
(1995) 03 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 912 of 1989

Jayavant Yaswant Raut

APPELLANT

Vs

Simplex Mills Ltd. and Others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79, 84
Constitution of India, 1950 — Article 227

Citation : (1995) 71 FLR 1031 : (1996) 3 LLJ 598

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

Bench : Single Bench

Judgement

1. This Writ Petition under Article 227 of the Constitution of India is directed against an order of the Industrial Court, Bombay, dated September 10, 1987 made in appeal (IC) No. 73 of 1986 u/s 84 of the Bombay, Industrial relations Act. 1946, hereinafter referred to as "the Act".

2. The petitioner was employed in the First Respondent's service from 1972 in the Drawing Department and was getting Rs. 700/- as his last drawn wages. From January 18, 1982 there was a general strike in the Cotton Textile Industry called by an unregistered union, Maharashtra Girni Kamgar Union. Though the strike was called by an unrecognised union not registered under the provisions of the Act, it received wide response from the employees in the Cotton Textile Industry. A large number of employees were thrown out of service with scant regard being paid to principles of natural justice or any procedure under the law and the Standing Orders. The Petitioner appears to be one such victim.

3. According to the Petitioner, the strike in the First Respondent mill continued unabated from January 18, 1982, till about May 1982 and it was virtually impossible to report for work. Sometime in May 1982, some of the employees led by the representative union. Rashtriya Mill Mazdoor Sangh started reporting for work. According to the Petitioner, when he attempted to report for work in May 1982, he was not allowed to report for work and carry out his work. This

situation continued for quite sometime and ultimately, on May 31, 1984 the Petitioner sent a letter of approach requesting that he be kept on work and paid his wages. His request not having been accepted, he followed it up with an application before the Labour Court u/s 78 read with Section 79 of the Act.

4. The Labour Court, by an order dated June 17, 1986, dismissed the application by holding that the Petitioner had been dismissed from service by an order dated September 26, 1982 and, therefore, the letter of approach sent by him on May 31, 1984 was not within the limitation prescribed under Rule 53(2) of the Bombay, Industrial Relations Rules, 1947. The Labour Court took the view that, since the approach letter itself was not valid, the application u/s 78 was not maintainable and, in this view of the matter, dismissed the application.

5. The Industrial Court in appeal disagreed with the findings of the Labour Court and came to the conclusion that the evidence on record did not show that the alleged order of termination dated September 26, 1982 had at all been served on the petitioner. After having arrived at this conclusion, however, the Industrial Court held that, in any event, in March and April 1983. When the petitioner had gone to the gates of the First Respondent Mill and had not been permitted entry, he had a cause of action and he should have sent a letter of approach within three months from such date, and, since his letter of approach sent on May 31, 1984 was not within three months from the date on which he was refused employment by the First Respondent, the letter of approach was bad in law. In fact, the Industrial Court went so far as to say that, once it was accepted that the Petitioner had not received the letter of termination alleged to have been issued by the First Respondent on September 26, 1982, the very fact that the First Respondent did not allow him to join duties sometime in December 1982, should have been treated as the starting point of limitation for sending the approach letter and, therefore, also the letter of approach was barred under Rule 53(2) of the Bombay Industrial Relations Rules 1947. Alternatively, the Industrial Court took the view that the refusal of work to the petitioner amounted to lock-out and the dispute in connection therewith would fall u/s 78 sub-section (1) paragraph A clause (c) for which the application had to be filed within three months of the cause of action having arisen. Since the application had not been made within three of December 1992. Looked at from the said angle also, the Industrial Court held that the application was barred by time. On this reasoning, the Industrial Court dismissed the appeal. Hence this Writ Petition.

6. In my view, the approach adopted by both the Courts below appears to be hyper-technical at the cost of substantial justice. The Industrial Court took judicial notice of the fact that there was a wide-spread strike in the Cotton Textile Industry, including the First Respondent Mill, during the relevant period the Industrial Court came to the conclusion that there was no order of termination of service served by the First Respondent on the petitioner but erred in holding that the dispute sought to be raised by the petitioner's letter of approach dated May 31, 1984 amounted to a dispute regarding the legality or propriety of an order

passed by an employer acting or purporting to act under the Standing Orders, within the meaning of Section 78(1)(A)(a)(i). In order that a dispute falls under this provision, it must first be shown that there is an order passed by the employer and that the order is either in fact passed under the applicable standing orders or, at least purported to have been passed under the Standing Orders by the employer. In the petitioner's case as the findings of the Industrial Court show, there was no order which was been communicated. As far as the petitioner was concerned, he was merely being orally refused work, right from December 1982. Without any one even disclosing to the reason for such refusal his contract of employment had been terminated. If in these circumstances, the employee makes a request that he be taken on work and kept in employment. I am unable to accept the view of the Industrial Court that such a dispute must necessarily be held to be a dispute within the meaning of Section 78(1)(A)(a)(i) so as to attract the rigour of the limitation prescribed under Rule 53(2) of the Bombay Industrial Relations Rule. In my view, the ends of justice would have been much better served if a liberal construction had been adopted by holding that the dispute was one which fell properly within clause (iii) of sub-paragraph (a) paragraph A of sub-section (1) of Section 78. In my view since there was neither an order of termination of service, nor any declaration of the reasons for which work was not being given to the petitioner, the petitioner was justified in making an approach even on may 31, 1984 and seeking the relief of being kept back on work and in employment. A dispute of such nature, in my view would be a change sought by the employee in respect of Item 6 of Schedule III of the Act which would properly fall within clause (iii) of Section 78(1)(A)(a)(i). Once we come to the conclusion, it is obvious that the approach letter dated May 31, 1994 would not be hit by the limitation prescribed in Rule 53(2) of the Bombay Industrial Relations Rules. 1947, and therefore, would be a valid approach. Consequently, the application based thereupon would be maintainable. In my judgment, both the Courts below erred in treating the application as not maintainable and dismissing it summarily.

7. Once it is held that the application made by the employee was maintainable, there does not seem to be any difficulty in granting him the relief sought, because the Industrial Court has clearly held that there was no valid order of termination by which the service of the employee was disrupted and, in any event, the alleged termination of service could not be upheld. In these circumstances, the Petitioner is entitled to be reinstated in service and paid back wages, at least from the date of his approach letter, i.e., from May 31, 1984. He is also entitled to continuity of service.

8. In the result, the petition is hereby allowed. The orders of the two Courts below are hereby quashed and set aside and it is directed that the petitioner be reinstated in service with continuity of service and be paid back wages from May 31, 1984. Rule is made absolute accordingly. The First Respondent to pay a sum of Rs. 500/- as costs of the petition. Order to be implemented within six weeks from today.

9. Issuance of the certified copy of this judgment is expedited.