr. Damania for more than one reason.

3. The question whether this particular Society can be termed as an "Industry" or not was not agitated before the Labour Judge. Therefore, that issue had not been dealt with and decided by the learned Labour Judge. It appears that at the time of admission of this writ petition my learned brother Jahagirdar, J. was of the view that the award passed by the Labour Court was without jurisdiction as a Co-operative Society could not be an industry and therefore the provisions of Industrial Disputes Act would not be applicable. In his opinion, therefore, the petition was not maintainable. That apart, he was of the view that on merits the award passed by the learned Labour Judge was correct. He accordingly rejected the petition at the admission stage by his Order dated 30th September 1986. Being aggrieved by the said order, the workman went in Appeal before a Division Bench. The Appellate Bench (S.K. Desai and N.K. Parekh, JJ) while hearing the said Appeal No. 1141 of 1986 on 19th January, 1987 observed that the Society was directed to file an affidavit but initially the affidavit was not filed and the one made on that day and tendered to the Court was not made by the Secretary of the Society but by the Manager and further the said affidavit was thoroughly unsatisfactory. The Division Bench was of the view that it was obvious that the Society had not come out with all, the facts. Accordingly, the appeals was admitted and fixed for peremptory hearing before the said Bench on the next day. Since the Appeal Court was of the view that the summary order of rejection of the writ petition did not appear to be justified in view of the limited material that was brought on record and further material kept back by the Society. The Appeal then came up for hearing before the same Division Bench and on 30th February, 1987 the Division Bench allowed the said appeal and substituted the order of rejecting the writ petition by the following order:

"Rule. Respondents to the Petition waive service. Return, if any, to be filed on or

before 31st March, 1987. Liberty to the Respondents, if so advised, either to file a fresh return or indicate their reliance on the affidavits already filed. Copy of the return or intimation to be sent to the Petitioner's Advocate by 31st March, 1987. Rejoinder, if any, with thirty days thereafter.

Liberty to the parties to apply for peremptory date of hearing after 1st July 1987"

4. As regards whether the Society is an Industry or not, the Appellate Court observed that the Society had not filed an affidavit in reply (for opposing admission of the writ petition) or even in the written statement before the Labour Court) did not take up such a plea and that in this connection they (Division Bench) had directed the filing of affidavit by the concerned parties and they were informed that this particular Society is the owner of the building in which there are several shops which have been let out to several parties. The Division Bench further observed that in view of the decision of the Supreme Court the exact factual position will have to be first established and it will have thereafter to be considered whether the Society or any part of its activities can be considered to be "industry" within the meaning of the definition as expounded by the Supreme Court in its several decisions. It is in this background that on behalf of the Society an affidavit of the Manager of the Society, namely, Pushpalata Ramkrishna Ghah, was filed on 31st March, 1987, to point out that the Society was not an "industry".

5. Now, apart from the contentions raised by the workman, with which I shall deal little later, the averments made in the affidavit of Pushpalata Ramkrishna Ghah, clearly show that the present Society was carrying out such activities on account of which it can easily be termed as an "industry". Thus it is averred by Pushpalata R. Ghah in her affidavit that there are 10 buildings in Plot Nos. 2 and 3 of the Society where there are 29 shops of commercial establishments and also two banks. Out of these shops and commercial establishments 20 shops and one bank face the main road and 9 shops and one bank are situated in the compound of the Society. She annexed a list of shops and commercial establishments which are given on rental basis by the Society and submitted that the Society received rents from these shops and banks. Pushpalata Ghah further deposed in her affidavit that the Society's income by way of rent received from the rented shops and banks is about Rs. 30,000/- per year and the regular income of the Society is about Rs. 40,000/- per year. She also averred that apart from this income the Society also earns income when any transfer of premises takes place. But that would not be regular income. Her affidavit then shows that the Society is required to pay an average of Rs. 25,000/-per year by way of salaries to the employees and after all the expenses there is a bank balance of Rs. 18,000/- on the day when she filed the affidavit. Pushpalata Ramkrishna Ghah further averred in her affidavit that the Society gets regular income by way of rent from a marriage hall as and when the marriage hall was utilised. The rent of the marriage hall is Rs. 430/- per day when occupied. She made a categorical statement that the Society gets an income of Rs. 7,000/- to Rs. 8,000/- per year

from these halls. Therefore from the averments made in the affidavit of the Manager of the Society, as above, it can be easily concluded that the Society question is an "industry"

6. But that apart, the evidence adduced by the workman in this regard also shows that the Society systematically carries on business and/or trade activities by co-operation between the Society and its employees, which if considered in its proper perspective would lead to only one conclusion that the Society is an "industry". Thus, the bye-laws of the Society show that the objects of the Society is to carry on trade of buildings, and of buying, selling, hiring, letting and developing land in accordance with Co-operative principles and to establish and carry on social, recreative and educational work in connection with its tenants and the Society shall have full power to do all things it deems necessary for the accomplishment of all objects specified in its bye-laws or expedient including the powers to purchase, hold, sell, exchange, mortgage, rent, lease, sub-lease, surrender, accept surrenders of and deal with lands of any tenure and to sell by instalments and subject to any terms or conditions and to make and guarantee advances to members for building or purchasing property and to erect, pull down, repair, alter or otherwise deal with any building thereon. The funds of the Society may be raised by entrance fees, by shares, by raising loans including debentures and loan stock, deposits, donations and contributions towards the cost of houses and land. In addition, we find from an affidavit filed by the workman in Appeal No. 1141 of 1986 on 19th January, 1987 that there are 27 shops and not 20 as averred by Pushpalata Ghah in her affidavit. The petitioner workman further averred in the said affidavit that the commercial shops are located in the Society's plot Nos.2 and 3 and they pay rent to the Society. The said commercial shops are as follows:

- i) General Stores Rs. 40/- p.m.
- ii) Dhanapati Mithaiwala Rs. 1,125/- p.m.
- iii) Kirana Shop Rs. 37/- p.m.
- iv) Coal Merchant Rs. 48/- p.m.
- v) Mill Wheat Grinder Rs. 180/- p.m.
- vi) Sharma Dairy Farm Rs. 497/- p.m.
- vii) Shankar Vilas Hotel Rs. 43/- p.m.
- viii) Jewellery Shop Rs. 48/- p.m.
- ix) Hardware Sohanlal Rs. 48/- p.m.
- x) Mishra Vegetalbe merchant Rs. 13/- p.m.
- xi) Naik Electric shop Rs. 37/- p.m.
- xii) Tiwari Tailor, approx. Rs. 21/- p.m.

- xiii) Small Bidi-wala shop Rs. 21/- p.m.
- xiv) Mohan Sharma Hosiery ready made Garment shop Rs. 48/- p.m..
- xv) New Taj Hair Cutting Saloon Rs. 10/- p.m.
- xvi) Patil Newspaper Vendor Rs. 21/- p.m.
- xvii) Marol Post Office Rs. 732/- p.m.
- xviii) Malika Hotel Rs. 190/- p.m.
- xix) Almeida Shop Rs. 135/- p.m.
- xx) Fine Art Tailor Rs. 58/- p.m.
- xxi) Patil Bread Shop Rs. 21/- p.m.
- xxii) Divisional Engineer, Telegraph city Rs. 325/- p.m.

The workman further averred in para graph 13 of his affidavit that one R.P. Agarwal is the landlord of Plot No. 25 belonging to the Society at which there is "Subhash Guest House" which is named after the son of the said R.P. Agarwal. He further averred that in the compound of the said Subhash Guest House, sweetmeats are prepared and sold in the shop in the name of Agarwal Dairy Farm, and the revenue collected goes to the Society's account. It is pertinent to note that all these averments made in the affidavit of the workman are not specifically denied by the Society. In view of the various judgments of the Supreme Court and more particularly, the law laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, there cannot be any doubt that the instant society is an "industry".

7. As regards the matter on merits the evidence on record shows that the services of the workman were illegally terminated. The workman deposed in clear terms that he was not given a notice before he was retrenched nor was any payment made to him as and by way of retrenchment compensation and notice pay. As a matter of fact the case of the Society was that a notice (Exhibit 13) dated. 31st May, 1982 was put up on the notice board according to which the present workman and 6 others were retrenched with effect from 1st June, 1982 and they were asked to collect retrenchment compensation and one month's notice pay from the office of the Society. But a suggestion made to the workman in the cross-examination that he was served with a notice personally was denied by the workman. Contrary to the stand taken by the Society that the present workman and 6 more were retrenched as and by way of notice displayed on the notice board of the Society on 31st May, 1952. Paslipalata in her affidavit dt. 31st March, 1982 stated that the present workman was given a notice of retrenchment along with other retrenched employees and a notice was also pasted on the notice board. Apart from the evidence of the workman that no such notice was displayed on the notice board. The oral evidence adduced on behalf of the Society in this respect also does not show that such a notice was

displayed. Thus, Anil Kumar Gupta who was examined on behalf of the Society in the Labour Court identified the signature of the Secretary of the Society on the notice as per Ex. C-13 but in the cross-examination he admitted that he had not prepared the said notice nor did he display it on the notice board. He, however, claimed that he has seen the said notice is on the said notice board. There is no evidence at all on record as to when the notice in question was displayed on the notice board. But it is pertinent to note that this witness of the Society (Anil Kumar Gupta) was not even in the employment of the Society on 31st May, 1982 because his further evidence in the cross-examination shows that he was employed by the Society in the month of November 1983 and that he was not in the services of the Society when the notice was displayed on the notice board. No other evidence was adduced by the Society to clearly prove that the present workman and 6 of his colleagues were retrenched as and by way of putting up a notice on the notice board. But assuming for the sake of argument that such a notice was displayed by the Society on the notice board there is absolutely nothing on record to show that the present workman was aware of that fact. The learned Labour Judge misdirected himself to the interpretation of the evidence on record and observed on conjectures and surmises that the notice in question must have been displayed on the notice board and that since other workmen were retrenched the present workman must have known that such a notice was displayed on the notice board. From these facts and circumstances, it is clear that the services of the workman were terminated as and by way of retrenchment without following the conditions laid down in Section 25F of the Industrial Disputes Act. That being so, the retrenchment has got to be held as illegal. It is not understood as to on what basis the learned Labour Judge has observed in his judgment that the Society retrenched the workmen on account of financial crisis. Financial crisis, even if there was any, for which there is no evidence on record, the Society could not have retrenched the present workman, the manner in which they did without following the procedure which they are duty bound in law to follow. Regard being had to all these circumstances, the impugned award made by the learned Judge suffers from errors apparent from the face of the record. It is full of infirmities, legal as well as factual. The miserly approach of granting only retrenchment compensation and notice pay to the workmen is difficult to be appreciated. I would not hesitate to say that the impugned award is perverse.

8. In this view of the matter, the award dated 22nd July, 1986 passed by the learned Labour Judge presiding over the First Labour Court, Bombay in Reference (IDA) No. 613/83 is quashed and set aside. The Respondent-Society is directed to reinstate the petitioner-workman in his original position with continuity of service and pay to him full back wages with effect from 1st June, 1982 till the date he is reinstated in service. The Society is further directed to take back the workman in employment immediately and pay to him his entire back wages on 1st March, 1988 along with the salary of the number of days that the workman shall be working with the Society in the month of February, failing which the

Society shall pay interest at the rate of 15 per cent per annum to the workman on the entire amount of the full back wages.

Rule is accordingly made absolute with costs.