

(1985) 12 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1885 of 1981

Hindustani Prachar Sabha and Others

APPELLANT

Vs

Dr. (Miss) Roma Sengupta and Another

RESPONDENT

Date of Decision : 04-12-1985

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (1986) 52 FLR 312 : (1994) 3 LLJ 34

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : N.B. Shetye, Nishita Pradhan and L.V. Talaulikar, for the Appellant; R.J. Kochar, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—The 1st petitioner is a charitable trust which carried on, inter alia, research in languages. The 1st respondent was its Research Officer (Hindi) at the Mahatma Gandhi Memorial Research Centre and Library between 1st April 1976 and 23rd April 1981.

2. On 3rd April 1981 the Managing Committee of the 1st petitioner met, considered and reviewed the working of the Research Centre and its organisation. The minutes of that meeting are on record and show that the 3rd petitioner, the Honorary Secretary of the 1st petitioner, commenced the discussion with the statement that the Research Centre was not functioning effectively. After some discussion the Managing Committee unanimously resolved that reorganisation of the Research Centre was necessary. It was resolved, under the item "Reorganization of Research Centre", that the 1st petitioner's magazine "Hindustani Zaban" should be suspended forthwith and the advisability of publishing it as an annual should be reviewed after the reorganization of the Research Centre. Under the same item it was also resolved thus:

"It was decided that the services of Research Officers Dr. Urmi Desai and Dr. Roma Sengupta may be terminated and Dr. Dalvi should be called for a meeting with Shri Narielwala and Shri Vadilal Dagli on the reorganization of the Research Centre. The members agreed with the suggestion of paying their legitimate dues in lieu of notice to these Research Officers and the Hon. Secretary was authorised to take action after obtaining legal advice".

3. On 22nd April 1981 the 3rd petitioner wrote to the 1st respondent recording that at the Managing Committee's meeting it had been decided to reorganize the research activities of the Research Centre and, in view of this, to suspend its activities. In the light of this decision the 1st respondent's services were not required from 23rd April 1981. The letter noted that the 1st petitioner was required to give to the 1st respondent one month's notice in lieu of which it would be paying an amount equivalent to one month's gross salary. After thanking her for the services she had rendered the 1st respondent was asked to contact the 1st petitioner's office for settlement of her dues.

4. On 28th April 1981 the 1st respondent filed a complaint of unfair labour practice on the part of the 1st petitioner under Item I(a)(b) and (d) of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971. The unfair labour practices alleged were that she had been discharged or dismissed by way of victimisation, not in good faith but in the colourable exercise of the employer's right and for patently false reasons. A written statement was filed on behalf of the petitioners. The 1st respondent examined herself. On behalf of the petitioners one Subramaniam Ramaswamy, the 1st petitioner's Administrative Officer, was examined, issues were raised, inter alia, on the question as to whether the 1st respondent was an employee and as to whether the petitioners had engaged in an unfair labour practice in terminating her employment.

5. The Labour Court by its judgment and order, dated 29th June 1981 held that the 1st respondent could not be considered to be a workman so that her complaint was required to be dismissed. However, it went on to consider the complaint on merits. It noted that neither in the complaint nor in her evidence had the 1st respondent given particulars regarding victimisation so that her case did not fall within Item I(a) of Schedule IV of the Act. There was no evidence on record to show that the petitioners were actuated by bad faith in terminating the 1st respondent's services. Upon a consideration of the letter by which the 1st respondent's services were terminated, the Labour Court concluded that the termination was not in colourable exercise of the employer's right. It had been submitted on behalf of the 1st respondent that the provisions of Section 25F of the Industrial Disputes Act had not been complied with so that the termination must be held to have been made in bad faith. The Labour Court held that it was not necessary to enter into the question whether the requirements of Section 25F of the Industrial Disputes Act had been complied with the allegation of the 1st respondent that she had been removed for patently false reasons was

rejected upon a consideration of the letter by which her services were terminated and the evidence on record. In the result, the Labour Court dismissed the complaint.

6. The 1st respondent preferred a revision application to the industrial Court u/s 44 of the Act. The Industrial Court found that the 1st respondent was a workman and that the complaint filed by her was competent. The Industrial Court then proceeded to consider whether the termination of the 1st respondent's services was mala fide and in colourable exercise of managerial rights and lacking in good faith. It was not possible to spell out of the resolution passed by the 1st petitioner on 3rd April 1981 a decision that the activities of the Research Centre were to be suspended for the resolution spoke only of reorganization of its activities. The statement about suspension of activities in pursuance of the decision of the Managing Committee in the letter by which the 1st respondent's services were terminated was not consistent with the terms of the resolution. There was no evidence placed on record by the petitioners to the effect that after the meeting of the Managing Committee any steps were taken in respect of the reorganization of the Research Centre. It was also not shown how and in what manner the services of the 1st respondent had become surplus. For this reason, the Industrial Court held that the order of termination was not proper for the reason mentioned therein, that it was arbitrary and, therefore, mala fide and that the petitioner was entitled to the relief sought in her complaint. The Industrial Court, therefore, set aside the Labour Court's order and the letter terminating the 1st respondent's services. It directed the petitioners to reinstate her on the same terms and conditions and pay her full back wages from the date of termination of her services till the date of reinstatement.

7. This petition challenges the order of the Industrial Court on the ground that, in granting the reliefs that it has done, the Industrial Court reviewed the evidence on record, and this was beyond its powers having regard to the provisions of Section 44 of the Act. There is no challenge to the finding of the Industrial Court that the 1st respondent was a workman and, therefore, entitled to maintain the complaint.

8. Section 44 of the Act reads thus:

"The Industrial Court shall have superintendence over all Labour Courts and may,-

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act, and in particular, for securing the expeditious disposal of cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court".

It is a provision on pan materia with Article 227 of the Constitution of India. The powers of superintendence do not include the power to review evidence on record. The power of the superintending court in so far as evidence is concerned is limited to setting aside an order where the evidence could never justify the conclusion, in other words where the order is perverse. I need only refer in this behalf to the decision of the Supreme Court in *Parry and Co. Ltd. Vs. P.C. Pal and Others*,

9. There is little doubt that in coming to the conclusion that it did on the aspect of the merits of the 1st respondent's claim, the Industrial Court reviewed the evidence. It based its order on its appreciation of the record as contrasted to that of the Labour Court and not on the finding that the order of the Labour Court was perverse. In doing so it exceeded its jurisdiction.

10. Mr. Kochar, learned counsel for the 1st respondent, submitted that the reasons given by the 1st petitioner in the resolution dated 3rd April 1981 and in the letter by which it had terminated the 1st respondent's services had not been substantiated by evidence. He also submitted that the scheme of reorganisation ought to have been put into effect first and then only could the petitioners have decided whether or not the 1st respondent's services had been rendered surplus and were, therefore, required to be terminated. In his submission the petitioners had, therefore, given false reasons for termination of the 1st respondent's services, and that their action in the behalf was mala fide.

11. It was not urged before the Labour Court or, for the matter before the Industrial Court, that the reorganisation of the Research Centre's activities ought to have preceded the determination of whether or not the 1st respondent's services had become surplus and, therefore, needed to be terminated. It is not a contention that can be raised for the first time in this petition.

12. Upon the pleadings the petitioners were not obliged to lead evidence in regard to the reasons for which the 1st respondent's services were terminated. It is not enough to aver in blanket terms that an employee has been victimised for false reasons or mala fide. It must be alleged what the false reasons or mala fides were so that the allegation can be met and investigated.

13. Mr. Kochar then submitted that it was clear from the terms of the letter of termination of the 1st respondent's services that one month's salary and other dues had not been tendered to her along with the letter. In his submission, therefore, there was an unfair labour practice. He relied in this connection upon a judgment of a Division Bench of this Court in *Executive Engineer, Electrical Division, Nagpur v. Prakash Devidas Kalasit*, 1985 M.L.J. 338. Making it clear that it was limiting its decision to the facts before it, the Division Bench held that the attempted action of retrenching the employee without giving him one month's notice or offering him one month's pay in lieu of notice and without payment of retrenchment compensation was a nasty action on the part of the employer covered by Schedule IV, Item 1(f) of the Act. Clearly, this judgment has no

application to the facts of the present case where the unfair labour practice of a hasty action is not alleged and where the evidence on the point is divergent and is unconsidered by the Labour Court.

14. Mr. Kochar next relied upon my decision in *Jai Vikram Shah v. R.P. Tripathi*, 1983 Lab. I.C. 605. It was a decision rendered in the context of a dismissal for loss of confidence and has no application to the facts of the present case.

15. The Industrial Court was in error in reviewing the evidence and, on that basis, upsetting the Labour Court's order. The Industrial Court's order must, therefore, be quashed and set aside.

16. There shall be no order as to costs.