

(1998) 02 BOM CK 0057

In the Bombay High Court

Case No : O.O.C.J.W.P. No. 1758 of 1997

Cricket Club of India and Another

APPELLANT

Vs

Baljit Shyam (Ms) and Another

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1998) 2 LLJ 578

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : J.P. Cama and K.P. Anilkumar, for the Appellant; Colin Gonsalves, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Rule. Respondents waive service. Petition heard forthwith.

The petitioners herein have approached this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, to impugn the order dated September 25, 1997 passed by the Industrial Court, Mumbai in Revision Application (ULP) No. 28 of 1997 in Complaint (ULP) No.205 of 1995. By the impugned order the Industrial Court, Mumbai, was pleased to set aside the order of the Labour Court dated November 30, 1996 dismissing the complaint tiled by the Respondent No. 1 against the petitioners under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act for the sake of brevity). The Respondent No. 1 approached the Labour Court alleging an act of unfair labour practice on the part of the petitioners herein, in terminating the services without holding an enquiry or complying with the other provisions of the Industrial Disputes Act, 1947. It is therefore, alleged that the petitioners had committed unfair labour practice under Items 1 (a), (b), (d) and (f) of Schedule IV of MRTU and PULP Act, 1971. It is an admitted position that no inquiry has been conducted against the Respondent No. 1 who initially joined the services of the petitioners on 3 May

19, 1993 as a House Keeper. She was thereafter confirmed with effect from August 20, 1993 and her services were terminated on May 8, 1995. It is also an admitted position that no statutory dues u/s 25-F of the Industrial Disputes Act was paid to the Respondent No. 1 at the time of termination of her services.

2. The petitioners raised a preliminary issue; contending that the Respondent No. 1 was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and as such the complaint was not maintainable.

3. In the written statement the petitioners contended that the duties of the Respondent No. 1 was entirely of a Supervisory nature as she was responsible for looking after the up-keep and maintenance of Club House; to take all necessary steps required to be taken to avoid complaints on that score, to train the hamals working under the House Keeper for the upkeep and maintenance of the rooms and various other duties as of a Supervisor. The petitioners thereafter denied that the services of the Respondent No. 1 were illegally terminated. It is pointed out that the termination was simple termination and the reasons were spelt out by the petitioners in the letter itself. It is pointed out that the termination was without any aspersion and/or allegation of whatsoever nature.

4. Evidence was led, both on behalf of the petitioner and the respondent. Documentary evidence was also produced including the letter of appointment as House Keeper and the list showing the duties of House Keeper.

5. On the material before it, the Labour Court was pleased to dismiss the complaint on the ground that the Respondent No. 1 was not a workman within the meaning of Section 2(s) of the I.D. Act. While so holding the Labour Court in para 26 arrived at a conclusion that the Respondent No. 1 was acting as supervisor. The Labour Court further held that the Respondent No. 1 had no power to take decisions and to look into the Managerial aspects of the C.C.I. The Labour Court thereafter proceeded to conclude that the Respondent No. 1 had no administrative and managerial powers, her main duties were supervisory house keeper as she was drawing more than Rs.1,600/- and as such not a workman within the meaning of Section 2(s) of the I.D. Act. After referring to various cases the Labour Court thereafter again in para 29 proceeded to hold that the respondent was mainly discharging administrative power of recommending leave of the employees working under her. Though she had no power to take decisions she was mainly employed to do supervisory and administrative duties and as such the complainant was doing mainly supervisory work and for that reason dismissed the complaint.

6. The Respondent No. 1 aggrieved by the said order challenged the same in Revision Application before the Industrial Court at Mumbai. In the grounds of Revision it was pointed out that the Labour Court had not addressed itself to the issue as to whether on the work performed the Respondent No. 1 could be said to be performing work of supervisory nature. It was also contended that the Labour Court had not taken into consideration the most vital and crucial points as

to clause 3 of the appointment dated May 16, 1993 which sets out that it. Respondent No. 1 will be governed by the Standing Orders and the Service Conditions of , the Club prevailing from time to time. It was contended that the appointment letter been contract governing the conditions of service the respondent are estopped from raising the pica that the applicant is not a workman as the applicant will be governed by Standing Orders. As no Standing Orders had been certified it will be Model Standing Orders which will be applicable.

7. The Industrial Court in para 9 of its order arrived at a conclusion that the Labour Court had not properly considered the evidence. There was no inquiry or charge-sheet held against the Respondent No. 1 before termination. The Revisional Court held that in terms of the appointment letter the provisions of the Model Standing Orders are applicable. The Industrial Court further held that the work of the respondent was that of maintenance and house keeping and she was governed by the appointment letter and as such the Respondent No. 1 was a workman. The learned Judge relied on the judgment in the case of S. A. Sarang v. W. G. Forge & Allied Industries Ltd. and Ors. 1996 I LU 67 for the proposition that once the employer had treated the respondent as a workman then such employer must be estopped from denying the said fact when the dispute regarding the dismissal of the employee finally Res before the adjudicator. The Industrial Court thereafter held that the termination; itself was illegal and in breach of conditions of services. As no inquiry has been held the Respondent No. 1 was entitled to be reinstated with full back wages and continuity of service. It is no doubt true that there is some reference to -framing of proper issues, but that would not be" material.

8. Counsel for the petitioners contended that the Industrial Court was wrong in exercising its revisional jurisdiction. In the instant case it is pointed out that the scope hi revision is limited. It is thereafter contended that the Industrial Court could not have while exercising revisional jurisdiction reversed the findings of fact given by the Labour Court that the Respondent No. 1 was not a workman. At any rate it is pointed out that if the Industrial Court had come to the conclusion that the termination was illegal an opportunity should have been given to the petitioner to prove the case against the Respondent No. 1. Reliance has been placed on a judgment of the Single Judge of this Court in the case of Kirloskar Cummins Ltd. v. Subhash Shripati Darekar and Ors. 1997(76) FLR 465.

9. On the other hand on behalf of the Respondent No. 1 workman it is contended that a perusal of the order of the Labour Court itself discloses that there was total non-application of mind by the Labour Court. In the first instance in para 26 of the order, the Labour Court came to the conclusion that the Respondent No. 1 had no administrative and managerial powers, whereas in paragraph 29 it held that the Respondent No.1 was mainly discharging administrative powers of recommending leave of employees working under her. It is further pointed out that the Labour Court did not consider the letter of appointment and the service

regulations governing the employees. Clause 3 of the letter of appointment dated May 19, 1993, mentioned that the Respondent No. 1 would be governed by the Standing Orders and the Service Conditions prevalent from time to time. In the letter of appointment itself the petitioners had treated the Respondent No. 1 as a workman by making applicable to her the Standing Orders and Service Conditions. The Service Conditions were on record which are known as "Service Regulations". In the Service Regulations an employee is defined to mean any member of the staff under the employment of the Club whose name is entered in the Muster. Clause 3 classified employees as Clerical and Subordinate. It is thereafter pointed out that once the letter of appointment itself made applicable the Standing Orders it will be mainly the Standing Orders which will apply and as the Respondent No. 1 had been made permanent, her services could only have been terminated after an inquiry. It is also thereafter pointed out that the correct test in holding as to who is a Supervisor was not addressed by the Labour Court and in these circumstances the Industrial Court was right in exercising its jurisdiction u/s 44 of the MRTU and PULP Act. Reliance was placed on a judgment of a Single Judge of this Court in S.A. Sarang v. W.G. Forge & Allied Industries Ltd. and Ors. (supra) for the proposition that once the employer proceeds on the footing that the employee is governed by the Standing Orders then such employer must be estopped from denying the said fact.

10. With this background the correctness of the order impugned can now be looked into. The question as to who is a Supervisor is a subject matter of a large number of judgments of this Court and the Apex Court. Suffice, if I refer to the judgment of the Apex Court in the case of National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, . In that case an issue was raised as to whether the internal auditor of a company was doing work of a supervisory nature. The Apex Court after considering various other judgments including the judgment in the case of P. Maheshwari v. Delhi Administration and Ors. 1993 (3) SCR 949, observed as under:

"The principle therefore is, one must look 5 into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to j the affairs of the company and making assessment for the purpose of reporting was not a supervisor."

The Apex Court thereafter referred to the; definition of Supervisor in Black's Law Dictionary Special Deluxe Fifth Edition, which describes Supervisor as under:

"In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The Apex Court also referred to the judgment in the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., . The Labour Court in arriving at the conclusion that the Respondent No. 1 was discharging supervisory duties ignored the fact that the Respondent No. 1 had no power to take decisions to bind the company. In para 29 of the judgment the Labour Court held that the Respondent No. 1 was mainly discharging administrative powers of recommending leave of the employees working under her and the fact that she was drawing salary exceeding Rs. 1,600/- per month. Even in para 26 the Labour Court held, that the Respondent No. 1 had no power to take decisions and to look into the managerial aspects of C.C.I. Therefore, it is irresistible to conclude that the Respondent No. 1 had no administrative and managerial powers and thereafter proceeded to hold that the main duties were supervisory as a house keeper. The test laid down in National Engineering Industries as to whether the supervisor could bind the company by taking decision on behalf of the company was not applied. There was nothing on record to show that she had power to appoint or initiate disciplinary proceedings. The respondent did not even have power to sanction leave. Ms. K. B. Mistry, Assistant House Keeper examined on behalf of the petitioner deposed that she was appointed by Secretary and directed to represent both the Secretary and the Respondent No, 1. Purchases required the sanction of the Secretary. Approval for purchase of materials required the sanction of the Secretary, Respondent No. 1 has examined herself. She has deposed to the work she was doing. Nothing has been brought about in cross examination that she was doing work of a supervisory direction. In re-examination she has deposed that her work was supervised by Secretary, Chief Secretary, Assistant Secretary and Consultant House Keeper.

11. The Industrial Court relying on the authority in the case of S.A. Sarang v. W, G. Forge & Allied Industries Ltd, & Ors, (supra) came to the conclusion that considering the letter of appointment, the Model Standing Orders were applicable to the Respondent No. 1 and that the nature of work of the Respondent No. 1 was maintenance and house keeping and not supervisory.

12. Therefore, can it be said that the Industrial Court acted in excess of its jurisdiction u/s 44 of the MRTU and PULP Act in reversing the order of the Labour Court and allowing the complaint filed by the Respondent No.1. As already pointed out, the Labour Court was confused between the expression administrative and supervisory. It has only proceeded on the footing that the petitioner was recommending the leave applications. Mere recommendation of leave applications would not make the petitioner a supervisor, as the recommendations would not bind the company. At the highest the recommendations would be considered while considering the application for leave. Apart from that in the instant case what is important to note is that non-consideration of the letter of appointment, the Service Regulations and the Model Standing Orders. If the letter of appointment which was on record had been considered by the Labour Court, Clause 3 of the letter would have made it clear that the company itself has considered the Respondent No. 1 as a workman by

making applicable the Standing Orders and Service Regulations. Clause 3 reads as under:

"You would be governed by the Standing Orders and Service Conditions of the Club prevalent from time to time".

13. In so far as the establishment of the petitioner is concerned, in terms of the Service Regulations the employees are either Clerical and Subordinate. In the instant case the Respondent No. 1 had complained by letter dated July 14, 1994 against withholding her increment and pointing out that, that amounts to punishment and the same could not be done without hearing. The petitioners replied the said letter by letter dated October 21, 1994. The Respondent No. 1 was informed that the increment had been withheld as her work was not satisfactory. Apart from that the nature of duties of the House Keeper were also on record and they have been reproduced in the order of the Labour Court. At any rate no material was produced to show that the Respondent No. 1 was doing work mainly of supervisory in nature. From the material on record and considering the judgment in the case of S. A. Sarong v. W.G. Forge & Allied Industries Ltd. and Ors. (supra) the Industrial Court was right in reversing the order of the Labour Court.

14. In fact in the case of The Workmen and Others Vs. Hindustan Lever Ltd., , the Apex Court on the issue whether the Company is estopped from contending that a person was not a workman has observed "that the agreement relied upon by the Union is a valid subsisting agreement. It is in force. It is neither repudiated nor terminated. It is binding upon both the parties. Once the agreement is held to be binding, the employer is estopped from contending that the workmen involved in the dispute who were salesmen were not workmen within the meaning of the expression under the Act. Therefore, the Tribunal was in error in undertaking to examine that contention and answer it."

15. The issue arose as there was an agreement between the management and the Union whereby the management had agreed not to contest in any industrial dispute, the status of field force that they were not workmen within the meaning of expression.

16. In the instant case there is a letter of appointment. In the letter of appointment it is mentioned that the Standing Orders and Service Regulations will be applicable. Standing Order can apply only to workmen, Service Regulations also show that the employees are either Clerical or Subordinate. In other words the letter of appointment would constitute an agreement between the parties. This would attract Item 9 of Schedule IV of the MRTU and PULP Act being breach of an agreement.

17. The matter was heard and posted for judgment on December 18, 1997. At the request of the learned Counsel for the petitioner the matter was again heard as on behalf of the petitioner it was contended that the petitioner would not be covered by the provisions of the Model Standing Orders. It was sought to be

contended that the provisions of Shops and Establishments Act would not be applicable and as such the provisions of the Standing Orders Act and the Rules also will not be applicable. In the first instance no such plea was taken either in the pleadings or before the lower Court. Also considering the definition in the Shops and Establishments Act and the provisions of the Standing Orders and the Rules framed thereunder there is no iota of doubt that the petitioner is an establishment to which the provisions of the Industrial Employment Standing Orders would apply. Once it is held that the provisions of the Industrial Employment Standing Orders will apply in the absence of certified Standing Orders in terms of Section 12 of the Act the Model Standing Orders framed under the Bombay Rules for Clerical and Technical Staff would apply. The respondent was a permanent workman and as such her services could not have been terminated without complying with the provisions of the Standing Orders or the statutory provisions of Section 25-F of the I. D. Act, 1947.

18. That brings us to the contention whether the employer must be given an opportunity to lead evidence. It is true that the issue was decided only on the issue as to whether the Respondent No. 1 was a workman. The complaint was dismissed by the Labour Court. The Industrial Court reversed the said finding holding that the Respondent No. 1 was a workman. The Industrial Court, however, held that no inquiry has been held, therefore, the question of giving an opportunity to the employee would not arise as there was a clear violation of Schedule IV of MRTU and PULP Act and if at all the petitioners could always take the proceedings available to them according to law. In the instant case admittedly the letter of termination does not show the termination was either for want of confidence or on account of misconduct. On the contrary it is the contention of the petitioner that the termination was simple termination and it was without any aspersion or allegation. In these circumstances the question of giving an opportunity to the petitioner to lead evidence would not arise. Under the provisions of the MRTU and PULP Act if the Respondent No. 1 is able to establish that the petitioner had committed unfair labour practice then in that event the Court under the MRTU and PULP Act could issue a direction to the petitioner from desisting from committing unfair labour practice. This is not a case of dismissal for an act of misconduct as can be seen from the record. In these circumstances once the Industrial Court arrived at the conclusion that the items of Schedule IV had been attracted the Industrial Court rightly directed the reinstatement of the respondent No. 1 with other consequential benefits as contained in the said order.

19. For all the aforesaid reasons I see no reason to interfere with the order of the Industrial Court more so considering that in the letter of termination all that is stated is that the services are terminated. Even in the reply and the written statement nothing has been averred to show that the respondent No. 1 had committed any misconduct and for that matter any act of the respondent No. 1 resulted in the petitioners losing confidence. There is no such material in the reply or the written statement.

In these circumstances rule discharged.