

(1994) 09 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 3866 of 1987

Delta Wires Pvt. Ltd.

APPELLANT

Vs

General Labour Union (Reg. Flag) and Another

RESPONDENT

Date of Decision : 12-09-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25A, 25H

Citation : (1995) 2 LLJ 287

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : A.V. Bukhari, for A.R. Bukhari and I.A. Saiyed, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—The Order dated April 2, 1987 made in Complaint (ULP) No. 1055 of 1985 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") is impugned in this Writ Petition under Article 227 of the Constitution of India.

2. The Petitioner-Company closed down its factory on account of acute shortage of raw material, acute power shortage and heavy financial losses, with effect from April 9, 1980. The Petitioners complied with the mandatory provisions of Section 25FFA of the Industrial Disputes Act, 1947 and effected closure of the factory. Consequent upon the said closure of the factory all the workmen working therein were paid their statutory dues payable to them under the provisions of Section 25FFF as well as gratuity and also other dues. The closure of the factory was challenged by the First Respondent-Union by its Complaint (ULP) No. 140 of 1980 under the provisions of the Act. The complaint was heard and dismissed by the Second Respondent. The said order of the Industrial Court was challenged by a Writ Petition before this Court, which was summarily dismissed. Two appeals under Article 136 of the Constitution, being Civil Appeal Nos. 6092 and 6093 of 1983, were filed there against in the Supreme Court of India. The Supreme Court

also dismissed the said Civil Appeals. Thus, the closure of the Petitioners-factory became final once and for all. Subsequently, the Petitioners' position improved and the Petitioners gave a public notice in the Marathi newspaper "Navakal", circulating in Bombay area, on June 25, 1982, and intimated to all concerned that the factory would restart from March 1, 1983 on a limited scale by way of trials and experiments. The erstwhile workmen were requested to come back and offer themselves for re-employment. This notice was issued by the petitioners to comply with the rights of the erstwhile workmen for reemployment, as provided u/s 25H of the Industrial Disputes Act, 1947. Pursuant to the said notice, a number of workmen did offer themselves for re-employment, and were re-employed. The factory restarted from March 1, 1983 with the help of the re-employed workers and others.

2-A. On October 18, 1985, the First Respondent-Union filed a Complaint, being Complaint (ULP) No. 1085 of 1985, before the Industrial Court, Bombay, alleging that, after re-employment, the workmen, who had been re-employed, had not been given the same conditions of service as to wages and other benefits which were applicable to them under the Settlement dated May 27, 1979 prior to the closure of the factory. This, the First Respondent alleged, amounted to "failure to implement a settlement", within the meaning of Item 9 of Schedule IV of the Act, and, therefore, an unfair labour practice. A declaration and consequential reliefs were claimed. The Industrial Court tried the complaint and correctly raised the question of law, viz., "whether, upon the closure of the factory and its subsequent restarting, the re-employed workmen were entitled to the same benefits and conditions of services as were applicable to them prior to the closure of the industry?". Unfortunately for the petitioners, the Industrial Court does not appear to have noticed a binding decision of a Division Bench of this Court and took the view that the workmen, who are re-employed under such circumstances were entitled to the benefits and conditions of service prescribed under the Settlement dated May 27, 1979 and, therefore, the petitioners had engaged in an unfair labour practice by denying the said benefits and conditions of service. The Industrial Court, therefore, declared that there was an unfair labour practice and directed appropriate relief to the workmen. Hence, this petition.

3. The question of law, which has been considered by the Industrial Court, was never *res Integra*, in as much as it has been settled by a Division Bench of this Court in *Indian Hume Pipe Co., Ltd, v. Bhimrao Baliram* reported in 1965 II LLJ 402, in *Indian Hume Pipe's* case, the Division Bench of this Court disagreed with the view taken by a Division Bench of the Andhra Pradesh High Court in *Indian Hume Pipe Co., Ltd. v. Labour Court, Andhra Pradesh* 1963 I LLJ 770, holding that the expression "re-employment used in Section 25H of the Industrial Disputes Act, implies employment on the same terms and conditions of service. The Division Bench of our High Court was of the view that the only obligation which could be spelt out u/s 25H of the Industrial Disputes Act, was that the employer had to give an opportunity to the retrenched workmen, in the

prescribed manner of offering themselves for reemployment and such of the workmen who offered themselves for re-employment had to be reemployed, barring exceptional and valid reasons. The Division Bench held that, upon restarting of an Industry, the employer must first offer the jobs to the erstwhile retrenched workmen before he could engage any other persons. Observed our Division Bench in Bhimrao's case p. 404:

"Section 25H only gives a right to a worker to have preference in the matter of re-employment, but we do not find anything in the section or any other provision in the Act which also gives him a right to secure employment on his previous terms and conditions of service."

The Division Bench further held that, after having been retrenched and paid off the statutory compensation payable to him, the only right available to the workman by reason of his having been previously employed is the one conferred on him by Section 25H, which was of a preference in securing re-employment. Our High Court considered and emphatically rejected the argument that, upon re-employment, the re-employed workmen should have the same conditions of service as enjoyed by them earlier. The Division Bench concluded the judgment by expressing its disagreement with the Andhra Pradesh High Court's view by saying (p.775):

"with respect, we find ourselves unable to agree that the word "re-employment" necessarily connotes employment on the same terms as before. All that Section 25H provides for is preference to retrenched workmen in securing employment, but it does not say that the re-employment should be on the former terms and conditions of service. If that had been the intention of the Legislature, it would have made a specific provision to that effect."

4. I am of the view that, in the face of the clear binding authority of the Division Bench of our High Court in *Indian Hume Pipe v. Bhimrao Baliram* (supra), the learned judge of the Industrial Court misdirected himself in assuming a position in law to the contrary. The impugned order is, therefore, clearly erroneous and liable to be interfered with.

5. Writ petition is, therefore, allowed. Rule made absolute. The impugned order of the Industrial Court dated April 2, 1987, made in Complaint (ULP) No. 1055 of 1985 is hereby quashed and set aside. Complaint (ULP) No. 1055 of 1985 is dismissed. However, in the circumstances of the case, there shall be no order as to costs.