
(2007) 10 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No's. 3609 and 3624 of 2004

Executive Engineer, Med. Proj. Dvn. and Another	APPELLANT
Vs	
Member, Industrial Court and Another	RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 81
Industrial Disputes Act, 1947 — Section 25F, 25G, 30(2)
Maharashtra Project Affected Persons Rehabilitation Act, 1986 — Section 6

Citation : (2008) 3 BomCR 798 : (2008) 1 MhLj 697

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : M.R. Joshi, for the Appellant; D.M. Kale, A.G.P. for Respondent No. 1 and S.S. Mujumdar, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—Rule returnable forthwith. Heard finally by consent of the parties.

By these two writ petitions, the petitioners have challenged common judgment and order dated 21-1-2002, passed by the Judge, Labour Court, Nagpur and confirmed in Revision on 14-1-2004 by the Industrial Court, Nagpur.

2. The respondent No.2 in both these writ petitions filed complaints i.e. Complaint (ULP) Nos. 30/1990 and 31/1990 in the Labour Court at Nagpur, alleging therein that they were appointed initially on 14-7-1985. They worked under the petitioners until they were orally terminated w.e.f. 27-10-1989. According to them no seniority list was published as required by Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 before the termination nor the procedure required by Section 25-F and 25-G of the Industrial Disputes Act, 1947 was followed and on the contrary juniors to them were retained in the employment. According to them the work was available even at the time of termination of their services and, therefore, the termination was made for

patently false reasons. They then averred that both of them were the projected affected persons and were appointed by the petitioners in that category of employment and as such their services could not have been terminated, they being in the said category. As per policy decision of the Government in lieu of the land taken from them, they are required to be provided employment on permanent basis. They then alleged that the officers of the petitioners realizing this position even issued a letter dated 17-3-1989 for continuing their services. The petitioners filed their reply to the application u/s 30(2) of the Act which was subsequently adopted as written statement. It was stated that the complainants were engaged on daily wages and were terminated w.e.f. 2-11-1989 due to completion of project work. They did not complete 240 days of continuous service. The petitioners, however, admitted that the complainants being project affected persons were entitled to employment on priority basis and in accordance with the provisions of Section 6(b) and (c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986. The petitioners then denied the claim of the complainants. The learned Labour Court after hearing the parties allowed the complaints and set aside the termination orders and directed their reinstatement with continuity of service with full back wages w.e.f. 27-10-1989. The petitioners challenged the said judgment of the Labour Court before the Industrial Court by filing revision but the same was partly allowed by the Industrial Court only insofar as the claim of award of back wages is concerned and reduced the same to 25%, but the order of reinstatement was maintained. Hence, these writ petitions.

3. Since Mr. J.T. Gilda, the Learned Counsel for the petitioners remained absent and this Court had refused adjournment under a separate order. This Court heard learned A.G.P. for respondent No. 1 and Learned Counsel for respondent No. 2 in both these writ petitions. This Court went through the entire record as well as the impugned orders. Now in view of the admitted position that the respondents complainants were projected affected persons whose lands were taken by the Government for project and that they were appointed in that category, having once appointed them, they could not have been terminated. Even assuming that the work was not available in a particular project that could not be a ground for terminating their services and on the contrary in that case they were required to be absorbed in some other project or establishment. Having lost their lands forever, the petitioners cannot be allowed to make a show of appointing them for three years and thereafter ask them to go away. That is not the spirit of the policy or the legislative intention in incorporating certain provisions in the Maharashtra Project Affected Persons Rehabilitation Act, 1986. If such a course is permitted, the very object of the said legislation would be defeated. The provisions of Section 6(a)(b) and (c) of the said Act read thus;

Section 6(a) to carry out such work for providing the necessary civic amenities in a new gaathan or the extension of an existing gaathan, as the case may be, established for rehabilitation of affected persons, as may be entrusted to it by the State Government or the Commissioner or the Collector;

(b) to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector;

(c) subject to any reservations validly made, to give highest priority in Class III and Class IV category of service on the project establishment to at least one person from the family of the affected person, if such person is eligible for such employment according to the recruitment rules for such posts.

4. In view of the above provisions and in view of the admitted fact that the complainants were appointed in that category, I do not think the petitioners could have at all endeavoured to terminate their services. Doing so would be violating the mandate of law. The reduction of back wages to 25% by the Industrial Court in this peculiar situation is in my opinion absolutely uncalled for, but I cannot modify the said revisional order as there is no petition from the respondent complainants before me. The lands of the respondents complainants were acquired by the Government for project and in terms of the said legislation they were also appointed but then they were suddenly asked to go. It is not the case of the petitioners that the lands which were acquired by the Government and which were their source of income were returned to them. The said legislation is a welfare legislation and is a sort of compassion being shown to the person whose land is taken by the Government for project depriving him of his source of livelihood. This compassion shown by the Government is in the form of legislation and the petitioners cannot be allowed to defeat the will of the legislature. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , the Constitution Bench said thus;

that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

In the case of *Indian Bank Vs. K. Usha and Another*, , the Hon''ble Supreme Court in paragraph No. 14 held thus ;

14. In this connection we must also have to keep in view the settled legal position that while construing any scheme in connection with the question of providing compassionate appointments to the heirs of deceased employee who was the breadwinner and whose exit had left his heirs in the lurch and in precarious and vulnerable economic position a construction which fructifies such a welfare measure has to be preferred as compared to another construction which stultifies such a benevolent welfare measure. In this connection learned Senior Counsel for the respondents was right when she relied upon a decision of this Court in the case of *Workmen v. Binny Ltd.* In that case a Bench of three learned Judges of this Court speaking through Khalid, J., had to consider the provisions of a Scheme of Amalgamation of companies concerned under the orders of the High Court. While interpreting the Scheme of Amalgamation which had an impact on the question of welfare of employees, the following

observations were made in para 9 at p. 330 of the Report:

...it is a trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak.

5. Further in the case of U.P. Drugs and Pharmaceuticals Company Limited Vs. Ramanuj Yadav and Others, , the Hon"ble Apex Court in paragraph No. 10 held thus;

10...The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court where this Court has observed that semantic luxuries are misplaced in the interpretation of "bread-and-butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

6. Now on the above aspects regarding employment as a project affected person, in the light of above provisions, there is a finding of fact recorded by the Labour Court in paragraph Nos. 32 and 34 of its judgment on the basis of certificates Exh.32 and 22 that the respondents were appointed as such. The said finding of is neither perverse nor incorrect. In my opinion, therefore, without going to the other aspects of the matter on this very ground the termination of the services of complainants was required to be declared as unfair labour practice being in undue haste and for patently false reasons.

7. Now coming to the very first ground taken in the petition and considering the judgment of the Supreme Court in the case of State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar, , it is seen that the petitioner did not at all take stand that it is not "industry" in the reply written statement and thus no dispute arose whether petitioner is an industry or not. Had the petitioners raised a serious dispute by elaborating the pleadings in defence as to how and why it is not industry, then in that case a positive assertion in the positive facts were requested to be placed before the Court by the complainant. Paragraph 5 of the said judgment opens with the sentence If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". That apart in that case a writ petition was directly filed by the employer in the High Court while the proceedings in the instant case were instituted before Labour Court where a full dressed trial took place. The petitioner did not even lead evidence to that effect nor any issue arose or was framed. Hence, the decision of the Supreme Court in the case of Parmar has no applicability.

8. It appears from the ground raised that the complainants did not complete 240 days of continuous service and that they did not discharge burden of proving that

they were employed for 240 days in one year of continuous service. Now that is a factual aspect which should not detain me since finding of fact has been recorded by the Courts below concurrently that they completed 240 days, but even then I feel it necessary to quote certain paragraphs from the impugned judgments.

The Labour Court has recorded finding of fact about it in paragraph Nos. 23 and 24 of its judgment, which read as under;

23. The record of the complaint (ULPA) No. 30/90 Exh.21 crystal clear indicate that the complainant had requested for issuance of direction to produce muster roll against the respondents for the period 1-7-1985 to 31-12-1985. In spite of this direction vide order below Exh.21 on 4-6-1996 the respondents have failed to produce the demanded documents. Had those documents been produced the position could have been crystal clear. Further, the respondents have not even cared to reply the application Exh.21. Therefore, an adverse inference can be safely drawn that it is because the complainants had served the respondents continuously for 240 days. The respondents did not produce muster roll for the period 1-7-1985 to 31-12-1985, because, it would go against their defence it been produced.

24. The witness of the respondents in cross-examination at Exh.37 submits that he had no authority to depose on behalf of the respondents. If it is this position, his evidence cannot be believed and relied upon. Similarly, he admits that he was not in Katol Sub-Division between July, 1985 to February, 1989. Therefore, he cannot tell whether the complainants were engaged in Katol sub-division between July, 85 to February, 89. Therefore, he cannot tell whether the complainants were engaged in Katol sub-division on this count also his evidence cannot be accepted.

The following extract from paragraph Nos. 7 and 8 of the order of the Industrial Court would also be relevant.

7...The respondents have filed the extract of 1989 only. No other earlier extract is filed. Therefore, the complainant allegation that they worked more than 240 days in the preceding year has to be accepted.

8. The employer has come with a case that the complainants voluntarily left the job. There is no cogent and clinching material on record to prove abandonment. If that is accepted that will be a ground for consideration of claim of back-wages. But that does not absolve the liability of the respondents to comply with the legal provisions.

9. The above findings of facts recorded by the Courts below are based on the evidence oral as well as documentary and preponderance of probabilities. There is no reason for me in the writ jurisdiction to re-examine the same over and again. These findings are, therefore, confirmed.

10. That I have already held that the respondent complainants being the project

affected persons could not have been deprived of employment with the petitioners in such an undue haste and without understanding the nature of their employment under a beneficial legislation. The fact however remains that they have been without employment from 1989 till this date and shockingly enough the Industrial Court has reduced the amount of their back wages to 25%.

11. This case does not fall in the categories mentioned by the Hon"ble Supreme Court in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , where the back wages could either be denied or reduced. On the contrary, this is a patent case where there is gross injustice and violation of a beneficial legislation by Government Department itself. Instead of accepting the judgment of the Courts below, the petitioners have been litigating and the respondents complainants have been deprived of their livelihood for over 18 years. I, therefore, find that this is a fit case for imposing compensatory costs on the petitioners so that the respondent complainants who have been deprived of 75% back wages without any justification can be slightly compensated. Hence, the following order.

12. Both these writ petitions are dismissed with costs of Rs. 20,000/- each to be paid to the respondents complainants within a period of six weeks from today.

13. The petitioners to reinstate the respondents complainants and to comply with the orders of the Courts below within a period of six weeks from today.

Rule accordingly.