

(2011) 07 BOM CK 0067

In the Bombay High Court

Case No : L. P. A. No. 174 of 2011 in W. P. No. 9475 of 2010 with Civil Application No. 253 of 2011

Dr. Beck and Company

APPELLANT

Vs

Sushil Kumar Madhav Bhide

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 59

Citation : (2012) 2 BomCR 109 : (2011) 131 FLR 202 : (2012) 1 LLJ 537 : (2011) 5 MhLj 354

Hon'ble Judges : P.B. Majmudar, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : K.S. Bapat instructed by M/s. Desai and Desai Associates, for the Appellant; Nitin Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—This Letters Patent Appeal came up for admission on 19th July, 2011 when it was decided to hear the matter finally today. Hence appeal admitted. Learned counsel appearing for the sole respondent appears and waives service of notice of admission. With the consent of the learned counsel appearing for the parties, matter is taken up for hearing and final disposal forthwith.

2. This Letters Patent Appeal is directed against the order of the learned single Judge dated 11th April, 2011 passed in Writ Petition No. 9475 of 2010 by which the learned single Judge allowed the writ petition filed by the respondent-workman and set aside the finding on Issue No. 4 framed by the Labour Court i.e. whether the misconduct is proved by acceptable evidence in enquiry.

3. The respondent was an employee of the appellant company. While he was in service, a departmental enquiry was conducted against him. At the time when the departmental enquiry was in force, the respondent filed a complaint before the 2nd Labour Court, Pune, being Complaint (ULP) No. 277 of 1995 u/s 28 read

with items 1 (a), (b),(c), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU & PULP Act"). The Labour Court framed various issues and by a judgment and order dated 15th July, 1996, dismissed the said complaint. While dismissing the said complaint, the Labour Court observed in the order that in case any punishment order is passed, the same may not be implemented for seven days from the date of the said order. As pointed out earlier, the respondent approached the Labour Court under the provisions of the MRTU & PULP Act. At that stage no final decision was taken in the inquiry proceedings. One of the points which was argued by the respondent in earlier proceedings was that the inquiry was not conducted in a fair and proper manner and that misconduct is not established on the basis of evidence in the enquiry. The aforesaid order of dismissal of the complaint was challenged by the respondent before the Industrial Court at Pune by way of revision application being Revision Application (ULP) No. 89 of 1996. The said revision was heard by the Industrial Court, Pune and the same was also dismissed. Being aggrieved by the said order of the revisional Court, the respondent preferred a writ petition being Writ Petition No. 3971 of 1998. The learned single Judge of this Court dismissed the said writ petition against which the respondent herein preferred an appeal being Letters Patent Appeal St. No. 40950 of 1998. In the interregnum, the appellant management already passed an order of dismissal against the present respondent. The Division Bench of this Court, in view of the subsequent development, vide its order dated 11th April, 2005 condoned the delay in filing the appeal and disposed of the said Appeal on the ground that the Appeal has become infructuous in view of the subsequent event i.e. dismissal order passed against the respondent. The Division Bench, however, gave liberty to the respondent to challenge the said order. The Division Bench also observed in the said order by way of clarification that the impugned orders shall not come in the way of the appellant (respondent herein) in challenging dismissal order in appropriate proceedings in accordance with law.

4. As stated earlier, the proceedings upto the Letters Patent Appeal were initiated when no final decision was taken in the departmental inquiry but the challenge was against the apprehended action of the management. In view of the same, the Division Bench came to the conclusion that since the dismissal order is passed by the management against the respondent, the proceedings initiated by the present respondent have become infructuous and that the respondent was required to take out fresh proceedings challenging the dismissal order.

5. The respondent-workman thereafter raised an industrial dispute under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"). The Appropriate Government referred the dispute to the First Labour Court, Pune, under the provisions of the I.D. Act for adjudication. The said reference is numbered as Reference (IDA) No. 433 of 2005. The said reference is pending before the First Labour Court, Pune. The first Labour Court, Pune, framed various issues at Exh. 16. The said issues framed by the First Labour

Court read thus :

1. Whether the decision of Second Labour Court, Pune, dt. 15-7-1996 in Complaint (ULP) No. 227/95 operates as res judicata? If yes to what extent?
2. Whether the reliefs claimed in this reference are barred in view of provisions of section 59 of the MRTU & PULP Act ? If yes, to what extent?
3. Whether the Second Party prove that Company Secretary Shri A. N. Navre has no authority to issue termination letter?
4. Whether the misconduct is proved by acceptable evidence in inquiry?
5. Whether the punishment imposed is shockingly disproportionate to the misconduct proved?
6. Whether the second party prove that his services are terminated illegally on 1-8-1996 on enquiry?
7. Whether the complainant is entitled to the relief of reinstatement as claimed?
8. Whether complainant is entitled to backwages as claimed?
9. What order.

6. On behalf of the appellant, an application was submitted to the Court, that Issue Nos. 1 and 2 may be tried as preliminary issues. The prayer was made by way of an application at Exh. 17. In the application it is averred that survival of Issue Nos. 4 and 5 depends upon the findings on Issue Nos. 1 and 2. The First Labour Court vide its order dated 3rd November, 2009 decided that Issue Nos. 1 and 2 be tried and decided as preliminary issues. The said decision of the Labour Court was not challenged by the respondent at that stage and instead the respondent submitted his arguments on merits on the aforesaid preliminary issues. The Labour Court, after hearing both the sides, ultimately came to the conclusion that the decision of the Second Labour Court, Pune dated 15th July, 1996 passed in Complaint (ULP) No. 277 of 1995 operates as res judicata in connection with Issue No. 4 meaning thereby that while deciding Issue Nos. 1 and 2, the finding is given that Issue No. 4 has become res judicata and the same cannot be reagitated again in the proceedings before the Labour Court. Accordingly the First Labour Court has held that Issue No. 4 has become res judicata and, therefore, it cannot be reagitated again. The Labour Court declared Part-I Award on 31st July, 2010.

7. Against the said decision of the Labour Court dated 31st July, 2010, the respondent preferred a writ petition being Writ Petition No. 9475 of 2010. The learned single Judge by the impugned order dated 11th April, 2011 came to the conclusion that the Division Bench in earlier proceedings permitted the respondent to take out fresh proceedings in connection with the dismissal order and when the Division Bench observed that the previous orders shall not come in the way of the respondent herein, if such proceedings are taken, it cannot be

said that Issue No. 4 has become res judicata and accordingly the learned single Judge set aside Part-I Award passed by the Labour Court and directed the Labour Court, Pune to decide all issues afresh which are framed at Exh. 16 in the proceedings. It is the aforesaid order of the learned single Judge which is impugned at the instance of the appellant-company in this appeal.

8. Mr. Bapat, learned counsel appearing for the appellant, submitted that in the earlier proceedings this very issue, with which we are concerned, was framed by the competent court and after recording the evidence on that issue, a positive finding is given to the effect that the misconduct is proved on the basis of evidence led before the Inquiry Officer. It is submitted that when in earlier proceedings a specific issue had already been raised at the instance of the respondent herein and when the Court has given finding on this issue on its own merits and that finding has not been upset neither in the writ petition before the learned single Judge nor before the Division Bench, the said issue now again cannot be tried as it has become res judicata. It is submitted that the learned single Judge gravely erred in relying upon passing observations made by the Court while deciding the Letters Patent Appeal filed by the present respondent. It is submitted by Mr. Bapat that the learned single Judge, therefore, committed an error in interfering with the order of the Labour Court and setting aside the finding given by the Labour Court on Issue No. 4 regarding res judicata. In the aforesaid premises, it is submitted that the order of the learned single Judge is required to be set aside and the order of the Labour Court may be upheld.

9. Mr. Kulkarni, learned counsel appearing for the respondent in his turn submitted that when the Division Bench in the earlier proceedings granted liberty to the appellant to take out fresh proceedings, the learned single Judge has rightly held that principles of res judicata is not applicable. It is submitted that in view of the liberty granted by the Division Bench in the earlier proceedings, the question of res judicata cannot be made applicable. In order to substantiate his say, the learned counsel for the respondent has relied upon the decision of the Supreme Court in the case of K. Sivaramaiah v. Rukmani Ammal, AIR 2004 SC 508. The learned counsel for the respondent has also relied upon the judgment of the Division Bench of this Court on which learned single Judge has also relied upon in the case of Hindustan Petroleum Corporation Ltd. Vs. Yeshwant Redkar and Another, .

10. We have heard the learned counsel appearing for the parties at length. We have also gone through the various orders passed by this Court as well as the Labour Court.

11. It is not in dispute that the respondent, at the time when no final order was passed in the inquiry proceedings, challenged the inquiry proceedings on various grounds by filing a complaint under the provisions of the MRTU & PULP Act, 1971. It is a well settled proposition of law that even against an anticipated action of the management, complaint under the provisions of the MRTU & PULP Act, 1971 is maintainable. The said complaint was, therefore, decided on its own

merits. In the earlier proceedings Issue No. 3 was whether the misconduct is established on the basis of the evidence in the enquiry and/or before the Court. The Labour Court, after recording the evidence and after considering the arguments on merits, gave a finding that the misconduct is established on the basis of the evidence in the inquiry. The said complaint was ultimately dismissed. As pointed out earlier revision preferred against the said order was dismissed and the writ petition was also dismissed meaning thereby that the said finding is also confirmed from time to time. In the meanwhile, dismissal order was passed against the respondent. The Letters Patent Appeal which was filed by respondent against the earlier order, therefore, had clearly become infructuous because of the subsequent dismissal order passed against the respondent. The Division Bench accordingly granted permission to the respondent to challenge the ultimate dismissal order. The Division Bench passed the following order.

By separate order passed by us today, we condoned the delay in filing the appeal.

2. We heard the learned counsel for the parties.

3. During the course of motion hearing, the learned counsel for respondent No. 1 employer submitted that the appellant has, been dismissed from service subsequent to the decision of the learned single Judge in the writ petition. This fact is not disputed by the learned counsel for the appellant. In view of the fact that the appellant has been dismissed from service, he had to pursue the appropriate proceedings in challenging the said dismissal. In this view of the matter, the complaint filed by the appellant apprehending his dismissal does not survive. We clarify that the impugned orders shall not come in the way of the appellant in challenging his dismissal from service in appropriate proceedings in accordance with law.

4. With the aforesaid observation, Letters Patent Appeal is dismissed.

The Division Bench, however, has clearly observed by way of clarification that the impugned orders shall not come in the way of the respondent in challenging his dismissal from service in appropriate proceedings in accordance with law. In view of the above, the subsequent proceedings are required to be decided in accordance with law and liberty was given to the respondent to challenge the final order of dismissal in accordance with law. The Division Bench has not set aside the finding given in the earlier proceedings by the competent Court under the MRTU & PULP Act.

12. In the present proceedings, the Labour Court has framed Issue No. 4 which reads thus:

Whether the misconduct is proved by acceptable evidence in enquiry?" Issue No. 3 framed in the earlier proceedings and the aforesaid Issue No. 4 as such is similar in nature. This fact is not disputed even by the learned counsel for the respondent herein. Considering the said aspect, in our view, when a Competent Court; has already decided the said issue on merits, the same cannot be agitated

again and again in subsequent proceedings, especially when the finding on the said issue has not been set aside in the earlier proceedings by the Court. In this connection, reference is required to be made to the provisions of section 59 of the MRTU & PULP Act, 1971, which provides 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 proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.

13. The respondent initially approached the Labour Court under the MRTU & PULP Act, 1971. After his dismissal, he has chosen another forum i.e. the forum available under the I.D. Act. However, it is not in dispute that Issue No. 4 framed by the Labour Court in the present proceedings is in pari materia to the one which was framed by the Labour Court under the MRTU & PULP Act, 1971, i.e. Issue No. 3. In our view, since the finding is already recorded in the earlier proceedings on the said issue and when an order of earlier proceedings was placed before the Labour Court in the present proceedings and attention of the respondent was also invited on this aspect and when the judgment is already produced before the Labour Court in the present proceedings and after going through the judgment and finding the Labour Court has given finding about res judicata, the learned single Judge ought not to have disturbed the said finding only on the ground that in earlier proceedings, the Division Bench has granted liberty to the respondent to take out fresh proceedings against his dismissal order. As stated above, the Division Bench earlier gave liberty to the respondent to challenge the dismissal order before the appropriate forum in accordance with law which may include even the question of res judicata on a particular issue. To reiterate, the Division Bench has not set aside the finding given by the Labour Court in earlier proceedings while deciding the Letters Patent Appeal and the same was disposed of only on the ground that the same has become infructuous. Since the finding given by the Labour Court in the earlier proceedings under the MRTU & PULP Act on Issue No. 4 has attained finality, the same issue cannot be allowed to be agitated again simply because subsequently dismissal order is passed. The respondent can challenge the dismissal order on all available points except on the point of Issue No. 4 which has been framed by the Labour Court and has been held to be res judicata. It is always open to the respondent to argue that the punishment is disproportionate or on any other available point on merits except on the aspect about Issue No. 4 as stated above. Since Issue No. 4 has already attained finality in the earlier proceedings and when competent Court after recording evidence given finding on that issue, the Labour Court except on that issue, is free to decide all other issues framed by it in the present reference.

14. So far as the decision of the Supreme Court in the case of K. Sivaramaiah (supra) is concerned, in the aforesaid case permission was granted to the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action. In view of the said factual aspect, the Supreme Court has held that if the fresh suit is filed after getting permission in the earlier suit and when permission is granted to withdraw the suit with liberty to file fresh suit on the same cause of action, the fresh suit cannot be barred by res judicata. It is not in dispute that in the instant case, the respondent herein had not taken permission from the Division Bench to allow him to withdraw the original complaint and to file a fresh complaint on all available points. In such an eventuality, perhaps in the fresh complaint, all issues are required to be decided on its own merits.

15. In the case of Hindustan Petroleum Corporation (supra), the petition was filed by an employee challenging the dismissal order passed by the Disciplinary Authority without challenging the Appellate Order. The writ petition was not entertained by the Court on the ground that the original order of dismissal had merged with the appellate order. The first respondent therein carried the matter to the Apex Court and the SLP was allowed to be withdrawn. Subsequently, the writ petition was filed in which challenge to the Appellate court was also made. Under the circumstances, the Division Bench of this Court has held that second petition was maintainable especially when the appellate order was not under challenge and court had not examined the matter on merits but the petition was dismissed only on the ground that the appellate order was not challenged in the writ petition. Insofar as the present case is concerned, it is not in dispute that in the earlier proceedings, the Labour Court decided the issue on merits, after hearing both sides, and that the said issue not having been upset at any point of time, that issue again cannot be tried in subsequent proceedings before any other forum. Considering the said aspect, in our view, the ratio laid down by this Court in the case of Hindustan Petroleum Corporation (supra) is not applicable so far as the present matter is concerned.

16. The learned single Judge has allowed the writ petition preferred by the respondent on the basis of the observations made by the Division Bench in Letters Patent Appeal. We have dealt with the said aspect earlier. However, at the cost of repetition, we may also reiterate that the Division Bench has permitted the respondent to take out fresh proceedings challenging the dismissal order in accordance with law. The clarification made by the Division Bench that the orders shall not come in the way of the respondent in challenging his dismissal from service in appropriate proceedings in accordance with law would only mean that even if fresh proceedings are adopted by the respondent, the same should not be dismissed solely on the ground that the complaint filed by the respondent is already dismissed as at that time no final order of dismissal was passed. The Division Bench judgment cannot be interpreted in such a manner that even the issues which are already concluded, the said issues can also be said to have been revived in subsequent proceedings. The fresh proceedings taken out by the respondent after his dismissal are required to be decided on its own merits and

in accordance with law but the finding on a particular issue cannot be allowed to be reopened in the subsequent proceedings.

17. Considering the observations of the Division Bench, it is clear that the Labour Court cannot dismiss the complaint solely on the ground that such complaint is not maintainable in view of the dismissal of earlier complaint under the MRTU & PULP Act. In view of the above, in our view, the order of the learned single Judge is not sustainable. The order is accordingly set aside and that of the Labour Court i.e. Award-I dated 31st July, 2010 is upheld. The Labour Court, Pune, shall now proceed to adjudicate rest of the issues on its own merits and in accordance with law. The appeal is accordingly allowed. There shall be no order as to costs. In view of the above, no orders are required to be passed on the Civil Application and the same is accordingly disposed of.