
(1987) 02 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1722 of 1984

Khamgaon Central Co-operative Consumers Wholesale and
Retail Stores Ltd.

APPELLANT

Vs

Jaykumar Madiwale

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 38B
Industrial Employment (Standing Orders) Act, 1946 — Section 1(3)

Citation : (1987) 2 BomCR 536

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : M.N. Ingley, for the Appellant; C.S. Dhabe, for the Respondent

Judgement

M.S. Deshpande, J.

1 This petition by the employer under Articles 226 and 227 of Constitution is - directed against the order passed by the Industrial Court while setting aside the order passed by the Labour Court dismissing the complaint filed by the respondent u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act" for short), declaring that the petitioner has committed an unfair labour practice under Clauses I(a), (b) and (d) of Schedule IV of the MRTU and PULP Act, and directing the petitioner to pay to the respondent Rs. 1000/- by way of compensation for wrongful discharge together with back wages for-two years.

2. The respondent who was employed as a clerk with the petitioner society was given a notice by the petitioner on 10-2-1981 intimating to him that as he had attained the age of 58 years, he would stand discharged from the employment with effect from 11-3-1981 and directing him to hand over the charge of his Post to the Salesman. The respondent was relieved on 11-3-1981, but he filed an application under Clause 1(a),(b) and (d) of Schedule IV of the MRTU and PULP Act, before the Labour Court, Akola, praying for a declaration that he was

wrongfully discharged. The Labour Court found that no unfair labour practice was committed by the petitioner because he was superannuated on attaining the age of 58 years and that would not fall within Clause 1 of Schedule IV of the MRTU and PULP Act. The respondent filed a revision before the Industrial Court which pointed out that the rules which were purported to have been passed by the petitioner had not been approved by the Registrar of the Co-operative Societies, and since those very rules itself mentioned that they would come into force only after the approval was obtained from the Registrar of the Co-operative Societies, the services of respondent could not be terminated on the basis of those rules. It was pointed out by the Industrial Court that the case of the respondent was governed by the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 and under Item 25 of the Bombay Industrial Employment (Standing Orders) Rules, 1959, which is applicable to the workmen employed in the clerical or supervisory work, the age of retirement or superannuation of the workman may be 60 years or such other age as may be agreed upon between the employer and the workmen by an agreement, settlement or award, which may be binding on the employer and the workmen under any law for the time being in force. There is no dispute that except the rules framed by the petitioner, there was no agreement, settlement or award which is contemplated by the latter part of Standing Order No. 25 and the age of superannuation would be 60 years unless the rules which had been framed by the petitioner on the approval of the Registrar of the Co-operative Societies which admittedly had not been obtained.

3. Shri Ingley the learned Counsel for the petitioner referred to the observations of the Industrial Court that there was no evidence regarding the strength of the petitioner's establishment and in the absence of evidence on that point, the Model Standing Orders under the Bombay Industrial Employment (Standing Orders) Rules, 1959, cannot be invoked. This Court pointed out in C.N. Bhaskaran v. S.A. Patil 1984 Mh.L.J. 343 that by reason of section 38-B of the Bombay Shops and Establishments Act, the provisions of the Industrial Employment (Standing Orders,) Act apply to all establishments to which the Bombay Shops and Establishments Act applies as if they were industrial establishments within the meaning of the Industrial Employment (Standing Orders) Act. The sections makes no provision for the number of employees that the industrial establishment should employ or for satisfaction of the condition imposed by section 1(3) of the Industrial Employment (Standing Orders) Act. By section 38-B, in effect, the provisions of the Industrial Employment (Standing Orders) Act are engrafted into the Bombay Shops and Establishments Act, with only the necessary consequential changes in points of detail. A person governed by the Bombay Shops and Establishments Act, who is suspended is therefore, entitled to be paid wages as per the Model Standing Order. In the present case there is no dispute that the petitioner is an establishment within the meaning of the Bombay Shops and Establishments Act, 1948. The age of retirement for the respondent, therefore, was 60 years.

4. It was urged by Shri Ingley for the petitioner that the case as made out here would not be covered by Clause I(a), (b) and (d) of "Schedule IV of the MRTU and PULP Act. The evidence of the respondent showed that his relations with the employer were good and he had been treated well by the employer. Even he did not allege that there was victimisation. Since the rules framed by the petitioner, though they had not the approval of the Registrar, provided for superannuation at the age of 55 years, when the petitioner purported to act under those rules, it could not be said that the superannuation was brought about for patently false reason. Clause 1(a) and (d) of Schedule IV of the MRTU and PULP Act would not, therefore, apply to the case of the respondent. However, it was apparent that the superannuation was purported to be brought about on the strength of the rule providing for superannuation after attaining the age of 58 years, though the rules under which this was sought to be done, had not been approved. There can be no escape from the conclusion that the petitioner purported to act in colourable exercise of employer's right under the said rules which had not yet become operative. It may be noted that though the rules provide for superannuation after attaining the age of 55 years, no action was taken until the respondent was about to complete the age of 58 years and when the action was sought to be taken under these rules when the employer was aware that they could not be enforced unless approved by the Registrar of the Co-operative Societies, and so the only inference would be that the action was not being taken in good-faith. The case, therefore, squarely falls within Clause 1(b) of Schedule IV of the MRTU and PULP Act. The order passed by the Industrial Court, was, therefore, justified under Clause 1(b) aforesaid though not under Clause 1(a) and (d) and no interference, therefore, is called for with the order passed by the Industrial Court.

5. The rule is discharged but there will be no order as to costs. If the amount has not yet been paid to the respondent, the petitioner shall pay it within one month.