

(1994) 06 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 64 of 1986

G. Pandurang Kotmire

APPELLANT

Vs

Kolhapur Janata Central Co-operative Consumers Stores Ltd.

RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (1995) 2 LLJ 507

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This petition under Article 227 of the Constitution of India impugns an order of the Industrial Court, Kolhapur, dated 4th November, 1985, made under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The respondent is a Consumers Co-operative Society carrying on its business at Kolhapur. The petitioner was employed as Mestry in the service of the Respondent in its Bakery Section with effect from 17th July, 1972. On the same day, another employee by name Shaikh was also employed as a Mestry in the service of the Respondent. On or about 1st April, 1974, the State Government formulated and implemented a scheme known as "Nutrition Scheme" under which it entered into a contract with the respondent-firm for supply of large quantity of bread in different towns and cities within Maharashtra. The contract awarded by the State Government to the respondent under the Nutrition Scheme naturally led to an increase in the volume of sales effected by the Respondent. The Nutrition Scheme and the contract thereunder came to an end on or about 14th August, 1983. It appears that, during the time when the contract under the Nutrition Scheme was in operation, both the petitioner and Shaikh were employed in the Bakery Section on the activity of manufacturing petitioner was deployed for several months on sales of products. Some time in January 1984,

the petitioner attempted to resume his normal duty as Mestry in the Bakery Department, but he was prevented from doing so and directed to proceed on leave for a month. Subsequently, with effect from 24th February, 1984, the Petitioner's services were terminated by way of retrenchment. At the time of retrenchment the petitioner was paid his statutory dues by a cheque after deducting a sum of Rs. 2171/- which was alleged to be the outstanding advance taken by the petitioner.

3. On 7th May, 1984, the petitioner challenged his retrenchment from service under the provisions of the Act invoking Items 1(a), (b), (d) and (f) of Schedule IV of the Act. The complaint was contested by the Respondent who denied the adverse allegations and maintained that the petitioner had been properly retrenched for justifiable reasons on account of slackness in work and that its action did not amount to unfair labour practice within the meaning of Items 1(a), (b), (d) and (f) Schedule IV of the Act.

4. The Labour Court tried the complaint and recorded the following findings :

5. The Labour Court held the unfair labour practice was proved and was not satisfied that there were justifiable reasons for the retrenchment. It was not satisfied that the provision of Section 25F of the Industrial Disputes Act had been properly complied with in that the full amount of statutory compensation had not been paid. It was also not satisfied that the rule in Section 25G of the Industrial Disputes Act had been complied with as the material on record did not warrant the stand of the respondent that the petitioner was junior to Shaikh, though both were employed on the same day. Finally, the Labour Court recorded a finding of victimisation for trade union activities. The circumstances of the case indicated that the petitioner was admittedly a representative of the Union in his section and was frequently found to be indulging in legitimate activities of the Union like collecting contribution on behalf of the Union from the workers, he used to give slogans and used to take lead in the demonstrations organised by the Union. In view of these reasons, the Labour Court set aside the order of retrenchment and directed reinstatement. However, when it came to the question of backwages, although the Labour Court has correctly reiterated all principles which would justify the award of full back wage, strangely the Labour Court declined to grant full backwages and directed payment only of 50% of the backwages by thinking that such a direction would meet the ends of justice.

6. Both parties being aggrieved by the order of the Labour Court dated 10th June, 1985, moved the Industrial Court by way of revision u/s 44 of the Act. Revision Application (ULP) No. 25 of 1985 was moved by the Respondent while Revision Application (ULP) No. 27 of the 1985 was moved by the petitioner. Naturally, while the respondent challenged both the directions of reinstatement and payment of 50% backwages, the petitioner challenged the direction by which the back wages were reduced by 50%. By the impugned order dated 4th November, 1985, the Industrial Court came to a clear finding that there was an unfair labour practice on the part of the employer-respondent within the meaning

of Item 1(a) of Schedule IV of the Act. The Industrial Court appears to have taken the view that the service of the petitioner was terminated for victimising him for engaging in legitimate trade union activities. I am not discussing the other finding of the Industrial Court, though I am of the view that much of the exercise done by the Industrial Court was beyond the purview of Section 44 of the Act. I need not go into other aspects of the matter, as, even if I assume that the exercise of jurisdiction was perfectly legitimate and within the bounds of Section 44 of the Act, the order is inconsistent and self-contradictory.

7. Having found that the service of the petitioner had been terminated by way of victimisation, one would have expected that implementing the statutory policy behind the Act declared in the preamble as : "the prevention of certain unfair labour practices", the learned Judge of the Industrial Court would have set aside the retrenchment order and granted full relief to the petitioner workman. Strangely, however, while holding that the order of Retrenchment of the petitioner was bad because it was affected by the unfair labour practice of victimisation, the Industrial Court took the view that it was not a case in which reinstatement should be granted. It declined to interfere with the finding of the Labour Court that only 50% back wages should be granted. Consequently, the Industrial Court substituted the relief of reinstatement with a direction for payment of six months compensation in lieu thereof, together with payment of half backwages upto the date of the order. IT is against this order that the petitioner is before this Court.

8. Shri Sakhare, appearing for the respondent, understandably has considerable difficulty in his attempt to sustain and justify the impugned order. With his help, I have carefully gone through the reasons enumerated in paragraph 24 of the impugned order of the Industrial Court, for denying the relief of reinstatement. Normally, relief is a matter of direction on the part of the Labour Court or Industrial Court and this Court is reluctant to interfere with such discretion in exercise of writ jurisdiction. However the discretion granted by the statute is to be exercised judicially and upon well recognised principles. If this Court is satisfied that such discretion has been arbitrarily exercised, then this Court would be fully justified in interfering with it.

9. With the held of Shri Sakhare, learned Advocate for the respondent, I have carefully gone through the reasons given by the Labour Court in paragraph 19 of its order for denying full backwages. Apart from the sentence, "I am, therefore, in the peculiar circumstances of this case, I think ends of justice will be met if the complaint is allowed 50% backwages though not full, from the date of termination till his actual reinstatement", there is no other reason which would justify exercise of discretion for denying half backwages to the petitioner workman. The normal rule that full backwages must follow the order of reinstatement, save in exceptional cases, appears to have been departed from, for no discernible reason. To that extent, I find that there is wholly irregular exercise of jurisdiction and arbitrary denial of half backwages to the workman

who was otherwise entitled to it.

10. Turning to paragraph 24 of the impugned order of the Industrial Court, the Industrial Court has appreciated that both the petitioner and Shaikh stood on the same footing since both had joined service on the same day and that, therefore, ordinarily it was the discretion of the management to decide as to who was to be retrenched. The learned Judge of the Industrial Court points out the well settled principle of law that the Courts are not ordinarily to interfere lightly with the internal administration of the management and, in ordinary course, he would not have disturbed the retrenchment but for the reason that the management is guilty of unfair Labour practice. He observes, In this case, however, there was some evidence of bias on the part of the management, but this bias, in my opinion, is not sufficient to grant reinstatement."

Then there is some discussion on Exhs. 28 and 38 which showed that, though the petitioner was a bakery Mestry, his work as salesman was appreciated, he was not willing to work as salesman, but willing to do his work as bakery Mestry, which was not satisfactory, Ergo, the Industrial Court thinks, therefore, reinstatement was not necessary and the ends of justice would be met by granting compensation of six months wages in lieu of reinstatement. In paragraph 25 the Industrial Court merely upholds the reasoning of the Labour Court of declining to grant full backwages.

11. After a careful reading of the reasons given in paragraph 24 of the impugned order of other Industrial Court in paragraph 19 of the impugned order of the Labour Court, I asked Shri Sakhare, learned Advocate for the respondent, as to how he could justify the reasoning therein for declining to grant full relief which was being sought. His reply was that it was admitted by the parties that the respondent had suffered a loss of Rs. 25,000/- in one year and that both the Labour and Industrial Courts, being conscious of this, were therefore hesitant to impose the unbearable burden of full relief upon the respondent-employer. He submits that, though this is not expressly stated to be so either in paragraph 19 of the Labour Court's order or in paragraph 24 of the Industrial Court's order, this must be the sub-silentio reasoning in the two orders. In my view, it is not possible to discern such a sub-silentio rational in the order to justify it. That upon an order of termination of service being set aside, the normal rule is reinstatement with full backwages is not disputed. It is also not disputed that there is discretion to refuse reinstatement of full backwages for special and justifiable reasons. However, what is lost sight of is that he who demands that the normal rule be departed from must plead, set forth and prove the special circumstances justifying the departure from the normal rule. There is neither any pleading, much less evidence, to show special circumstances which would have justified the departure from the normal rule of reinstatement and full backwages. Notwithstanding the heretic attempts made by Shri Sakhare to justify the impugned order, I am not convinced that there were any special circumstances which were brought to the notice of the two Courts below which could have been

considered as the basis for the refusal to grant reinstatement and full backwages. Thus, in my view, there being no exceptions, the normal rule must apply. Both courts below erred in not applying the normal rule. This calls for interference with the orders of the Courts below, in exercise of the writ jurisdiction.

12. Consequently, petition is allowed. Rule made absolute in terms of prayer (a). The respondent shall reinstate the petitioner in service with continuity and pay him full backwages from 24th February, 1984, till the date of reinstatement. The direction as to reinstatement and backwages shall be implemented and backwages shall be implemented not later than 30th September, 1994, failing which the backwages calculated upto that date and further liability towards wages arising thereafter shall carry interest at the rate of 12 per cent annum, apart from other consequences.

13. Rule made absolute accordingly with costs.

14. Certified copy to be expedited.