

(1999) 10 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 5131 of 1989

Chandrashekhar Narayan Karandikar since deceased through
his legal heirs and representatives

APPELLANT

Vs

Vasant Dada Sugar Institute and Another

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 44

Citation : (1999) 4 ALLMR 507 : (2000) 1 BomCR 562 : (2000) 1 BOMLR 232 :
(2000) 2 LLJ 28 : (2000) 1 MhLj 225

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : S.M. Dharap, for the Appellant; S.R. Nargolkar instructed by V.R.
Kulkarni, for the Respondent

Judgement

R.J. Kochar, J.—The legal heirs and representatives of the deceased petitioner are continuing to contest the present writ petition on behalf of the deceased Chandrashekhar Narayan Karandikar, who died on 3-9-1990 during the pendency of the petition. The original petitioner himself had filed the above writ petition to challenge the order of the Industrial Court at Pune passed on 5-9-1989 whereby the petitioner's complaint of Unfair Labour Practice was dismissed. On the death of the petitioner his legal heirs have come on record. In the present case since the petitioner himself has expired the relief of reinstatement does not survive. We, therefore, have to consider whether the petitioner if alive would have been entitled to get the relief of reinstatement with full back wages and continuity of service. The heirs and legal representatives would only be entitled to claim monetary benefits if they succeed in the proceedings.

2. The facts are in a very narrow parameters. The deceased petitioner was appointed by the respondent Institute on 2-11-1984 as an Instrumental Mechanic. By his letter dated 7-7-1986 he tendered his resignation and

requested the Institute to treat the same as three months notice and to pay him the legal dues. On receipt of the said letter of resignation the respondent Institute wrote back to the deceased petitioner on 21/24-7-1986 that his resignation was accepted with immediate effect and that his legal dues would be paid, if any, in the office. The deceased petitioner appears to have been aggrieved by the acceptance of his resignation with immediate effect and not on the expiry of three months notice. He, therefore, filed a complaint of Unfair Labour Practice under Item 1(b)(f) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 (hereinafter referred to as "the Act"). He based his complaint of Unfair Labour Practice on the ground that if at all he was to resign that was effective after three months and since the respondent Institute had accepted his resignation with immediate effect it has brought about his termination from employment prematurely and, therefore, it was an Unfair Labour Practice within the meaning of Items 1(b) and (f) of Schedule IV of the Act. It was his contention that within the period of three months he had a right to withdraw his resignation and, therefore, the respondent Institute had no right to accept his resignation with immediate effect. He succeeded in satisfying the Labour Court to hold that the action of accepting the resignation earlier than the expiry period of notice amounted to an Unfair Labour Practice as contemplated by Item 1(b) and (f) of the Act. The Labour Court therefore, directed the respondent Institute to reinstate the deceased petitioner with full back wages and continuity of service.

3. The said order was carried by the respondent Institute in revision u/s 44 of the Act before the Industrial Court. The learned member of the Industrial Court considering all the facts and circumstances and the case law cited before him, came to a different conclusion and allowed the revision application and quashed and set aside the order of reinstatement passed by the Labour Court. It however, remanded the matter back to the Labour Court only for the purpose of sanction of legal dues payable to the deceased petitioner. The Labour Court after remand held that the deceased petitioner was entitled to get wages earned during the period 1-7-1986 to 27-7-1986 and also encashment of leave for 50 days. The other claims were rejected by the Labour Court. The learned member of the Industrial Court has accepted the contention of the respondent Institute that at the most the acceptance of the resignation prematurely would amount to an illegality but not an Unfair Labour Practice. The learned Industrial Court has specifically recorded in paragraph 20 that the deceased petitioner's evidence showed that he was not interested in reinstatement but only in legal dues. This finding of the Industrial Court was not specifically controverted in the petition initially though an attempt is made in the petition to show that he was interested in reinstatement also. Even from the prayers in the complaint, which are reproduced in the writ petition it is clear that there is no specific prayer of reinstatement in the complaint. The prayer only says that he should be granted full back wages upto the date of decision and all other legal dues. A specific prayer of reinstatement in service which is substantial one is conspicuously absent in the prayers. Read with the prayers of the complaint the Industrial

Court has also referred to the oral evidence of the deceased petitioner and has come to a positive finding that since the relief of reinstatement was not prayed it could not have been granted. It is also significant to note that even in the letter of resignation the deceased petitioner had specifically stated "I am not in a position to continue my services." The learned Labour Court has reproduced the said resignation letter which was exhibited as Exhibit 21 and which is reproduced in para 8 of his judgment. It is therefore clear that he did not contemplate reinstatement in service and according to me, the findings given by the Industrial Court cannot be faulted with that the petitioner was not interested in reinstatement but only in his legal dues which were not paid.

4. I am also in agreement with the conclusion recorded by the Industrial Court that premature acceptance of the resignation given by the deceased petitioner might be illegal but it would not amount to an Unfair Labour Practice. If any act or decision of the employer does not amount to an Unfair Labour Practice in that case no complaint of Unfair Labour Practice would lie. I fail to understand how the decision of the respondent Institute to accept the resignation before the expiry of three months and to relieve him with immediate effect pursuant to his resignation letter would amount to a decision not in good faith but in the colourable exercise of employer's rights or with undue haste ? The deceased petitioner had tendered his resignation letter saying that he was not in a position to continue in service. In that case I do not find anything wrong with the respondent Institute Management to have relieved him with immediate effect. There are no other circumstances which are set out by the deceased petitioner initially to show that such a decision of the Management was not in good faith or it suffered from any malice or ulterior motives. In the absence of any such allegations of facts constituting colourable exercise having been made and proved I can not accept the contention of Shri Dharap, the learned Advocate that the premature acceptance of resignation itself amounted to an Unfair Labour Practice. The charge of Unfair Labour Practice is a serious charge and it cannot be made lightly and accepted easily. Like the charge of victimisation it must be specifically pleaded and proved. The Industrial Court has rightly found that the decision to accept the resignation prematurely might be in contravention of the rule but it was not an Unfair Labour Practice. To constitute an act of an Unfair Labour Practice mere illegality is not enough but much more is required to be pleaded and proved. I do not find any such circumstances constituting even remotely an Unfair Labour Practice in the decision of the management to have accepted the resignation of the deceased petitioner prematurely particularly when he himself had categorically stated that he was not in a position to continue in services. I, therefore, do not find any substance in the contention of Shri Dharap that the action of the management amounted to an Unfair Labour Practice.

5. According to me, there is not even illegality in the action of the management. The discretion to accept the resignation before the expiry of three months is vested with the management under the rules governing the service conditions.

Rule 7 as it is reproduced by the Labour Court reads as under:

"A permanent employee desirous of resigning permanent services of the Institute, may tender his resignation by giving three months notice or by paying three months pay in lieu of notice. However, the Director may at his own discretion refuse to accept three month's pay in lieu of notice, and may call upon the employees to give only a notice about resignation. It is specifically made clear that the period of notice of resignation and the leave of any kind shall not concurrently take place. In case of employees appointed on probation or on temporary basis the resignation will be accepted as per the conditions laid down in such appointment letters."

From the reading of the said rule, we find that it is the discretion of the management to merely accept the notice of the resignation and it is not necessary for the management to wait for three months till the expiry of the period of three months and to waive three months pay in lieu of three months notice. In view of this position I do not find any illegality in the decision of the respondent Institute in accepting the resignation tendered by the deceased petitioner before the expiry of three months in the facts and circumstances of the present case.

6. In the affidavit filed by the respondent Institute it is averred on oath that the deceased petitioner along with Shri Vaidya the other petitioner in the companion petition, both were jointly doing their private business of repairing of instruments required by various Sugar Factories. It is also clearly stated that before getting employment in the Institute they were doing the same business initially under the name of M/s. Vinitronics at Pune. It is further stated that even later on both of them continued the same business in the name of Remacal Instruments at Pune and both have rendered services to various Sugar Factories all over Maharashtra. In rejoinder in the other petition by Shri Vaidya it is an admitted position that after resignation they had started the business in the name and style of Remacal Instruments. The respondent-Institute has also produced documentary evidence in the form of the correspondence between the deceased petitioner's firm and the other parties about their business deals. Considering all these facts it is very likely that both of them having resigned on the same day must have planned well in advance to resign and to revive their own old business. Their doing of the said business jointly is not disputed but it is an accepted fact. There is therefore no substance in the grievance made by the deceased petitioner that he would have withdrawn the resignation within three months. It is also to be noted that after his resignation was accepted with immediate effect he did not protest by saying that he was reconsidering the matter and that he might have withdrawn his resignation. No such step was taken by the deceased petitioner to indicate that he was in a mood to revise his decision of resignation. It is therefore, futile and is clearly an after thought to say that he would have withdrawn his resignation and that the action of the respondent Institute accepting the resignation with immediate effect amounted

to an Unfair Labour Practice.

7. Shri Dharap next contended that in the affidavit the respondent institute for the first time stated that the deceased petitioner was doing some business while in employment and if that is so that amounted to an act of misconduct and, therefore, a domestic enquiry was necessary against the petitioner and as no such enquiry was held, the acceptance of the resignation prematurely for that reason amounted to illegal termination. The deceased petitioner had tendered his resignation saying that he was not in a position to continue in service and he never protested against the immediate acceptance of his resignation and he never prayed for reinstatement and he continued to do his private business, which he was doing earlier and also while during his service and which he continued thereafter also along with his partner. Shri Vaidya, the other petitioner, by no stretch of imagination it can be said that the action of the respondent Institute amounted to any illegality or an Unfair Labour Practice in any manner and even remotely. There are no allegations of mala fides or lack of bona fides or good faith and, according to me, there is no undue haste or colourable exercise of powers amounting to an Unfair Labour Practice engaged in by the respondent Institute. In fact prompt accepted of the resignation was in the interest of both the petitioners who could continue his business more vigorously and openly. I therefore hold that there is no substance in the petition, and the order of the Industrial Court requires no interference under Article 226 of the Constitution of India. There is neither any illegality nor impropriety or an Unfair Labour Practice or any miscarriage of justice in the matter. The writ petition therefore, is dismissed. Rule is discharged. No order as to costs.

8. Petition dismissed.