

(1990) 08 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 3150 of 1988

Daji Murarrao Surve

APPELLANT

Vs

I.T.C. Ltd., Bombay and another

RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 33(1), 33(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 59

Citation : (1990) 08 BOM CK 0068

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

Bench : Single Bench

Advocate : H.L. Gokhale and L.G. Waingankar, for the Appellant; P.K. Rele instructed by Crawford Bayley and Company, for the Respondent

Final Decision : Dismissed

Judgement

H.H. Kantharia, J.—The petitioner joined the first respondent-company as Clerk II on September 19, 1952 and was promoted thereafter. He was dismissed from service on May 21, 1980 when he was working as intermediate Clerk in CMR Grade III and was drawing an approximate salary of Rs. 2,450/-per month. He was dismissed, after a domestic enquiry, on allegations of certain charges of misconduct with which we are not presently concerned. After his dismissal, he filed a complaint of unfair labour practice in 10th Labour Court. Bombay under item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. 1971 (hereinafter referred to as "the MRTU and PULP Act*). The learned Labour Judge who heard the said complaint framed necessary issues viz. "(1) Whether the respondent dismissed from services the complainant on 19-5-1980 by engaging in the alleged unfair labour practices? (ii) Whether the complainant was entitled to reinstatement with continuity of service and full back wages from 20-5-1980 from the respondent? and (iii) Whether the complainant was entitled to the relief's claimed by such

means without raising an industrial dispute?" and answered all the three issues in the negative and dismissed the complaint by his judgment and order dated April 29, 1986. Feeling aggrieved, the petitioner-workman filed a revision application in the Industrial Court at Bombay. The learned Member presiding over the Industrial Court who heard the said revision application was of the opinion that the revision application was not maintainable and in the alternative, if it was maintainable, the impugned, order passed by the Labour Judge deserved to be confirmed. He accordingly by his judgment and order dated February 23, 1987 dismissed the revision application.

2. Thereafter, the petitioner-workman raised, an industrial dispute with the first respondent-company to the effect "Whether the dismissal order dated 20th May 1980 issued to Shri D. M. Surve (Token No. Z-1228) was based on a fair and proper enquiry, whether the findings were not perverse and whether the punishment awarded is out of all proportion. If so, what relict should be given to him" but unsuccessfully. Therefore, he approached the second respondent. Assistant Commissioner of Labour and Conciliation Officer, Bombay with a request to admit his industrial dispute in conciliation. The second respondent rejected his application for intervention by an order dated June 13, 1988 which has been impugned in this writ petition under Article 226 of the Constitution.

3. Now, the impugned order of the second respondent reads as under:-

With reference to the above subject, I have to state that I do not propose to intervene in the dispute raised by you against the Management of M/s. I. T. C. Ltd.. for the following reasons.

1. Shri D.M. Surve, the workman has already challenged his dismissal order by filing the complaint, bearing No. 73 of 1980 in the 10th Labour Court. Bombay under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. 1971 which was dismissed by the Labour Court by its order dated 19th April, 1986. The workman challenged its order of Labour Court under reference by filing a revision application, bearing No. 53 of 1986 in the Industrial Court. Maharashtra. Bombay and the Industrial Court dismissed this revision application by its order dated. 23rd February, 1987.

2. As the dispute matter has already been decided by the Labour Court and Industrial Court under the above mentioned Act, it is barred by section 59 of the MRTU and PULP Act. 1971.

3. As the dispute matter has already been decided by the above referred Competent Authorities, after full enquiry it is not tenable under the Industrial Disputes Act, 1947.

As the undersigned do not propose to intervene in your dispute matter, the matter is treated as closed.

4. In support of the petition. Mr. Gokhale urged that it is no doubt true that the petitioner had taken the dispute to the Labour Court and the Industrial Court but

both the Labour Court and the Industrial Court had limited jurisdiction and could not go into the quantum of punishment and, therefore, the industrial dispute to the extent of quantum of punishment could be raised by the petitioner which could have been admitted in conciliation by the second respondent and the petitioner should not have been non-suited at the threshold by the second respondent by resorting to the provisions of section 59 of the MRTU and PULP Act. In reply. Mr. Rele. learned Counsel appearing on behalf of the first respondent-company, urged that a plain reading of section 59 of the MRTU and PULP Act shows that once the petitioner had invoked the jurisdiction of the Labour Court and the Industrial Court under the provisions of MRTU and PULP Act. his remedy under the Industrial Disputes Act, 1947 was clearly barred u/s 59 of the MRTU and PULP Act.

5. On careful consideration of the submissions made at the Bar. I am unable to persuade myself to agree with the submissions of Mr. Gokhale.

6. In order to appreciate the controversy, it may be useful to incorporate here the provisions of section 59 of the MRTU and PULP Act which reads as under:

59. Bar of proceedings under Bombay or Central Act. - If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act. then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be the Bombay Act. then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act.

This provision law is very clear and according to it no proceeding can be entertained by any authority in respect of any matter falling within the purview of MRTU and PULP Act and instituted under the said Act. under the Central Act. or as the case may be, the Bombay Act and vice versa if any proceeding is instituted under the Central Act or as the case may be the Bombay Act in respect of any matter then no proceedings shall at and time be entertained by the Industrial Court or the Labour Court under the MRTU and PULP Act. In other words, once a party takes recourse under the provisions of the Industrial Disputes Act, he is debarred from taking recourse to the provisions under the MRTU and PULP Act with regard to the same subject matter and if a party resorts to the provisions of MRTU and PULP Act is prohibited from taking any action with regard to the same subject matter under the provisions of Industrial Disputes Act. 1947. A Division Bench of this Court in Consolidated Pneumatic Tool Company (India) Ltd. vs. R. A. Gadekar. Member, Industrial Tribunal and others, 1986 I LLN 978. had held that from the bare reading of this section it is quite clear that it involves a principle of double jeopardy and option or election of remedy and therefore, if any proceeding in respect of any matter falling within the purview of the MRTU and PULP Act is instituted, then it is directed that no proceeding shall at any time be entertained by any authority in respect of that

matter under the Central Act or the Bombay Act as the case may be. Again, a learned Single Judge of this Court in Maharashtra Girni Kamgar Union vs. Corona Sahu Co. Ltd., 1985 I CLR 100 had held that the plain reading of the section makes it clear that no proceedings can be entertained by any authority under the Central Act, or the Bombay Act. in respect of the matter falling within the purview of the MRTU and PULP Act and in respect of which the proceedings have already been instituted.

7. Mr. Gokhale, brought to my notice a Division Bench judgment of this Court in Maharashtra State Road Transport Corporation vs. Yadao and etc., 1985 Lab.I.C. 1012 and submitted that there is no absolute bar u/s 59 of the MRTU and PULP Act to entertain a proceeding even if one was taken under the provisions of the Industrial Disputes Act, 1947. I am afraid, this ruling cited by Mr. Gokhale does not help him in any manner for the simple reason that in the said case it was held that it could not be said that the employee could not have filed a complaint under, section 28 of the MRTU and PULP Act in view of bar of section 59 as the proceeding u/s 33(1) and 33(2) of the I. D. Act will have nothing to do with the proceedings in the nature of a complaint u/s 28 of the, MRTU and PULP Act. It is important to note here that even the Division Bench in the said case had pointed out that the intention of the legislature was to prevent the multiplicity of proceedings, possibility of contradictory verdicts and wastage of judicial time if proceedings under the MRTU and PULP Act and the Industrial Disputes Act are allowed to be taken in respect of the same subject matter. Mr. Gokhale, also referred to another Division Bench judgment of this Court in The Cosmos India Rubber Pvt. Ltd. Vs. Mumbai Mazdoor Sabha and Others, in which it was held that the scope of an enquiry u/s 28 of the MRTU and PULP Act against an employer would be confined to matters set out in Schedule IV of the said Act and such enquiry proceedings would not be in the nature of an appeal in the sense an appeal Court functions as a Court of error providing for a rehearing of the entire matter. These observations made by the Division Bench do not help the petitioner in any manner.

8. I also find no substance in the argument of Mr. Gokhale that the subject matter as to the quantum of punishment could not have been decided by the Labour Court or the Industrial Court exercising jurisdiction under the provisions of MRTU and PULP Act and the same could be done u/s 11-A of the Industrial Disputes Act. The provisions of section 11-A of the Industrial Disputes Act empower the Labour Court to consider the quantum of punishment, even if the enquiry is legal and the finding that the workman is guilty of the charges was just. As a matter of fact, the same discretion can be exercised by the authorities under the MRTU and PULP Act as can be seen from Item I (g) of Schedule IV of the MRTU and PULP Act by which Labour Court is empowered to examine the past record of service of the employee so as to find out whether the punishment inflicted on him amounted to shockingly disproportionate to the charges levelled and proved. It is, therefore, not quite correct to say that the Labour Court under the provisions of the MRTU and PULP Act would not be in a position to consider

the adequacy or inadequacy of punishment.

9. In the case of Maharashtra Girni Kamgar Union (supra) it was submitted that in view Of the provisions of MRTU and PULP Act, which is a self-contained Code, it is not permissible, and, indeed not necessary for the State to make reference to determine the identical question to Which the learned single Judge rejected by saying that, in his judgment, the submission deserves acceptance and, therefore, the order passed by the Deputy Commissioner of Labour need not be disturbed and that the workmen dismissed from the employment could get relief in the complaint instituted by the petitioner union and where the action of their dismissal had been specifically put in issue. I respectfully agree with the view taken by the learned Single Judge.

10. In this view of the matter, I find no error apparent on the face of the record in the impugned order passed by the second respondent refusing to admit the dispute raised by the petitioner in conciliation and thus there is no substance in the writ petition. In the result, the writ petition fails and the same is rejected. Rule is accordingly discharged but with no order as to costs.