
(2016) 08 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 9120 of 2016

Chief Executive Officer

APPELLANT

Vs

Shri Prashant Raghunath Kulkarni

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALLMR 1 : (2016) 3 LLN 580 : (2016) 6 MhLJ 688

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Mr. Kiran Bapat i/by M/s. Desai and Desai Associates, for the Petitioners; Mr. Nitin A. Kulkarni, Advocate, for the Respondents No. 1; Mr. Nitin A. Kulkarni, Advocate, for the Petitioners; Kiran Bapat i/by M/s. Desai and Desai Associates, for the Responde

Final Decision : Allowed

Judgement

R.M. Savant, J.(Oral)—Rule in all the above four Petitions, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the judgements and orders dated 04/07/2016 passed by the learned I/c. Member of the Industrial Court Pune by which orders, the Revision Application (ULP) No. 42 of 2016 and Revision Application (ULP) No. 41 of 2016 came to be partly allowed thereby the Petitioners in Writ Petition No. 9120 of 2016 and 9121 of 2016 were directed to pay to the Applicants i.e. the Respondents in the said Petitions 25% of the back wages from the date of their dismissal. The order of the Labour Court directing reinstatement of the Respondents in the said Writ Petitions was not interfered with.

3. The Petitioners in Writ Petition Nos. 1920 of 2016 and 1921 of 2016 i.e. the Maharashtra State Khadi and Village Industries Board would be referred to as the

State Khadi Board whereas the Respondents in the said Writ Petitions and the Writ Petition Stamp Nos. 23417 of 2016 and 23418 of 2016 would be referred to as the Complainants.

4. It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions that are required to be issued in the above Writ Petitions. Suffice it would be to state that the Complainants were working with Handmade Paper Institute run under aegis of the State Khadi Board. It seems that certain directions came to be issued to the Complainants as regards their employment which directions the Complainants did not follow resulting in termination of their services vide order dated 02/06/2011 ostensibly on the ground of wilful insubordination resulting in loss of confidence. The Complainants invoked the provisions of MRTU & PULP Act, 1971 and filed Complaint ULP No. 175 of 2011 and Complaint ULP No. 174 of 2011.

5. In the written statement which was filed by the State Khadi Board amongst the contentions which were raised in opposition to the reliefs sought in the Complaints was the contention of the State Khadi Board that the Complainants were supervisors and therefore not workmen within the meaning of the term as given in the Industrial Disputes Act. In view of the fact that the State Khadi Board had not held an inquiry prior to the termination of the services of the Complainants, the State Khadi Board sought permission of the Labour Court to lead evidence to prove the misconduct in the Court. Upon this, the Complainants filed a purshis before the Labour Court that since it is the State Khadi Board i.e. the Respondent in the Complaints who has to prove the misconduct, it would have to lead evidence first. The said purshis was accepted by the Labour Court and accordingly the State Khadi Board led evidence of two witnesses in support of its case as stated in the Written Statement. The Complainants also adduced their own evidence to controvert the evidence adduced by the State Khadi Board.

6. The learned Judge of the Labour Court had, prior thereto, framed issues revolving around, whether Complainants are employees ; whether Complainants prove that the Respondent i.e. the State Khadi Board has engaged in unfair labour practices ; whether the Complainants prove that the Respondents illegally terminated them ; and whether the Respondents i.e. the State Khadi Board prove the alleged misconduct of the Complainants, and as to what relief the Complainants are entitled to.

7. The learned Judge of the Labour Court held that the Complainants are the employees within the meaning of Section 3(5) of the MRTU & PULP Act, 1971. However, in the context of the challenge raised in the Writ Petitions filed by the State Khadi Board, what is required to be noted is the answer to Issue No. 4. The learned Judge of the Labour Court recorded the answer to the said Issue No. 4 as "Does not survive", in view of the fact that the justification given by the State Khadi Board i.e. the Respondents in the Complaints for not holding an inquiry was not acceptable and therefore the evidence adduced by the State Khadi Board could not be looked into. The Labour Court in answering the said issue has relied

upon the judgments of the learned Single Judges of this Court in *Bank Karmachari Sangh v. Cosmos Coop., Urban Bank Ltd & ors* reported in 1998 ICLR 504 Bom. and the judgement of the Apex Court in *Gujarat Steel Tubes Ltd. and Gujarat Steel Tubes Mazdoor Sabha* reported in 1980 I LLJ 137 SC. The Labour Court therefore did not deem it appropriate to look into the evidence adduced on behalf of the State Khadi Board to prove the misconduct in Court. The answer to the said issue has impacted the answers to the other issues, once the Labour Court came to a conclusion that the misconduct has not been proved by the State Khadi Board. The learned Judge of the Labour Court No. 2, Pune by the judgements and orders dated 28/03/2011 has accordingly allowed the Complaints and directed the reinstatement of the Complainants on the same terms and conditions on the basis of which they were employed, and the Respondents in the Complaints i.e. the State Khadi Board was directed to pay 25% back wages to the Complainants from the date of dismissal i.e. 02/06/2011 till reinstatement in service.

8. The said judgements and orders dated 28/03/2011 passed by the learned Judge of the Labour Court No. 2, Pune in Complaint ULP Nos. 175 of 2011 and 174 of 2011 were taken exception to by the State Khadi Board by filing Revision Application (ULP) Nos.42 of 2016 and 41 of 2016 before the Industrial Court. The Industrial Court in so far as the said Issue is concerned, reiterated the finding of the Labour Court and confirmed the finding of the Labour Court in so far as the said issue is concerned. However, the Industrial Court has set aside the grant of 25% of the back wages passed by the Labour Court, but however, directed that the reinstatement would be with continuity of service. As indicated above, it is the said judgements and orders dated 04/07/2016 which are taken exception to in the Petitions filed by the State Khadi Board in so far as the grant of reinstatement is concerned. The Complainants have challenged the said Judgments and Orders of the Labour Court by which orders the Labour Court refused to grant full back wages and only granted 25% back wages by filing Revision Applications (ULP) Nos.45 of 2016 and 46 of 2016. As indicated above, it is the said judgments and orders dated 04/07/2016 which are taken exception to in the Petitions filed by the Complainants in so far as setting aside the grant of back wages is concerned.

9. The principal contention of the learned counsel appearing for the State Khadi Board is that the learned Judge of the Labour Court has erred in holding that since the justification given by the State Khadi Board for not holding inquiry is not found to be acceptable, the evidence cannot be looked into. The learned counsel for the State Khadi Board would contend that the case of a defective inquiry and a case of no inquiry stands on the same footing and in support of the said contention sought to place reliance on the judgement of the Apex Court in *Bharat Forge Co. Ltd. v. A B Zodge* and another reported in (1996) 4 SCC 374 wherein the Apex Court has held that disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is

well recognised, and therefore, the employer is entitled to adduce evidence, for the first time, before the Tribunal even if the employer had held no inquiry or the inquiry held by the employer is found to be defective. It was therefore the submission of the learned counsel that the learned Judge of the Labour Court ought to have looked into the evidence and thereafter ought to have come to a conclusion whether the termination of the Complainants was justified by the State Khadi Board or not.

10. Per contra, the learned counsel for the Complainants Shri N.A. Kulkarni would submit that since in the instant case no charge-sheet was issued, the findings recorded by the learned Judge of the Labour Court in respect of the said issue cannot be found fault with. It was the submission of the learned counsel for the Complainants that the evidence can be allowed to be led in the Court in respect of the charges in the charge-sheet and not otherwise as the Labour Court cannot frame charges in the Court for the first time. In support of the said contention the learned counsel for the Complainants sought to place reliance on the judgments of the learned Single Judges of this Court in *Theatre Employees' Union & ors v. S.V. Kotnis and ors* reported in 1992 I CLR 474 and the judgement in *Wai Taluka Sahakari Kharedi Vikri Santh Ltd. Satara v. Bajirao Mahadeo Mahadik* reported in 1992 I CLR 637. The learned counsel for the Complainants would submit that though the Labour Court has nonsuited the Respondents i.e. the State Khadi Board on a different ground, the orders can still to be justified on the touchstone of the aforesaid two judgments. Upon this the learned counsel appearing on behalf of the State Khadi Board Shri Bapat would draw this Court's attention to the judgement in *D.D. Shah & Co. v. Vajidali T. Kadri* reported in 2007 I CLR 913, and the judgement of the Division Bench of this Court in LPA No. 149 of 2007 in the case of *Vajidali T. Kadri v. D.D. Shah and Co.* reported in 2007(6) Mh.L.J. 650. In the said LPA the order passed by a learned Single Judge of this Court was challenged. It was the submission of the learned counsel Shri Bapat in rejoinder that the judgement in *Theatre Employees' Union's* case (supra) and in *Wai Taluka Sahakari Kharedi Vikri Santh Ltd. Satara's* case (supra) as well as *Bank Karmachari Sangh's* case (supra) is no more good law in view of the judgement of the Division Bench in *Vajidali T. Kadri's* case (supra).

11. Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated herein above, the learned Judge of the Labour Court has refused to look into the evidence adduced on behalf of the State Khadi Board on the ground that the justification for not holding an inquiry was found not acceptable by it. In so far as the said aspect is concerned, it is well settled by the pronouncements of the Apex Court from time to time that a defective inquiry and a case of no inquiry stand on the same footing. A reference could be made to the judgement of the Apex Court in *Bharat Forge Co. Ltd.* case (supra). However, the learned counsel appearing on behalf of the Complainants Shri Kulkarni sought to change track by contending that though the position is well settled as enunciated in *Bharat Forge Co. Ltd.'s* case (supra), what is required to be seen is whether the charge-sheet has been issued as the evidence can be allowed to be led in the

Court for the first time only in respect of the charges which are appearing in the charge-sheet. In support of the said contention, reliance is sought to be placed, as indicated above, on Theatre Employees' Union's case (supra), Wai Taluka Sahakari Kharedi Vikri Santh Ltd. Satara's case (supra) as well as Bank Karmachari Sangh's case (supra). In so far as the said aspect is concerned, it is not necessary to dilate further as the said judgments were considered by a learned Single Judge of this Court in D.D.Shah & Co.'s case (supra), and in the light of the judgments of the Apex Court in Punjab National Bank Ltd v. All India Punjab National Bank Employees Federation and another reported in AIR 1960 SC 160 and in Delhi Cloth and General Mills Co. v. Ludh Budh Singh reported in AIR 1972 SC 1031 as also the reiteration of the said principles in The workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd v. The Management and ors reported in AIR 1973 SC 1227. The learned Single Judge of this Court concluded in paragraph 11 thus : " The decision by the learned Single Judge of this Court in the matters of S.V. Kotnis (supra), Bajirao Mahadeo Mahadik (supra) and Bank Karmachari Sangh (supra) were in the peculiar facts of each of those decisions. In any case, the law on the point being clearly laid down by the decision of the Apex Court, the decisions of this Court contrary to the decisions of the Apex Court can be of no help to the respondent to justify the impugned order." The facts in the D.D.Shah & Co.'s case (supra) were identical to the facts in the instant case. In the said case the learned Judge of the Labour Court had granted permission to the employer to adduce evidence before the Court which order was challenged in the Industrial Court. The Industrial Court had set aside the said order which resulted in filing of a Writ Petition in this Court which had come before a learned Single Judge of this Court. The learned Single Judge of this Court has therefore in the light of the judgments of the Apex Court has held that the law on the point being clearly laid down by the decisions of the Apex Court, the decision of this Court contrary to the said decisions of the Apex Court can therefore be of no help to the Respondent to justify the impugned order.

12. The judgement of the learned Single Judge of this Court in D.D.Shah & Co.'s case (supra) was carried by way of an LPA to a Division Bench of this Court. The Division Bench of this Court in paragraphs 6, 7 and 8 has adverted to the judgments in Theatre Employees' Union's case (supra), Wai Taluka Sahakari Kharedi Vikri Santh Ltd. Satara's case (supra) as well as Bank Karmachari Sangh's case (supra) and thereafter has adverted to the judgement in Punjab National Bank Ltd 's case (supra), in Delhi Cloth and General Mills Co.'s case (supra) and in The workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd's case (supra) and concluded in paragraph 15 thus : "

"In view of the above judgments, the appellant's contention that the learned Single Judge has erred in holding that the management can adduce evidence before the Labour Court must be rejecte. Reliance placed by the appellant on the judgments of this Court which take a contrary view is wholly misplaced. We concur with the learned Single Judge that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to justify the action

by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected."

13. The Division Bench has therefore upheld the preposition that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence remains unaffected. In the light of the pronouncement of the Division Bench in Vajidali T. Kadri's case (supra) it would make little difference even if a charge-sheet was not served upon the Complainants and the employer i.e. the State Khadi Board would be entitled to lead evidence and it is for the Labour Court to record a finding as to whether the misconduct is proved on the basis of the said evidence which is adduced on behalf of the employer i.e. the State Khadi Board. That having not been done by the Labour Court and the same being affirmed by the Industrial Court, the judgments and orders dated 28/03/2011 passed by the Labour Court Complaint ULP No. 175 of 2011 and Complaint ULP No. 174 of 2011, and the judgments and orders dated 04/07/2016 passed by the Industrial Court in Revision Application (ULP) No. 42 of 2016 and Revision Application (ULP) No. 41 of 2016 would have to be quashed and set aside and are accordingly quashed and set aside and the Complaints in question are remanded back to the Labour Court for a denovo consideration on the touchstone of the observations made in the instant order. Needless to state that the contentions of the parties as regards whether the misconduct is proved or not on the basis of the evidence which is adduced on behalf of the State Khadi Board are kept open for being agitated before the Labour Court. The Labour Court would now venture to decide as to whether the State Khadi Board has proved the misconduct before it and record findings accordingly. The Writ Petitions filed by the State Khadi Board being Writ Petition Nos.9120 of 2016 and 9121 of 2016 are allowed to the aforesaid extent and the Rule in the said Writ Petitions is accordingly made absolute. In view of the fact that the judgments and orders passed by the Labour Court and the Industrial Court are set aside. The Rule in the Petitions filed by the Complainants to accordingly stand disposed of. On remand the hearing of the Complaints in question is expedited.

14. W.P. allowed - Matter remanded to Labour Court.