

(2000) 08 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 197 of 1991

Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Maharashtra S.R.T. Kamgar Sanghatana

RESPONDENT

Date of Decision : 12-08-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2001) 2 ALLMR 207 : (2001) 3 BomCR 825 : (2001) 90 FLR 99 : (2002) 4 LLJ 278 : (2001) 2 MhLj 90

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Articles 226, 227 of the Constitution takes exception to the Judgment passed by the Industrial Court, Nagpur, dated October 4, 1990, in Complaint (ULPN) No. 228 of 1984.

2. Briefly stated, the respondent/union filed the Complaint before the Industrial Court, complaining of unfair labour practice by the petitioners in terms of Section 28 read with Item 9 of Schedule - IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act). The main grievance in the said Complaint was that with the nationalisation of passenger road transport service, which commenced in the year 1956 in the State of Maharashtra, the services of the ex-employees of private operators were gradually taken over in stages by the petitioners. For this purpose, a settlement was arrived at between the petitioners and the employees of ex-operators and in one such settlement dated April 25, 1956, there has been unequivocal agreement between the parties to implement the assurance given for absorption of ex-employees of private operators. The said Settlement reads thus:

""Settlement":- Drivers, conductors and other employees from the old operators who are absorbed in S.T. will commence their service and will earn their increment in addition to the advanced increments, if any, as mentioned above at the end of first year of their service. Assurance given to absorb bona fide employees of old operators will be implemented."

It was contended on behalf of the respondent/complainant that, according to the Settlement, the petitioner was under an obligation to absorb all the ex-employees of private operators, those who were found to be bona fide employees of the private operators.

3. The petitioners resisted the said Complaint and relied on two resolutions passed by the Corporation dated March 25, 1974 and September 11, 1974. The purport of the said two resolutions is that in addition to the requirement of ex-employees being bona fide employees of the private operators, additional condition was imposed viz., such employee should be found to be suitable. The Resolutions also mention that enquiry as to whether the ex-employee is bona fide or not, is to be undertaken by the Government Labour Officer.

4. There is no doubt that so far as 11 employees mentioned in Annexure-A of the Complaint, have been held to be bona fide ex-employees of Private operators. This fact has been recorded by the Industrial Court in para 10 of its Judgment, which finding has remained unchallenged.

5. The Industrial Court, after considering the rival stands took the view that insofar as one employee, viz, Jagdish Antaram Goswami was concerned, there was no material on record to show that he was a bona fide employee and the relief was refused to the said employee. However, with regard to the remaining 11 employees, the Industrial Court proceeded on the admission that the other ex-employees mentioned in Annexure-A to the Complaint, were bona fide ex-employees of private operators. In this context, the matter was examined further and the Industrial Court held that it was not open to the Corporation to modify the terms of settlement, which were arrived at between the parties. The Industrial Court referred to the decision reported in 1984 L.I.C. 1721 and held that the resolutions which imposed the additional condition of suitability, having been passed unilaterally, the same could not be used against the employees. In the circumstances, the Industrial Court accepted the stand taken by the respondent and ordered that the ex-employees, who were found to be bona fide employees of private operators, were entitled for the relief of absorption in service. With regard to the back wages, however, the Industrial Court, rejected the claim put-forth by the respondent, There is no challenge to the said finding recorded by the Industrial Court. The Industrial Court further observed that the absorption of the employees shall be with effect from the date of Complaint, i.e. July 19, 1984, in the post, in which they were formerly working and further directed the petitioners to work out the benefits to the said employees, which they were entitled to under the law from that date.

6. The aforesaid order is the subject matter of challenge in the present writ petition. The learned counsel for the petitioner mainly argued three points. It is contended that on the principle of "No work No pay" the Industrial Court was in error in directing that the employees should be given benefits from the date of filing of the Complaint, i.e. July 19, 1984. According to the petitioner, the employees were absorbed in service in the year 1991, after giving effect to the impugned orders and the employees were entitled for relief from the date on which they were actually absorbed. In support of this, reliance has been placed on the selfsame Settlement between the parties, which provides that employees who are absorbed will commence their service and will earn their increments from the date of such absorption. The second point urged on behalf of the petitioner is that, having regard to the Resolution dated March 25, 1974, the petitioner was entitled to insist for the additional condition of suitability of the ex-employees before absorbing them in service. The third contention raised on behalf of the petitioner is that the Corporation was entitled to pass resolution and impose additional condition overriding the settlement. In this context, reliance has been placed on the decision reported in 1998 (1) CLR 51.

7. The learned counsel for the respondent has opposed the aforesaid submissions and has placed strong reliance on the reasoning adopted by the Industrial Court. According to the respondent, there is no infirmity in the decision arrived at by the Industrial Court, which requires interference in writ jurisdiction. According to him, the decision of the Industrial Court is based on sound principles and well settled legal position.

8. Having considered the rival submissions, I would proceed to deal with the first point raised by the petitioner. The submission that principle of "No work No pay" be made applicable, in which case the employees although being absorbed in service would not be entitled for benefit w. e.f. July 19, 1984, clearly overlooks the fact that the relief which has been granted by the Industrial Court in favour of the employees is restricted from the date on which the Complaint was presented before the Court. Merely because the matter remained pending in Court, would not denude the employees to get the benefit on the basis of notional declaration granted by the Industrial Court that the employees have been absorbed in service from the date of presentation of the Complaint. Besides this, what is relevant to point out is that the Industrial Court has not awarded any back wages, but has only ordered that the employees would be entitled for other benefits w.e.f. July 19, 1984, which would be in the nature of continuity of service and retiral benefits, if any. In other words, the benefits, which are otherwise available to the employees, as if they were in service w.e.f. 1984, would be made available to them without there being order of back wages. In my view the Industrial Court was justified in issuing such direction, which would only give notional benefits to the employees, as if they have been absorbed in service w.e.f. July 19, 1984. No serious exception can be taken to this approach of the Industrial Court. In the circumstances, this argument advanced by the learned counsel for the petitioner deserves to be stated to be rejected.

9. The second point, urged on behalf of the petitioner that the petitioner was entitled to insist that the employees to be absorbed should be suitable in view of the resolution dated March 25, 1974. This argument clearly overlooks the well settled position, as this aspect has been directly answered in the decision of this Court, reported in 1984 L.I.C. 1721, to the effect that the resolution having been issued unilaterally by the Corporation, it could not change the terms of settlement arrived at between the parties as back as in the year 1956. Accordingly, there is no substance in the argument that the resolution dated March 25, 1974 could be pressed into service by the petitioner to make absorption subject to the condition that the employees are found to be suitable. Since the settlement between the parties does not provide for this condition, it was not open for the petitioner to impose this additional condition by way of resolution. The decision relied upon by the petitioner, reported in 1998 (1) CLR 51 has no application to the facts of the present case, inasmuch as in the said case the resolution was passed by the Joint Committee, which was constituted for settlement between the petitioner and union representing the employees. There is obvious difference between the resolution issued by the Joint Committee and unilateral resolution issued by the petitioner/Corporation. In my view, the principles enunciated in the said decision will have no application to the facts in hand. In the circumstances, even the second point raised on behalf of the petitioner deserves to be stated to be rejected.

10. Insofar as the third and last contention urged on behalf of the petitioner that the petitioner was entitled to issue resolution overriding the settlement arrived at between the parties is concerned, as aforesaid, even this issue is no more res integra as it is covered by the decision of this Court, reported in 1984 Lab. IC 1721 (supra). In the circumstances, even this contention has no substance and deserves to be rejected.

11. For the aforesaid reasons, the Writ Petition is dismissed with costs. Rule stands discharged.