
(2001) 04 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 1715 of 1999

G. Thiagarajan alias Rajan Gopal

APPELLANT

Vs

J.B. Engineering Works and Another

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 2, 33

Citation : (2001) 4 BomCR 444 : (2001) 4 BOMLR 40 : (2002) 92 FLR 184

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Aditya Chitale, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar. J.

1. The petitioner is aggrieved by the award dated 21st November, 1998 passed by the First Labour Court at Mumbai in Reference I. D. A. No. 584 of 1991 given by the Government of Maharashtra in exercise of its powers u/s 10(1) read with Section 12(5) of the Industrial Disputes Act. 1947 for adjudication of an industrial dispute between the employer-respondent and the petitioner in the above writ petition.

2. The petitioner was in employment of the respondent employer and his services were terminated on and from 24th July, 1990. According to the petitioner, this order of termination was illegal, invalid, improper, unjustified, unwarranted and mala fide. He further contended that the charges levelled against him were vague and that he was not given a proper opportunity to defend himself. According to the petitioner, he was innocent and had not committed any act of misconduct, which would make the respondent lose confidence in him. The petitioner has prayed for reinstatement with full backwages and continuity of service. In nutshell, this was the case of the petitioner before the Labour Court in

his statement of claim. The respondent employer filed its written statement contesting the claim of the petitioner on various grounds, including the one that the reference was not maintainable as the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. According to the respondent employer, the petitioner himself was having his own separate factory when he joined the employment of the respondent Company. He was simultaneously looking after his own factory and would attend the work in the present Company to carry out the supervision and control over the working in the factory. According to the respondent Company, he was also carrying on the same business which the respondent Company was having and that the petitioner was diverting the business of the respondent Company to his own factory. In the aforesaid circumstances, the respondent Company was constrained to terminate the petitioner from their establishment. It was specifically averred that he was not a workman and was getting wages of Rs. 3,400/- per month and his duties were that of supervisory nature. He himself being a owner of his factory could not have been doing the work of an ordinary workman. In these circumstances, there was no question of issuing any charge-sheet or holding any enquiry and his services were terminated simpliciter. According to the respondent it was detrimental to the business of the respondent Company to have continued him even for a single day soon after It came to know that the petitioner was carrying on his own parallel business.

3. Both the parties submitted their pleadings and adduced their relevant oral and documentary evidence before the Labour Court. It appears that the petitioner had filed an application u/s 33(c)(2) of the Industrial Disputes Act (No. 169 of 1992) to claim certain monies due from the respondent Company. In the said application also, the respondents had raised an issue that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and therefore, his application was not maintainable. The Labour Court heard the said application and recorded the evidence of both the parties and dismissed the application upholding the contention of the respondent Company that the petitioner was not a workman under the Industrial Disputes Act. There is no dispute that both the parties had adduced their respective oral and documentary evidence before that Labour Court and on the basis of the evidence, the Labour Court had held that the petitioner was not a workman.

4. The respondent Company filed before the First Labour Court, which was also trying the reference for reinstatement the aforesaid order of the Sixth Labour Court between the same parties holding that the petitioner was not a workman. It was submitted on behalf of the respondent Company before the First Labour Court that in view of the said decision which is not challenged by the petitioner in a higher forum, the issue of the employee being workman has become res judicata and, therefore, the First Labour Court was bound by the said decision on the question of the issue of the petitioner not being a workman. The First Labour Court in the circumstances had accepted the said order of the Labour Court and recorded its findings that the question of workman had become res judicata and

rejected the reference on that point as not maintainable.

5. I have heard the petitioner who was in person, at quite a length, who was narrating all relevant and/or irrelevant facts. According to him, there was no question of the point being *res judicata*. He also submitted that the petitioner was not given any opportunity of hearing. He further denied that he had any parallel business. He termed the order of his termination as *mala fide* and was passed only to harass him. He virtually blamed the respondent Company that his life was ruined. Shri Chitale for the respondent on the other hand supported the award of the Labour Court. He affirmatively submitted that the earlier order of 6th Labour Court was not challenged before the higher forum and, therefore, it has become final and, therefore, it was binding on the First Labour Court.

6. I do not find any illegality or infirmity in the award passed by the First Labour Court holding that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. I further do not find any illegality in the order of the First Labour Court in accepting as binding the judgment and order of the 6th Labour Court between the same parties on the issue whether the petitioner was a workman or not. The First Labour Court could not have taken any other view as the said issue was finally determined between the same parties by the competent forum. In these circumstances, I do not find any merits in the petition which deserves to be dismissed. The same is dismissed.

7. Shri Chitale at my instance offered the legal dues which were offered to the petitioner at the time of admission of another petition before this Court. Shri Chitale stated after taking instructions from his clients that the respondents are willing and ready to pay the same even now to the tune of Rs. 45,000/-. The petitioner however was not at all inclined to accept the said amount. If he were to show any inclination, I would have tried to persuade Shri Chitale to add the amount of interest on the said amount. But since the petitioner was not in a mental frame to accept any suggestion made by me, I leave the matter at that end only.

8. In the result, the petition is dismissed, rule is discharged with no order as to costs.