
(2015) 07 BOM CK 0310

In the Bombay High Court

Case No : Writ Petition Nos. 3936, 4643 of 2007, Writ Petition No. 2046 of 2009,
Writ Petition No. 2135 of 2011 and Writ Petition No. 6541 of 2013

Kalmeshvar Textile Mills Ltd. and Others APPELLANT

Vs

Ratnakar Baburao Chimote and Others RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13), 42(1)
Industrial Disputes Act, 1947 — Section 2(s), 25-O
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2015) 07 BOM CK 0310

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : R.B. Puranik, for the Appellant; S.A. Kalbande, Advocates for the
Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J—Heard Shri R.B. Puranik, the learned advocate for the employer, Shri D.C.R. Mishra and Shri S.A. Kalbande, the learned advocates for the employees and Mr. N.S. Khubalkar, the learned A.G.P. for the Respondent/ Industrial Court.

These petitions are ordered to be tagged together for hearing as the employer - Maharashtra State Textile Corporation is common in all the matters and the petitions raised identical points for consideration. The petitions are being disposed of by common judgment as the substantive arguments in all the petitions are same.

2. The Maharashtra State Textile Corporation Limited (hereinafter referred to as "the Corporation") is a Government Company registered under the provisions of the Companies Act. This Corporation was running and managing several textile undertakings in the State of Maharashtra and the respondent No. 2-Kalmeshwar Textile Mills Limited (hereinafter referred to as "the Mill") was one of the textile

mill which was run and managed by the Corporation. The employees who are party to this petition have been working with Mill.

3. It is undisputed that the mill was governed by the Bombay Industrial Relations Act, 1946. It is undisputed that Rashtriya Mill Mazdoor Sangh (hereinafter referred to as "the Sangh") was the Trade Union registered under the provisions of the Trade Unions Act, 1926 and was also registered as representative union for the mill.

According to the employer several agreements/ statements were entered into between the mill and the Sangh regarding the service conditions of the employees working in the mill and relating to the wages, workload, fixing of complement of workers and other service conditions and these service conditions were revised by agreements between the mill and the Sangh.

4. According to the employer, the Government of Maharashtra had taken policy decision on 10th January, 2001 to effect closure of all the textile mills run by it in the State of Maharashtra which included Kalmeshwar Textile Mills Ltd. According to the employer, the Government of Maharashtra while taking the above decision of closure of mills had also decided to offer the employees working in the textile mills, the scheme for voluntary retirement as per the Gujarat Pattern. The Corporation had filed an application under Section 25-O of the Industrial Disputes Act, 1947 before the Commissioner of Labour seeking permission to effect closure of the Mill. During the pendency of the application, according to the employer, there were negotiations between the employer and the Sangh. According to the employer, notice of change under Section 42(1) of the Bombay Industrial Relations Act, 1946 was served on the Sangh on 23rd September, 2002, expressing its intention to effect the closure of the mill and to pay the employees as per the Voluntary Retirement Scheme referred above. It is the case of the employer that after extensive discussions between the employer and the Sangh, the agreement dated 25th September, 2002 was arrived at for effecting the closure of the mill and offering the ex-gratia payment to the employees as per the voluntary retirement scheme. A copy of the agreement was filed by the employer before the Commissioner of Labour who granted permission on 4th October, 2002 to effect closure of the mill. It is the case of the employer that the settlement was effected with the employees of the mill as per the Voluntary Retirement Scheme.

5. The undisputed facts relevant for deciding the controversy are that, the employees who are party to these petitions were working as Badli workers and that as per the agreement dated 25th September, 2002 there were 51 posts vacant in various departments of the mill and that Badli workers who were working in 51 permanent vacant posts were entitled for the benefits under the voluntary retirement scheme on par with the permanent employees.

6. The employees in these petitions filed complaints under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, 1971 (hereinafter referred to "MRTU & PULP Act") alleging that the employer indulged in unfair labour practices. The challenges on behalf of the employees were substantially based on the following two grounds :

- i) That the service conditions of the employees working in the mill were governed by the Model Standing Orders and the Voluntary Retirement Scheme, on the basis of which the employer had taken action, could not have been given effect to;
- ii) Alternatively that even while effecting the Voluntary Retirement Scheme, the employer had acted with malice and had adopted pick and choose policy which resulted in depriving the employees, who are party to these petitions, their legitimate claims.

The employer had opposed the claim of the employees. The Industrial Court after considering the contentions of the respective parties, by the impugned order, allowed the complaints of Shri Ganesh Marotrao Kaddak (Respondent No. 1 in W.P. No. 4643/2007), Shri Ratnakar Baburao Chimote and Shri Ashok Vyankatrao Chimote (Respondent Nos. 1 and 2 in W.P. No. 3936/2007) and Shri Laxman Chandrabhanji Bhujade (respondent No. 1 in W.P. No. 6541/2013) and Vinayak Ghanshyam Bhelkar, Suresh Deoraoji Kherde, Rajendra Bhanuji Kakde, Dhanobaji Lahanuji Nibudhe, Narayan Vitthal Madankar and Gautam Narayan Patil (Respondent Nos. 1 to 6 in W.P. No. 2135/2011).

The Industrial Court dismissed the claim of Shri Ravindra Wamanrao Nerkar (Petitioner in W.P. No. 2046/2009)

The employer, being aggrieved by the order passed by the Industrial Court allowing the complaints of the employees, as referred above, has filed the writ petitions.

Shri Ravindra Nerkar, being aggrieved by the order passed by the Industrial Court dismissing the complaint filed by him, has filed the writ petition.

7. Mr.R.B. Puranik, the learned advocate for the employer has made exhaustive submissions which can be summed up as follows :

- i) The complaints filed by the employees were not maintainable.
- ii) The employees having accepted the benefits under the Voluntary Retirement Scheme, could not have raised the challenge before the Industrial Court.

8. It is undisputed that the employees were working as Badli workers. Relying on the definition of "employee" as given in Section 3(13) of the Bombay Industrial Relations Act, 1946 and the definition of "workman" as per Section 2(s) of the Industrial Disputes Act, 1947, the learned advocate for the employer has submitted that the employee would be able to file complaint under Section 28 of the MRTU & PULP Act only if he challenges the order of dismissal, discharge, retrenchment or termination and the employee would not have above remedy available for making any other claim. It is submitted that the claim of the

employees in the present case was that the employer indulged in unfair labour practice by not giving them the benefits as per the Model Standing Orders. The submission is that the employees had not challenged the order of dismissal, discharge, retrenchment or termination and therefore, the complaints filed by them were not maintainable.

The complaints were filed by the employees alleging that the employer indulged in unfair labour practice as defined under Items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act. The employee is given right to approach the Court under the provisions of the MRTU & PULP Act for redressal of his grievance if the employer indulges in the unfair labour practice as defined under Items 5 and 9 of Schedule IV of the MRTU & PULP Act. Though the employees contended that they are entitled for being conferred with deemed permanency as per Clause 4-C of the Model Standing Orders, alternate claim of the employees is that they are entitled for the benefits on par with the permanent employees as per the terms of the agreement dated 25th September, 2002 as they were working in the permanent vacant posts and were senior-most eligible employees in their category. The submissions made on behalf of the employer that the complaints filed by the employees seeking redressal of grievance of some other nature and without there being challenge to the order of dismissal, discharge, retrenchment or termination would not be maintainable, cannot be accepted as giving of such restrictive meaning would curtail the jurisdiction of the Court conferred by the provisions of the MRTU & PULP Act.

9. Shri Puranik, the learned advocate for the employer has submitted that the employees accepted the benefits under the Voluntary Retirement Scheme and then filed the complaint making claim for benefits on par with the permanent employees. It is submitted that the employees could not have filed complaints after accepting the benefits under the Voluntary Retirement Scheme. The submission on behalf of the employer is that the acceptance of the Voluntary Retirement Scheme was optional for the employees and once they exercised the option of accepting the Voluntary Retirement Scheme, it is not open for the employees to challenge the Voluntary Retirement Scheme. In support of this submission the learned advocate has relied on the following judgments :

i) Judgment given in the case of A.K. Bindal and Another Vs. Union of India (UOI) and Others, AIR 2003 SC 2189 : (2003) 114 CompCas 590 : (2003) 98 FLR 1 : (2003) 4 JT 328 : (2003) 2 LLJ 1078 : (2003) 134 PLR 470 : (2003) 4 SCALE 313 : (2003) 5 SCC 163 : (2003) SCC(L&S) 620 : (2003) 45 SCL 89 : (2003) 3 SCR 928

ii) Judgment given in the case of HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, AIR 2006 SC 1420 : (2006) 3 JT 102 : (2006) 2 LLJ 245 : (2006) 2 SCALE 660 : (2006) 3 SCC 708 : (2006) SCC(L&S) 602 : (2006) 3 SLJ 162 : (2006) AIRSCW 1361 : (2006) 2 Supreme 617 .

iii) Judgment given in the case of Manojbhai N. Shah Vs. Union of India (UOI) (2015) 2 AD 181 : (2015) 1 ESC 177 : (2015) LabIC 1193 : (2015) 1 SCALE 64 : (2015) 4 SCC 482 : (2015) 1 SCJ 465 : (2015) 2 SCT 49 : (2015) 1 SLJ 357 : (2015) 1 UPLBEC 25 .

iv) Judgment given in the case of WMI Cranes Limited and Storm-Kraft Controls Vs. Kush Sitaram Chavan and Others, (2007) 4 BomCR 181 .

v) Judgment given in the case of Gajanan G.Patil Vs. Reliance Petrochemicals Ltd. reported in 2012 III CLR 829.

10. The proposition of law laid down in the above referred judgments is very clear that once the employee opts for accepting Voluntary Retirement Scheme, he cannot turn around and raise challenge in the matter. The above referred judgments support the employer insofar as it raises the challenge that the employees cannot contend that they are entitled for conferral of deemed permanency on the basis of Clause 4C of the Model Standing Orders. The employees cannot be permitted to make the claim relying on the provisions of Clause 4C of the Model Standing Orders after they have accepted benefits under the Voluntary Retirement Scheme.

However, in my view, the point which is required to be considered is as to whether the employees are entitled for the benefits on par with the permanent employees as per the terms of the agreement dated 25th September, 2002. The employees have made this alternate claim in their complaints.

11. It is undisputed that as per the agreement dated 21st April, 2003 between the employer and the Sangh, there were 797 employees working in the mill and that 51 permanent posts were vacant. As per Clause 1(c) of the agreement dated 25th September, 2002 Badli workers who were working on permanent vacant posts on the date of the agreement i.e. 25th September, 2002 were to be considered as permanent workers. According to the terms of the agreement such Badli workers, who were working on the permanent vacant posts, were entitled to get benefit under the Voluntary Retirement Scheme on par with the permanent employees. The question, which is required to be adverted to, is as to whether the employees who made complaints before the Industrial Court were working in the permanent vacant posts.

12. After going through the record of the cases, I find that the employees have pleaded that they have been working in the permanent vacant posts. The employees have given the details of the permanent vacant posts in which they were working and they had also given details as to how they were entitled for the benefits under the Voluntary Retirement Scheme, on par with the permanent employees. The employees have discharged the preliminary burden of pleading and bringing on the record the proof to show that they had been working in the permanent vacant posts.

The employer had tried to controvert the claim of the employees relying on the

terms of the subsequent agreement dated 21st April, 2003 and it is the case of the employer that the employees have failed to prove that they were working in the same department and in the same shift in which the permanent vacant posts were available. The employees have disputed the agreement dated 21st April, 2003 and it is the case of the employees that it has been executed in clandestine manner. However, without going in to the challenge raised on behalf of the employees in these regards, in my view, the employer has failed to discharge the burden of proving that the employees have not been working in the permanent vacant posts. The employer has not brought on the record sufficient material on the basis of which it can be ascertained that the permanent vacant posts were available in a particular shift and in a particular department and that the employees who had made the complaints before the Industrial Court were not working in those shifts and in those departments.

13. In Writ Petition No. 6541 of 2013, it is the case of the employer that Shri Sahebrao Marotrao Pote and Namdeo Kashirao Tapre were given deemed permanency as per the agreement dated 16th June, 2003 as they were working in the permanent vacant posts available in the Maintenance Section and Ring Frame Department and that Shri Laxman Chandrabhanji Bhujade (who had filed complaint) was working in the Spinning-Carding Department. It is the case of the employer that though the Spinning Department is parent department, as per the terms of the agreement dated 16th June, 2003, the employee (who had filed complaint) was not entitled for conferral of deemed permanency as he was not working in the permanent vacant post available in the Maintenance Section of Ring Frame Department.

14. Mr. D.C.R. Mishra, the learned advocate for the employees has pointed out the evidence of the employee (page 51 of the paper book of writ petition) that the employee was working in the Ring Frame Department as Cleaner in January, 1995 and that the employer had not published any list showing the vacant posts and the rules for absorption of the substitute workers in those vacant posts. The learned advocate has pointed out from the evidence of the employee (paragraph 9 at page 54 of the paper book of the writ petition) that Shri Namdeo Kashirao Tapre and Sahebrao Marotrao Pote had been junior to the complainant. The learned advocate for the employee has pointed out from the evidence of Shri Mubarak S/o. Mirjad Khan, who was working as Labour and Welfare Officer in the Mill, from paragraph No. 7 on page 58 of the paper book of the petition the stand of the employer that the employee (who had filed complaint) was transferred to Spinning-Carding Department and he worked there till 31st March, 2003 i.e. the date on which the mill was closed down. From paragraph 9 of the evidence of Shri Mubarak Mirjad Khan it is pointed out that two permanent vacant posts were available in the Maintenance Section of the Ring Frame Department and Shri Sahebrao Pote and Namdeo Tapre were working in that department and therefore, they were conferred with the deemed permanency and as the employee (who had filed complaint) was transferred to the Spinning-Carding Department he was not entitled for conferral of deemed permanency. Mr. D.C.R.

Mishra, the learned advocate for the employee has pointed out from paragraph 17 of the evidence of Shri Mubarak Khan that the employer had not produced any documentary proof to support their contentions.

15. The case of the other employees whose complaints are allowed by the Industrial Court, is also similar and they have brought on the record the pleadings showing their entitlement for conferral of deemed permanency. The employer has tried to controvert the claim of the employees contending that the employees were not working in the permanent vacant posts available in the particular department or particular shift, however in all these cases the employer has not produced documentary evidence to support its contentions. The record was undisputedly available with the employer and the employer has not given any justification for not producing the relevant record to support its contentions. The employer has failed to discharge its burden of proving that the employees (who had filed complaints) were not working in the particular department or the particular shift to prove that the permanent vacant posts were available in a particular department or in a particular shift and that the employees (who had filed complaints) were not working in that department or in that shift.

The Industrial Court has recorded the findings of fact by properly appreciating the pleadings and the evidence brought on the record by the respective parties. The employer has not been able to point out any patent illegality or perversity in the appreciation of material on the record, by the Industrial Court. It is not the case of the employer that the Industrial Court has not considered any relevant evidence on the record. It will not be possible for this Court to re-appreciate the evidence on the record.

16. In Writ Petition No. 2135 of 2011, the employer has raised the point that the complaints were filed before the Industrial Court after the prescribed period of limitation. The learned advocate for the employer has submitted that the point of limitation strikes at the root of the jurisdiction of the Industrial Court to entertain the complaints filed by the employees. However, the record shows that this point was not agitated before the Industrial Court. The Industrial Court did not frame any issue on the point of limitation. The employer has not raised this point in the memo of petition also. In view of these facts, I am not inclined to consider the submissions made on behalf of the employer in these regards.

17. For the above reasons, I am not inclined to interfere with the orders passed by the Industrial Court which are challenged in Writ Petition Nos. 2135/2011, 6541/2013, 4643/2013 and 3936/2007. The writ petitions are dismissed. In the circumstances, the parties to bear their own costs.

18. In Writ Petition No. 2046 of 2009, the claim of the employee is based on Clause 4C of the Model Standing Orders. It is undisputed that the employee accepted the benefits under the Voluntary Retirement Scheme. The contention of the employee is that as per Clause 4C of the Model Standing Orders, the employer was required to confer deemed permanency on the employee and the

employee was entitled for the benefits under the Voluntary Retirement Scheme on par with the permanent employees. The employee cannot be permitted to raise such challenge after accepting the benefits under the Voluntary Retirement Scheme. The employee has not been able to discharge the preliminary burden of showing that he was working in a permanent vacant post as contemplated by the agreement dated 21st April, 2003. [The judgment given in the case of Om Prakash Marwaha (D) thr. LRS. and Others Vs. Jagdish Lal Marwaha (D) thr. LRS., (2008) 13 JT 484 : (2008) 15 SCALE 560 : (2009) 1 SCC 510 : (2009) AIRSCW 655 : (2008) 8 Supreme 773 relied upon by the learned advocate for the petitioner, is not relevant for deciding the points raised in the petition.]

19. Shri R.B. Puranik, the learned advocate for the employer has submitted that the respondent No. 4 has been granted deemed permanency as he was working in permanent vacant post was senior to the employee (petitioner whose complaint is dismissed by the Industrial Court). The learned advocate for the employee has not been able to controvert the submission made on behalf of the employer. It cannot be said that the findings of fact recorded by the Industrial Court and the rejection of the claim of the employee by the Industrial Court is improper. I see no reason to interfere with the impugned order.

The Writ Petition No. 2046 of 2009 is dismissed. In the circumstances, the parties to bear their own costs.