
(2010) 06 BOM CK 0155
In the Bombay High Court
Case No : Writ Petition No. 5891 of 2010

Jagannath Mane

APPELLANT

Vs

Wokhardt Ltd.

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2010) 126 FLR 1045 : (2010) 4 LLJ 711

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : T.K. Prabhakaran, for the Appellant; R.V. Ghuge, for the Respondent

Final Decision : Partly Allowed

Judgement

R.K. Deshpande, J

1. Rule. Rule made returnable forthwith. By consent of parties, matter is heard finally.

2. This Petition is preferred by an employee who had challenged his dismissal from service w.e.f November 24, 1993, after holding Departmental Enquiry in respect of the charges held to be proved against him, by filing Complaint (ULP) No. 90/2001 invoking the jurisdiction of the Labour Court u/s 28 read with Items 1(a)(b)(d)(f) and (g) of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (MRTU and PULP Act for short), for declaration of unfair labour practice on the part of the employer and for granting relief of reinstatement in service with continuity in service and back-wages. The Labour Court by its judgment and order dated April 15, 2005. allowed the Complaint and set aside the order of dismissal dated November 24, 1993 and granted declaration that the employer shall cease and desist from engaging in unfair labour practice. In lieu of reinstatement and continuity in service, the Labour Court directed payment of lump sum compensation amount of Rs. 2,05,000 to the complainant.

3. Aggrieved by the aforesaid judgment and order, the employee preferred Revision (ULP) No. 64/ 2005. The Industrial Court maintained the findings recorded by the Labour Court and dismissed the Revision Petition by its judgment and order dated January 17, 2008. Hence, the present Petition is preferred by an employee challenging the judgment and order passed by both the Courts as below.

4. The limited issue which is raised and involved in the present petition is, as to the amount of compensation awarded by the Labour Court i.e. of Rs. 2,05,000 to the Petitioner, complainant in lieu of reinstatement and continuity in service. Except this, no other ground is pressed in the present Petition. According to Shri Prabhakaran, the learned Counsel appearing for the Petitioner, the determination of the amount of compensation of Rs. 2,05,000 by the Labour Court is not based upon the valid criteria and that it is in ignorance of the evidence available on record. He submits that the compensation awarded is totally inadequate looking to the salary which was paid to the employee and the number of years service he has rendered and the number of years service he was to render, in the absence of order of dismissal. He relies upon the judgment of the Apex Court in the case of Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, . He further submits that this judgment follows the earlier judgment of the Apex Court in the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, . According to him. the guidelines are prescribed in the decision of the Apex Court. In O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (supra), which is being followed. However, according to him, the Labour Court has failed to apply these principles while determining the compensation.

5. Shri Ghuge, the learned Counsel appearing for the Respondent employer on the other hand, submitted that the Labour Court has taken into consideration the fact that the employee was getting a monthly income of Rs. 3000 and that his financial position was sound and after taking into consideration the relevant factors, the amount of compensation has been determined at Rs. 2,05,000. He, therefore, supports the findings recorded by the Labour Court. He further submits that the finding of fact is also confirmed by the Industrial Court in Revision and hence, the same needs no interference under Articles 226 and 227 of the Constitution of India by this Court.

6. The judgment of the Apex Court in O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (supra), lays down the criteria/principles which are required to be followed while determining the compensation in lieu of reinstatement and continuity in service. The criteria laid down in the said judgment is followed in the later judgment of the Apex Court in Workmen v. Bharat Fritz Werner(P) Ltd. (supra). Para 23 of the said judgment laying down the criteria is reproduced below Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, :

"22. In O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (supra) this Court has held that compensation equivalent to 3.33 year's salary

(including allowances) as admissible on the basis of the last pay and allowances would be a reasonable amount to award in lieu of reinstatement. In that case the Court has taken into consideration the fact that the corpus, if invested at the prevailing rate of interest (15 per cent), will yield 50 per cent of the annual salary and allowances and the workman would get 50 per cent of what he would have earned by way of salary and allowances with four additional advantages:-

"(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50 per cent of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50 per cent he would be getting annually he would get not only beyond the date of superannuation, for his life time (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event."

7. After going through the judgment and order passed by the Labour Court, the only relevant portion, which has been brought to my notice, considering the aspect of award of compensation, is contained in paragraph 18 of the said judgment, which is reproduced below:

"18. Looking to the misconduct of unauthorized absenteeism of the complainant and past service record the punishment of dismissal inflicted by the Respondent company upon the complainant appears to be harsh, disproportionate and illegal and it amounts to unfair labour practice under item 1(g) of Schedule IV of MRTU and PULP Act, 1971. Complainant has remained absent for 75 days. Looking to the strained relations and the habit of unauthorised absenteeism of the complainant with the Respondent company, I think relief of reinstatement with continuity of service of the complainant would not be possible to be granted in favour of the complainant instead of that it would be just and proper to pay lump sum compensation to the complainant. I think the lump sum compensation of Rs. 2,05,000 would be adequate and just relief to the complainant in lieu of reinstatement with continuity of service. If the complainant is sent to the Respondent company again by way of relief of reinstatement then there is possibility of spoiling of discipline of Respondent company. Complainant appears to have misused his position of office bearers of the union and remained absent unauthorizedly on many occasions and because of which production of Respondent company has suffered. Looking to other ground that complainant after dismissal has started business of daily collection of milk for Mahananda Society and having also agricultural land by which complainant is getting monthly income to the tune of Rs. 3000. From this it is seen that the financial position of the complainant is sound. Considering this financial background, I think that compensation amount of Rs. 2,05,000 would not be less. Compensation amount be given to the complainant for future loss of his employment in the Respondent

company."

8. The aforesaid finding is confirmed by Revisional Court in its judgment and order dated January 17, 2008.

9. Bare perusal of the consideration by the Labour Court reveals that the principles laid down by the Apex Court reproduced above, have not at all been applied. There is not finding as to what was the salary (including allowances) admissible, to the Petitioner-employee, on the basis of the last pay and allowances drawn. The learned Counsel for the employer submits that if this criterion is applied then the compensation awarded by the Labour Court will get reduced. As against this, Shri Prabhakaran, the learned Counsel appearing for the Petitioner submits that the amount of compensation which would be determined on the basis of the principles laid down by the Apex Court would be much more than what has been granted. Be that as it may, it is not a matter for this Court to consider. It is apparent from the finding recorded by the Labour Court that the criterion has not all been applied and thus there is an error apparent on the fact of record which requires an interference by this Court under Articles 226 and 227 of the Constitution of India. In view of this, the judgment and order passed by the Courts below will have to be set aside only to the extent of determination of compensation with a direction to the Labour Court to hear the parties afresh and to pass an appropriate order.

10. In the result, the instant petition partly succeeds. The judgment and order passed by the Courts below are quashed and set aside only to the extent of determination of compensation of Rs. 2,05,000. The matter is remanded back to the Labour Court for deciding the quantum of compensation payable to the Petitioner, in lieu of reinstatement and continuity in service, after hearing the parties before it. Rule is made absolute in these terms. No order as to costs. Needless to state that all other points stand concluded and shall not be reopened. The Labour Court to decide the issue on or before a period of three months.