

(1985) 04 BOM CK 0006

In the Bombay High Court

Case No : Letters Patent Appeal No. 124 of 1983

Executive Engineer, Electrical Division, Nagpur and another

APPELLANT

Vs

Prakash Devidas Kalasit

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1985) MhLj 338

Hon'ble Judges : H.D. Patel, J;G.A. Paunikar, J

Bench : Division Bench

Advocate : A.A. Desai, Asstt. Govt. Pleader, for the Appellant; M.B. Agasti, V.R. Thakur, R.B. Puranik on behalf of employer and S.D. Thakur on behalf of workmen, for intervenors, for the Respondent

Final Decision : Dismissed

Judgement

H.D. Patel, J.—The only question which falls for consideration in this Letters Patent Appeal is whether the retrenchment of an employee without following the procedure as prescribed by section 25F of the Industrial Disputes Act, 1947 amounts to unfair labour practice within the meaning of clause (f) of item 1 of schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act (hereinafter referred to as the Maharashtra Act No. 1 of 1972).

2. Admittedly the respondent was employed on daily wages as an Assistant Wireman in the Electrical Division of Public Works and Health Department at Nagpur. The services of the respondent came to be terminated with effect from 31.8.1981 in order to accommodate the candidates sponsored by the Employment Exchange as required by the Rules. Whereupon the respondent filed a complaint u/s 28 of Maharashtra Act No. 1 of 1972 invoking jurisdiction of the Labour Court under clauses (a), (b) and (f) of schedule IV challenging the termination of his services on the ground that though he had completed 240 days of service in a year, his services were terminated without payment of notice pay or pay in lieu of notice and without payment of retrenchment compensation

as required by section 25-F of the Industrial Disputes Act, 1947. It was also the case of the "respondent that he was removed from service while his juniors were retained by the appellants.

3. The Labour Court, Akola which decided the matter found that the respondent has completed 240 days in a year before the impugned action was taken. However he held that non compliance of section 25-F of the Industrial Disputes Act neither amounted to discharge in colourable exercise of the employer's right. The learned Labour Court hence rejected the complaint. The respondent, feeling aggrieved, filed a revision application before the Industrial Court, Nagpur Bench, Nagpur. The learned Member of the Industrial Court confirmed the finding that the respondent worked continuously for 240 days in a year preceding 31-8-1981 and further held that non compliance of the conditions precedent to retrenchment u/s 25-F of the Industrial Disputes Act amounts to a discharge in undue haste and thus squarely falls within the purview of clause (f) of item 1 of schedule IV of Maharashtra Act No. 1 of 1972. Based on these conclusions, the learned Member of the Industrial Court set aside the order of termination and directed the petitioners to reinstate the respondent with continuity of service and payment of full back wages. This order was assailed by the petitioners in Writ-Petition No. 102/83 before the Single Judge of this Court but without any success. The learned Single Judge concurred with the findings of the Industrial Court and dismissed the Writ-Petition vide his Judgment dated 7-4-1983. It is against this Judgment that the present Letters Patent Appeal is filed.

4. Since the point involved in this appeal raises important question of law, other counsel interested in the point were permitted to intervene on request being made by them.

5. The gist of the arguments submitted on behalf of both the parties is summarised below:

It was contended on behalf of the employer that clause (f) of item 1 of schedule IV of Maharashtra Act No. 1 of 1972 cannot be interpreted to include disputes relating to retrenchment which are exclusively covered by chapter V-A of the Industrial Disputes Act, 1947. According to them, the breach of section 25-F of the Industrial Disputes Act, 1947 would be an industrial dispute to be adjudicated by the Labour Court under reference made by appropriate Government. As long as the action taken by the employer is bonafide and in good faith, the breach of certain rules and regulations or even irregularity committed can in no circumstance amount to an unfair labour practice. In other words, it was the submission on behalf of the employers that each and every industrial dispute need not be unfair labour practice though the vice versa may be true. According to the facts which emerge from the case, it was submitted that no motive can be attributed or mens rea inferred so as to term the impugned action as unfair labour practice. For this purpose, reliance was placed on Kapurthala Central Co-operative Bank Limited, Kapurthala Vs. The Presiding Officer, Labour Court, Jalandhar and Others 1984 L & C 974, M/s Richardson &

Crudas (1972) Ltd. Vs. Mahadeo 1984 L & C 1227 and D. C. Tonge and another Vs. Divisional Secretary, Maharashtra State Transport Corporation, Nagpur 1984 L & C 1687. On behalf of workmen, the argument was repelled by contending that it is not necessary that motive or mens rea must be present in each and every case of unfair labour practice and, therefore, reliance placed on behalf of the employer on the cases (cited supra) are of no consequence. According to the Learned Counsel for the workmen, clause (0 of item 1 of schedule IV of Maharashtra Act No. 1 of 1972 is wide enough to cover the breach of rules including standing orders particularly when schedule IV prescribes general unfair labour practices on the part of employers.

6. It is true that the Courts below, including the learned Member of the Industrial Court, have found that the termination of services of the respondent was brought about to accommodate the candidates sponsored by employment exchange which was valid and proper. Therefore, it cannot be said that the respondent was" discharged by way of victimisation or discharged not in good faith but in colourable exercise of the employer's rights. No reliefs have been awarded to the respondent under clause (a) and (b) of item 1 of schedule IV of Maharashtra Act No. I of 1972. It is, thus, evident that there is no motive or mens rea in the mind of the appellants at the time the respondent was removed. But the question which arises in this appeal is whether motive or mens rea is an essential ingredient for holding the employer responsible for indulging in or have indulged in unfair labour practices. Our answer is in the negative. We shall first consider the citations on the point as cited supra.

7. In Kapurthala Central Co-operative Bank Limited's case (cited supra), the services of workmen were terminated on their rendering 230 days of service with nominal breaks, when the work of workmen was satisfactory and others had been recruited in their place.. It was held to be an instance of unfair labour practice. In this case, the employer never wanted the workmen to derive any benefit that may accrue to them on their completing 240 days of service and such an action has been held to be an unfair labour practice. No-doubt the employer was motivated in the peculiar circumstances of the case. This very case, however, never lays that in each and every case of unfair labour practice, the impugned action must have a nexus with motive or that the mens rea must be present.

8. Similarly in the case of Richardson & Crudas Limited (cited supra), while granting interim relief, it has been held that the transfer of an employee from Yard Attendant to a galvanising shop was a demotion and such a transfer would put the employee to harassment and humiliation. The complaint in this case was filed by the employee under the provisions of item 3,5,8 & 9 of schedule IV of Maharashtra Act No. 1 of 1972. Item 3 clearly envisages a malafide transfer of an employee from one place to another in the guise of following the Management's policy and hence the motive is implicit in the item itself. This case also cannot be of any help to the appellants.

9. The next case relied upon is that of B. C. Tonge (also cited supra) which deals with item 9 of schedule IV that is failure to implement award, settlement or agreement. According to the settlement in force, the promotions were to be given to employees after holding examination. The maximum number of employees to be called for examination was four times the number of vacancies and the names of the candidates allowed to appear at the examination had to be announced three months in advance. Both these conditions were breached and hence it was held that any promotion that would be made in pursuance to the tests which are held in breach of rules prescribed would be violation of the breach of settlement itself and accordingly upheld the decision of the Industrial Court which declared the action of the employer as unfair labour practice covered under item 9 of schedule IV of Maharashtra Act No. 1 of 1972. Now in this case, the question of motive does not arise. By holding examination not in conformity with the settlement, it was obvious that the employees would be prejudiced. It is in this background that the impugned action was struck down by this Court. Mere breach of settlement by itself is sufficient to declare that the employer is engaging in unfair labour practice. It is rather difficult for us. to conceive the arguments advanced on behalf of the employers that motive must precede or should be the basis for declaring an action to be an unfair labour practice.

10. A bare perusal of items in various schedules would show that it is not necessary in each and every case of unfair labour practice motive plays an important role. If the impugned action attracts any of the items, there can be no impediment for the Court to hold that such action or actions constitute an unfair labour practice. Each and every item is independent of each other and there may be instances when an action impugned could attract one or more items of the schedule. It is, therefore, difficult for us to accept that retrenchment of a worker without following the prescribed procedure would fall within the ambit of item 1 of schedule IV only when it is by way of victimisation or not in good faith but is in colourable exercise of the employer's right.

11. At this stage, it would be proper for us to consider the arguments advanced by Shri V. R. Thakur, Advocate appearing for the intervenor who has relied upon an unreported decision of this Court in *Mis Ferro Alloys Corporation Limited (Steel Division) Vs. Engineering Seva Mazdoor Sangh* and another decided by Padhye J. (as he then was) on 24th/25th February 1982. Our attention was drawn to paragraph 7 of the Judgment which reads as under:

"Discharge" and "dismissal" are words which have not been defined and dictionary meaning of these two words is such that they can include within their compass every termination of service. Under item no. 1 of schedule IV of Unfair Labour Practices Act, every discharge or dismissal of an employee or employees has to be an action taken by employer under any of the circumstances (a) to (g) mentioned therein. Discharge or dismissal has to be either by way of victimisation or not in good faith and in colourable exercise of employer's right or for patently false reasons or under any of the other circumstances mentioned.

Termination of service purporting to be on account of retrenchment by the employer even in contravention of the provisions of Chapter VA of the Industrial Disputes Act, 1947 by itself could certainly not become an unfair labour practice under item no. 1 of schedule IV of Unfair Labour Practices Act, unless it was alleged and proved by the employee that it was by way of victimisation or it was not in good faith but in colourable exercise of employer's right or it was for patently false reasons or under any other circumstances mentioned in item 1(a) to (g) of schedule IV of Unfair Labour Practices Act. The moment any of such circumstances are alleged and proved, the action of termination of services which purports to be a retrenchment does amount to a discharge or dismissal of an employee."

12. What is enunciated in this paragraph does not assist the employers at all. While dealing with a point whether the expression "dismissal" or "discharge" covers the case of retrenchment with reference to facts in that case, the Court has observed that termination of services purporting to be retrenchment by an employer even in contravention of the provisions of Chapter VA of the Industrial Disputes Act, 1947 by itself could not certainly become an unfair labour practice under item 1 of schedule IV of the Maharashtra Act No. 1 of 1972 unless it was alleged and proved that it was by way of victimisation or it was not in good faith but in colourable exercise of the employer's right or it was for patently false reasons or any of the circumstances mentioned in other clauses of schedule IV. It is, therefore even according to this Judgment, open for the workman to establish that his discharge is covered by any of the clauses as contained from (a) to (g) of item 1 of that schedule. In the circumstances of the case, it has been found that the respondent was hastily retrenched and it constitutes an unfair labour practice within the meaning of clause (f) of schedule IV of Maharashtra Act No. 1 of 1972. this finding is not contrary to the principles enunciated in the case cited *supra*.

13. It was next canvassed on behalf of the employers that the words "with undue haste" appearing in clause (f) of item 1 of schedule IV cannot be read disjunctively with the earlier words "in utter disregard of the principles of natural justice in conduct of domestic enquiry" of that clause. This rule of interpretation generally known as *eiusdem generis* rule was pressed into service by the employers. In other words, it was their submission that the words "with undue haste" will have to be ascertained by reference to the meaning of the words associated with them. We shall shortly point out that the argument is devoid of any substance.

14. The true scope of the rule of *eiusdem generis* is that the words of general nature following the specific and particular words should be constructed as limited to things which are of the same nature as those specified and not its reverse, with specific words which precede are controlled by general words which follow, as held in *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, and in *Thakur Amar Singhji Vs. State of Rajasthan*, . This rule reflects an attempt to

reconcile the incompatibility between the specific and general words, in view of other rules of interpretation, that all words in a statute are to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule of ejusdem generis only serves as an aid to discover the legislative intent; it is neither final nor conclusive and it attracts only when the specific words enumerated constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of the intent to give a proper meaning to the general words.

15. Now the words "with undue haste" which are followed by the words "in utter disregard of the principles of natural justice in the conduct of domestic enquiry" cannot be described as words of general nature so as to attract the rule of ejusdem generis. As a matter of fact, even the words preceding the words "with undue haste" are specific and not in general terms. No doubt the words "in utter disregard of the principles of natural justice in the conduct of domestic enquiry" are wide enough to cover several contingencies and will include even hasty conductance of the domestic enquiry. Legislature, therefore, never intended to repeat what was already covered by the first part of the clause. Unless a separate and distinct meaning is given to the words "with undue haste", these words would be rendered superfluous. Hence keeping in tune with the rules of interpretation, the only possible conclusion would be that clause (f) should be given its natural meaning that it also covers the cases of dismissal and discharge which will include retrenchment effected with undue haste. "Undue haste" can be inferred if the retrenchment is resorted to by the employer without complying with the conditions precedent of giving one month's notice or notice pay or without payment of retrenchment compensation. In the present case, the petitioners have admittedly retrenched the respondent without giving him one month's notice or even offering him one month's pay in lieu of notice and even without payment of retrenchment compensation on the basis of completed year of service which are conditions precedent to retrenchment. Such a hasty action on the part of the respondent is clearly covered by clause (f) of item 1 of schedule IV of Maharashtra Act No. 1 of 1972.

16. The arguments canvassed that such disputes are exclusively triable by forums prescribed under the Industrial Disputes Act upon reference being made by the appropriate Government does not carry any weight. Many of the disputes which are covered by the Industrial Disputes Act can be agitated even under the various items of different schedules of Maharashtra Act No. 1 of 1972. The jurisdictions under both the Acts do overlap but the choice is left with the employee or workman to select either of the remedies. Necessarily, the remedies provided under Maharashtra Act No. 1 of 1972 are much wider as the Courts are empowered even to prevent the indulgence by an employer into unfair labour practice by granting temporary reliefs and it is open for the workmen to resort to speedier remedy if such remedy is available to them.

17. We are limiting our decision to the facts as it appears in the present case. By

this decision, we do not wish to convey that every discharge in contravention of every rule or regulations or irregularity committed would be an unfair labour practice. Each case will have to be decided on the facts established in that case.

18. For the reasons stated above, the appeal is liable to be dismissed and is accordingly dismissed with costs.