

(2014) 04 BOM CK 0246
In the Bombay High Court
Case No : W.P. No. 6502 of 2013

Dombivli Nagari Sahakar Bank Ltd.

APPELLANT

Vs

Lahu Keshav Rewale

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1), 30(2)

Citation : (2014) 143 FLR 501 : (2014) 3 LLJ 607

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : K.S. Bapat, M.V. Joglekar and Rahul Oak, Advocate for the Appellant; A.S. Peerzada, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—By this petition the Petitioner challenges the order passed by the Industrial Court Thane, rejecting the Revision application filed by the Petitioners against the order passed by Labour Court Ahmednagar. The Labour Court has directed the Petitioners to allow the Respondent to resume his duties on his previous posts temporarily during the pendency of the complaint till the disposal of the main complaint on merits. The Respondent was employed by the Petitioner Bank as a peon on 18 September 1992. On 30 March 2008, he was promoted to the post of junior clerk. The Respondent is the secretary of the employees' union of the Petitioners. The Petitioners have in its employment about 532 employees. The union of which the Respondent is General Secretary is the only Union in the Petitioners-bank. It is the case of the Respondent, that the Respondent was initially moved from Mumbai to Jalgaon to prevent his activities as a union member. It was his case that various demands of the workmen are pending with the Petitioners and to intimidate the Union, the Petitioners carried out certain transfers. According to the Respondent, he tried to unionise grievances against the Petitioners management and therefore the Petitioners wanted to ensure that his union activities come to an end. A show-cause notice

came to be issued to the Respondent on 13 November 2011. The show cause notice stated that, on 23 September 2011, the Respondent had taken leading role in campaigning of distribution of forms and letters in respect of Union deductions, distributed printed forms to hold a meeting of staff members and these activities were carried out while on duty and in the bank premises without permission of the superiors. This according to the Petitioners amounted to misconduct. It was also alleged in the show-cause notice that the Respondent addressed a representation to the Minister for Co-operation and this was also considered as one of the misconducts.

2. On 28 November 2011, the Respondent gave a reply to the show-cause notice and submitted that the timings of the main branch are from 8.50 a.m. to 12.50 p.m. in the morning and 4.45 p.m. to 8.45 p.m. in the evening and in between these hours that the Respondent he did his outdoor activities. It was also submitted by the Respondent that the representation was made to the Minister for Co-operation in view of the oppressive conduct of the Petitioners-bank. It was stated in the reply that the Respondent had acted in the best interest of the members of the Union and he had no intention of bringing the bank in disrepute. Immediately thereafter by order dated 27 December 2011, an order of dismissal was issued against the Respondent. It was stated therein that since the Respondent had admitted having visited the branches and having addressed letters to the Minister for Cooperation, no useful purpose would be served by holding an inquiry. The Petitioners took a categorical stand that there was no need for an enquiry.

3. The Respondent filed a complaint (ULP) No. 3 of 2012 in the Labour Court, Jalgaon under Schedule IV Item 1 (a), (b), (d), (f), (g) and Section 28(1) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In this complaint the Respondent took out an application u/s 30(2) for interim relief. The Petitioners filed reply to the application for interim relief.

4. The Labour Court considered the rival contentions and framed issues whether Respondent had made out a prima facie case of Unfair Labour Practices and in whose favour the balance of convenience would lie. The Labour court took note of the fact that the Respondent was a Secretary of the Union and inspite of specific Rule-34 of the Rules framed by the Petitioners, the Respondent was dismissed from services without holding any inquiry. The argument was made on behalf of the Respondent that having once taken a stand that inquiry is not necessary, it is not permissible for the Petitioners to lead evidence. It was also contended by the Respondent that since there is a prima facie case made out he is entitled to interim relief. The application for interim relief was opposed by the Petitioners relying on various decisions of this Court and the Apex Court which would be referred subsequently, to contend that it is open to the Petitioners to lead evidence and once that is permissible the right of an employer to remove an undesirable employee from services cannot be taken away from the employer.

5. The Labour Court however, did not accept these contentions and granted interim relief by order dated 25 April 2012. In the meanwhile The Petitioners filed a Revision Application before the Industrial Court Jalgaon, which was transferred to Industrial Court Thane. The Industrial Court by dismissing the revision by the impugned order, confirmed the order passed by the Labour court. Before the Industrial Court it was argued that as per the decision of the learned Single Judge of this Court in the case of Mumbai Cricket Association Vs. Pramod G. Shinde, and the Division bench in the case of United Ink and Varnish Co. Ltd. v. Chandrashekhar Kuvre and Others 2007 (112) FLR 1009 : LNIND 2006 Bom 1372, it was not permissible for the Industrial Court to grant interim relief since the Petitioners would be at liberty to prove the misconduct by leading evidence even though no inquiry was conducted. The reliance was also placed on the decision of the Apex Court in the case of Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory,

6. The learned counsel for the Petitioners submitted that both the Courts below have erred in granting interim relief in favour of the Respondent in spite of clear misconduct by the Respondent. He submitted that the show-cause notice, contents of which have been virtually admitted, would show that the Respondent has committed misconduct. He relied upon the decision of the learned Single Judge in the case of Mumbai Cricket Association v. Pramod G. Shinde (supra) to contend that even if there is no inquiry held or if the inquiry is defective, upon decision of the Court, the date of termination will be back to the termination effected by the employer. He submitted that the termination order is in force and there is no distinction as far as the right of the employer to lead evidence, whether the inquiry is effective or no inquiry has been held. Placing reliance on the decision of Division bench in the case of United Ink and Varnish Co. Ltd. v. Chandrashekhar Kuvre and Others (supra) it was submitted that when the industrial court had followed the course of action such as the one taken in the present case of directing employment pending the complaint, the Division bench had disapproved this course of action and had set aside the order. The learned counsel submitted that the right of the employer to prove misconduct and case of dismissal of services, even though there is no inquiry cannot be taken away by issuing such directions. The learned counsel submitted that it is settled law that an employer can lead evidence even though no inquiry is held. He further submitted that such direction would amount to allowing the complaint at interim stage.

7. The learned counsel for the Respondent submitted that there is no dispute about the proposition of law stated by the learned counsel for the Petitioners however grant of interim relief would depend on facts of each case. He submitted that cases cited were of misappropriation and such serious misconduct. Learned counsel submitted that for a minor allegation a drastic punishment of dismissal was awarded. He submitted that the Respondent is targeted because he is a Union leader and is dismissed deliberately without an inquiry. It was submitted that the Court has taken into consideration the strong prima facie case and has

rightly granted interim relief.

8. u/s 30(2) of the MRTU & PULP Act, the Industrial Court and the Labour Court have power to grant interim orders including directions to the person to withdraw temporarily from the unfair labour practice which is complained of in the proceedings. Thus, if the Industrial Court finds that there is a strong prima facie case regarding an Unfair labour practice, it has power to issue interim relief to withdraw the unfair labour practice. Neither the decision of the Division bench in the case of *United Ink and Varnish Co. Ltd. v. Chandrashekhhar Kuvre and Others* (supra) nor the decision of the learned Single Judge in the case of *Mumbai Cricket Association v. Pramod G. Shinde* (supra) has laid down any absolute proposition of law that no interim relief can be granted moment the employer seeks to justify its conduct. If the industrial court can grant interim relief even where there has been an properly held inquiry, to hold that if the employer holds no inquiry or a faulty inquiry, the industrial court cannot grant interim relief, even if facts so warrants, will be an absurdity.. There no dispute about the proposition that as far as right to lead evidence is concerned there is no distinction between no inquiry and defective inquiry. Ultimately it will depend upon whether a strong prima facie case and balance of convenience, is made out.

9. It is no doubt true that for grant of relief such as one granted in the present case high degree of case must be established and such relief is not to be granted casually. The Labour Court or Industrial Court must be convinced that the prima facie case is of such nature that it is equitable to grant such relief. The complaint has been filed under Schedule IV Item (d) (f) and (g) of the MRTU & PULP Act. These items read as under:

"(d) for patently false reasons;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

10. Perusal of the show-cause notice would show that what was alleged against the Respondent was that he had distributed certain forms or letters in respect of Union deductions and had advised the staff members to fill them up and submit the same to H.R. department. It was also alleged that the Respondent had held a meeting of staff members at Nandivli branch and has addressed certain letters to the Minister for Co-operation. It cannot be forgotten that the Respondent is a Union Secretary. He has been in service for last 22 years. It is his allegation that the Petitioners are trying to disrupt the Union activities by transferring certain employees. The Respondent had a right to generate opinion as part of his union activities. The Respondent gave an reply to the show-cause notice and straightaway he was dismissed from service by the impugned order. Prima facie the intention of the Petitioners appears to get rid of Union representative without

an enquiry on a charge, which hardly appears to be serious.

11. In such circumstances, the Labour Court and Industrial Court have exercised their discretion and have come to a concurrent finding that a strong prima facie case exists for grant of interim relief. As regards balance of convenience is concerned there is no charge that the respondent has committed misappropriation or that mere presence of the respondent is detrimental. Balance of convenience is clearly in favor of the Respondent

12. The Petitioners have approached this Court invoking the equitable jurisdiction. If prima facie, factual position on record show that without holding an inquiry a Secretary of the Union who has been serving for 22 years has been sought to be dismissed with complete disregard to the rules, which mandate holding of an inquiry on charges which are not very serious, there is no reason to interfere with the concurrent finding, the Petition is accordingly rejected. It is clarified that all observations made above are prima facie and the complaint will be decided on its own merits.