

(1999) 11 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 3149 of 1988

Hoechst Marion Roussel Ltd.

APPELLANT

Vs

Rhona Norenga Ms. and Another

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 41, 44

Citation : (2000) 1 ALLMR 535 : (2000) 85 FLR 453 : (2000) 3 LLJ 394

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

Bench : Single Bench

Judgement

R.J. Kochar, J.—This is a classic case which demonstrates how sometimes the employees lose their good jobs by their irrational and whimsical behaviour during the course of their employment.

2. The facts of the case are very simple. The Respondent-employee was employed by the Petitioner-employer as a Confidential Secretary with effect from January 1, 1978. The employer had also notified her name as Confidential Secretary under the provisions of the Bombay Shops and Establishments Act. By an order dated June 16, 1977 the Respondent-employee was appointed as a Confidential Secretary in the Petitioner's establishment. By an order dated January 2, 1978 her services were confirmed. Soon after the services came to be confirmed she requested the Petitioner-employer to transfer her from Worli establishment to Thane factory as it was convenient to her. It appears that for their internal administrative exigencies of work and reasons her request for transfer to Thane factory was not accepted. However, she was assured that as and when vacancy arises she would be considered as a candidate for transfer to the Thane factory. By a letter dated July 24, 1978 she protested to the Management about the work which was to be given to her as the work which was given to her should not have been assigned to her. From the contents of the said memo it appears that some typing work was to be done by her, but she protested on the ground that that was not her work.

3. By a reply dated July 28, 1978 the management put it on record that she should not go on writing such memos for such trivial matters and that such things could be resolved across the table by discussion with her seniors. It was also clarified that in the special circumstances the work assignment will be given to her as per the exigencies of the work and that she would be called upon to type confidential matters. The management therefore advised her not to engage in unnecessary and uncalled for correspondence regarding the matters which could be sorted out through personal discussions to maintain a congenial atmosphere within the department. I have gone through the said letter and I do not find anything which the management has written as "bitter comments" but the Respondent employee once again gave her reply to the said reply from the management and indulged into further dialogue and she had further complained about the so called "bitter comments" in the said letter.

4. By memo dated August 2, 1978 the petitioner employer had accepted the assurance given by the employee and had however not agreed with the comments made by the employee in the said memo. By memo dated March 13, 1979 the Financial Controller and Secretary of the petitioner employer addressed a memorandum to the Respondent employee that on March 7, 1979 at about 5.00 p.m. she was asked by Shri I. Vishwanath, Accounts Officer, to make certain amendments in the Annual accounts which were typed by her as the same were required urgently. Instead of making necessary corrections she flatly refused to carry out the instructions saying that it was time for her to leave work as the day was coming to a close and that she would not sit late for that purpose. It was also mentioned in the said memo that the work could be completed within 10 minutes. It was also mentioned in the said memo that the said correction was carried out by the other Secretary in the department. The said memo further contained an incident of March 9, 1979 when she was told that the final accounts were required to be typed on March 12, 1979 for presentation at the Board Meeting on March 15, 1979 and that it should be completed on March 12, 1979. As desired by the employee a sufficiently well in advance notice was given to her to complete the work by the evening of March 12, 1979. It was stated in the said memo that inspite of the advance notice she flatly refused to sit late in order to complete the urgent work. In the said memo the Management brought to her notice and took strong exception to the type of uncooperative attitude towards the work which resulted in hindrance of keeping up of departmental work schedule. In her reply to the said memo by her letter dated March 15, 1979 she gave reasons for not sitting late. In all she gave two reasons for not being able to sit late in the office viz. (1) in evening she had to take some musical lessons, and (2) she had to attend special religious discourses. It was set out that the employee was not cooperating with the management to do her work and she used to refuse to work required to be done even a little after the office hours. In the total circumstances it was the grievance of the management that on account of her attitude harmony in the office was lost and therefore, they were constrained to terminate the services of the respondent employee. Before the

Labour Court both the parties have adduced their respective oral and documentary evidence. The respondent employee examined two witnesses in support of the order of termination. The Labour Court by its judgment and Order dated March 16, 1985 dismissed the complaint on the basis of the evidence on record. The Labour Court has given exhaustive findings and held that there was no unfair labour practice engaged in by the petitioner employer. The Labour Court had discussed and appreciated whole evidence and found that there was no victimization or ill-will on the part of the petitioner employer and that the order did not suffer from lack of bona fides or any colourable exercise of the employer's powers. The Labour Court found that it was a case of pure, simple and bona fide termination of service of an employee who was adamant and non-cooperative when her proposal for transfer was refused and she was required to do, at time, extra office work. The Labour Court had specifically found that no unfair or bad motive or bad intention could possibly be attributed to the employer behind the sudden termination at all. He also found that no Confidential Secretary and Steno Typist could possibly refuse to work extra hours in the interest of the company during such periods. He also found that the urgency of the work could not be decided by the employee but it was to be decided by the management only. The Labour Court therefore held that there was no legal justification for the employee to avoid or refuse to sit late. The Labour Court also placed on record that the employer had also appreciated her work whenever they were satisfied about the good work which was performed by her. The Labour Court had gone into the evidence delivered before him and had appreciated the facts and circumstances on record and held that there was no unfair labour practice which was engaged in by the petitioner employer. It is also found from the record that in the whole year 1978 she was required to sit late after office-hours. It, therefore, reflects that whenever the exigency of work required she was required to sit a little after the office hours and not during the whole year or as a part of harassment of the employer. In spite of this fair treatment the employee complained of an unfair labour practice against the employer. The Labour Court has recorded the conclusions based on the material on record. By no stretch of imagination can be said that findings of the Labour Court were in any way perverse or illegal and improper.

5. Being aggrieved by the said judgment and Order of the Labour Court the Respondent employee filed a Revision Application before the Industrial Court u/s 44 of the Act. The learned President of the Industrial Court has pointed out the parameters of the supervisory jurisdiction of the Industrial Court u/s 44 of the Act and she has recorded the findings to that extent that her jurisdiction is very narrow and she could re-appreciate the evidence to come to any Court of law. She also recorded that the supervisory powers could be exercised only when there was any error of law and facts on record. Surprisingly having accepted the said legal provisions she had proceeded to decide whole case on facts, once again she re-appreciated the facts and evidence and came to entirely different conclusion without any cogent reasons. She has held against the petitioner

employer only one ground that no enquiry was preceded by the order of termination and that no opportunity to defend her was given by the petitioner employer. On that basis she merely held that the punishment was by way of victimization. I have carefully gone through the judgment of the learned President of the Industrial Court, there is absolutely no reason recorded by her why she is coming to a different conclusion which even otherwise she could not have done noting very narrow jurisdiction u/s 44 of the Act. She has proceeded to re-appreciate and re- assess the whole evidence without pointing out what was the error of law apparent on the face of record, particularly after accepting and holding that she had no jurisdiction to interfere u/s 44 of the Act, unless the Labour Court exceeded jurisdiction vested in him or findings were perverse or when there are errors apparent on the face of it After recording the said finding she had done exactly opposite and appreciated the whole evidence. She has not recorded that the Labour Court had exceeded its jurisdiction to decide the complaint or had in any) way committed any error of law which is apparent on the face of record The judgment and order of the Industrial Court cannot be strengthened in any manner. Not only the Industrial Court had no jurisdiction to re-appreciate and re-assess the evidence, even on merits the findings of the Labour Court should not be dealt with. The simple case of the petitioner employer was that the Confidential Secretary-the respondent employee had adopted a totally un-cooperative attitude and she was refusing to sit late even for a while to complete a work which was required urgently. In the circumstances the order of the Industrial Court is illegal and perverse without jurisdiction and the same is to be quashed and set aside and the order of the Labour Court is restored by me.

6. The Rule is made absolute in terms of prayer Clause (a). No order as to costs.