
(1991) 06 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 2467 of 1983

Larsen and Toubro Ltd.

APPELLANT

Vs

Rajnikant Raghunath Belekar and Others

RESPONDENT

Date of Decision : 25-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 63 FLR 607 : (1995) 3 LLJ 115

Hon'ble Judges : S.P. Kurdukar, J

Bench : Single Bench

Advocate : N.B. Shetye, N. Mhatre and P.M. Patel, for the Appellant; K.K. Singhvi and R.J. Kochar, Advs for R1, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kurdukar, J.—On a full-dressed trial, the Presiding Officer of the 1st Labour Court, Bombay, vide his order dated August 31, 1983, held that the termination of the 1st respondent by the petitioner-company vide its letter dated 9.7.1979 was not termination simplicitor under Standing Order No. 21, but dismissal and amounts to unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Act"). The learned trial Judge accordingly declared that letter of termination of service dated 9.7.1979 is bad and illegal and directed the petitioner-company to cease to engage in the unfair labour practice and to reinstate the 1st respondent with continuity of service and full back wages with effect from the date of termination. It is this order of this Labour Court which is the subject matter of challenge in the writ petition filed under Article 226 of the Constitution of India. The petitioner is a Limited Company. The 1st respondent was an employee, whose services were terminated vide letter dated 9.7.1979 by the petitioner-company.

2. In order to appreciate rival contentions I may briefly summarise the pleadings of the parties as under:

The 1st respondent on receipt of the termination order dated 9.7.1979, filed complaint (ULP) No. 100 of 1979, alleging that the Petitioner-Company is guilty of unfair labour practice under Item 1 of Schedule IV of the Act and also prayed for reinstatement with continuity of service and full back wages. It is averred by the 1st respondent that he was a permanent employee of the petitioner-company for last 11 years. He averred that he has excellent record of his service. At the relevant time, he was working as Die Maker in Tool Maintenance Assembly Department. The 1st respondent also made a reference to three merit Awards awarded to him by the petitioner-Company for his meritorious work. By letter dated 9.7.1979, petitioner-Company terminated the services of the 1st respondent with immediate effect, in exercise of the powers under Standing Order No. 21. It was alleged by the petitioner company that on June 20, 1979 at about 7.30 p.m. the 1st respondent was found sharpening a weapon commonly known as Kukri (knife) having 12 inches blade on the grinding machine of the company in its premises. On the basis of this incident, the petitioner-Company concluded that the 1st respondent was in possession of a lethal weapon on the premises of the company during working hours. This act of the 1st respondent has shaken Company's confidence and, therefore, his services came to be terminated. It is common premise that no charge sheet or memo was given nor any enquiry was held against the 1st respondent. It is alleged by the 1st respondent that termination letter dated 9.7.1979 amounts to dismissal without holding any enquiry. The termination also amounts to victimisation and not in good faith but colourable exercise of the Company's right. Action of the Petitioner-Company is thus mala fide. Therefore, the termination order be set aside and he be reinstated with continuity of service with full back wages. The petitioner-Company vide its written statement (Ex.-C) contested the complaint. It is averred by the petitioner-Company that the 1st respondent was neither discharged nor dismissed from service by the petitioner-Company but, according to them, company had taken action under Standing Order No. 21 and as such, there is no unfair labour practice falling under Item 1 of Schedule IV of the Act. According to the petitioner-Company, simple termination under Standing Order No. 21 cannot be termed as unfair labour practice. Petitioner-Company further averred that the 1st respondent was found in possession of Kukri, At the relevant time he was sharpening the blade on the lathe belonging to the petitioner-Company, during working hours. According to the petitioner-Company, services of the 1st respondent were terminated by way of simple termination. The petitioner-company then averred that there has been rivalry between Bharatiya Kamgar Sena and the Union of Datta Samant and as a result thereof, there were several incidents which led to violence and on occasions company had to close the factory. Petitioner-Company then gave several details as regards activities of both these Unions as well as the members of the respective Union. The 1st respondent although originally belonged to Bharatiya Kamgar Sena, later on switched over to Datta Samant Union and in fact he is an office-bearer. Having regard to the past conduct of the 1st respondent, petitioner-Company has lost confidence in him and, therefore, instead of holding any enquiry the petitioner-

Company has terminated the services of the 1st respondent by way of simple termination in exercise of power under Standing Order No. 21. The petitioner-Company has neither victimised the 1st respondent nor committed any unfair labour practice under the Act. Complaint filed by the 1st respondent is false and the same may be dismissed.

3. Both the parties led evidence at the trial. The learned Trial Judge framed as many as 6 issues and recorded his findings. The relevant findings of the Trial Judge are as under:

The complaint filed by the employee was not barred by limitation; the termination of the 1st respondent was not by way of victimisation; termination of the 1st respondent amounted to unfair labour practice. Consistent with these findings, the learned Trial Judge ordered that the 1st respondent be reinstated with continuity of service and full back wages. It is this order made by the learned Trial Judge is the subject matter of challenge in this writ petition.

4. Mr. Shetye, learned counsel, appearing for the petitioner-Company urged that Item 1 of Schedule IV of the Act attracts only punitive action or action grounded on misconduct. He further urged that every termination under Standing Order is not unfair labour practice. He also urged that every termination need not be preceded by enquiry, if misconduct is not made the basis for termination. Before I deal with these contentions, at this stage, it would be proper to refer to termination order (Ex.-A) Termination order reads as under :-

"On 20th June 1979, at about 7.30 p.m. while you were working in the 2nd shift, you were found sharpening a "Kukri" type knife with about 12" blade on grinding machine. You were thus in possession of a lethal weapon on the premises of the establishment during working hours.

In view of the history of the recent past in the company which had resulted even in cessation of all operations at Powai works for a long period and your having a lethal weapon in your possession has shaken our confidence in you and we are of the view that your continuance in our employment is not desirable and is fraught with risk.

Your services are, therefore, hereby terminated with immediate effect as per Company's Certified Standing Order No. 21 for daily-rated workmen.

You will be paid one month's wages in lieu of notice along with the other legal dues at the time of service of this letter on you which you are requested to collect.....".

From the termination order therefore, it is quite clear that basis of shaking confidence of the petitioner-Company was the incident of 20th June 1979 at about 7.30 p.m. when 1st respondent while on duty found sharpening the lethal weapon on the grinding machine, and as a result thereof, the company terminated the services of the 1st respondent resorting to the powers under Standing Order No. 21. The learned Trial Judge on appreciation of material on

record, recorded a finding that the allegation against the 1st respondent that he was found in possession of the lethal weapon on the Company's premises on 20th June 1979 was not established. If this finding of the learned trial judge is sustainable then, the question is whether the termination order amounts to dismissal or simplicitor termination under Standing Order No. 21, Mr. Shetye, learned counsel, took me through the evidence and other material on record. He vehemently urged that the learned judge has totally misread and misinterpreted the evidence on record. Counsel urged that on evidence it must be held that the 1st respondent was in possession of lethal weapon as averred by the Company in its termination order. After going through the evidence of the witnesses, I am afraid, it would not be possible for me to take a different view of the matter. The learned Trial Judge very carefully and cautiously examined the evidence on record and reached an unassailable finding that the petitioner-Company has failed to establish that the 1st respondent was in possession of a lethal weapon and was sharpening the same on the grinding machine of the Company. I am in agreement with the said finding. It may also be stated that this being a finding of fact, based on appreciation of the material on record, it would not be permissible for this Court in exercise of its powers under Article 226 of the Constitution to interfere with such finding of fact. The result, therefore, is that loss of confidence based on possession of lethal weapon by the 1st respondent being foundation of termination order must fail. If this be so, the question would be as to whether the impugned termination order dated 9.7.1979 amounts to simple termination in exercise of powers under Standing Order No. 21. Once it is held that recitals in the termination order as regards possession of the lethal weapon are not proved, then obviously there could not have been foundation for terminating services of the 1st respondent. Latter part of the termination order refers to the apprehension entertained by the petitioner-Company which was sought to be supported by first part of the order viz., that the 1st respondent was found in possession of a lethal weapon during shift hours. In my opinion this termination order which is founded on possession of lethal weapon with the 1st respondent, if not found established by the petitioner-company, then it cannot be read as simple termination as sought to be emphasised by Mr. Shetye in support of his submission.

5. I may now refer to relevant provisions of Item 1 of Schedule IV of the Act. In my opinion, complaint of the 1st respondent clearly and squarely falls under Clauses (b) and (d) of the said provision.

Clauses (b) and (d) read as under:

"(b) Not in good faith, but in colourable exercise of the employer's right;

(d) For patently false reasons."

At the cost of repetition, it must be stated that once it is held that the petitioner-company has failed to establish that the 1st respondent was in possession of a lethal weapon on the premises of the company during working hours, then the

only inference is that the termination of the 1st respondent was not in good faith, but in a colourable exercise of the employer's right under Standing Order No. 21. Viewed from another angle, it must follow that the penalty of dismissal inflicted by the petitioner-company on the 1st respondent was patently illegal. If this be so, the Learned Trial Judge was right in reaching a conclusion that the impugned order of termination dated 9th July 1979 at Exhibit-"A" was not a simple termination covered by Standing Order No. 21, but amounted to dismissal and thus, penalty and consequently, the same cannot be sustained. The submission of Mr. Shetye, therefore, that the letter of termination at Exhibit-"A" is not punitive action or action founded on misconduct cannot be accepted. As far as other two submissions which are referred to hereinabove are concerned, they are pure legal hypothetical submissions and answer thereof must flow from finding on the 1st submission which I have answered against company.

6. Mr. Shetye drew my attention to various judgments of the Supreme Court to emphasise that the impugned order of termination dated 9.7.1978 Exhibit-A was simple termination and not punitive action. He drew my attention to a judgment of the Supreme Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha 1980 1 LLJ 137. He strongly relied upon the observations contained in para 55":

"On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing dubious servant. Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

There can hardly be any dispute about the legal proposition, but as I have pointed out earlier, the termination order dated 9th July 1979 was founded on the alleged incident viz. possession of lethal weapon by the 1st respondent during working hours which has shaken confidence of the Company and this foundation the company has failed to establish. The principle laid down by the Supreme Court, therefore, in the facts of the present case, is not applicable.

7. Mr. Singhvi, learned counsel appearing for the 1st respondent, drew my attention to paragraphs 55, 56 and 57 of the same judgment and urged that there cannot be hard and fast rule to test character of termination order as to whether it is punitive or otherwise. He urged that in the present case, company did rely upon alleged misconduct of 1st respondent in its termination order dated 9th July 1979, and if this foundation is found untenable, then only conclusion that must follow is that the termination is not a simplicitor termination falling under Standing Order No. 21, but amounts to dismissal without following normal procedure prescribed by law. Mr. Singhvi, therefore, urged that the observations of the Supreme Court in para 55 of the judgment relied upon by Mr. Shetye do

not advance petitioner's case any further. Once it is held that the impugned order could not be a simplicitor termination then other authorities cited by Mr. Shetye will have no bearing upon two other legal submissions. I may only refer to the authorities without dealing with the same any further:

(1) Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, .

(2) The Punjab National Bank Ltd. Vs. Its Workmen, .

(3) Hindustan Steel Ltd. v. Roy (A.K.) and Ors. 1970 1 LLJ 228.

(4) Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, .

Thus, conclusion that must follow is that the termination order dated 9th July 1979 is not termination simplicitor covered by the Company's Certified Standing Order No. 21 and in fact, it is a dismissal. The petitioner-company has resorted to order of dismissal founded on alleged misconduct without holding any enquiry and thus violated principles of natural justice. It must, therefore, follow that the Company-petitioner has been guilty of unfair labour practice as contended by the 1st respondent.

8. It was next contended by Mr. Shetye that notwithstanding the principle that once order of termination is set aside, reinstatement as a rule must follow, but in this case, he urged this is not a fit case where respondent No. 1 be ordered to be reinstated with full back wages. Mr. Shetye relied upon the following circumstances to deny reinstatement as well as back wages to the employee :

(i) Internal Union rivalry.

(ii) Attack on Towaro by members of rival union; and

(iii) Respondent No. 1 is active member of the rival union of Datta Samant, who had refused to accept the benefits under the settlement.

These circumstances, in my opinion, in the present case, can hardly be taken into consideration for refusing relief of reinstatement. Mr. Shetye also urged that object of Industrial Disputes Act is to achieve peace and by reason of granting reinstatement to the 1st respondent the said object would be defeated. This can hardly be accepted having regard to the finding that the Petitioner-Company had resorted to unfair labour practice, while terminating the services of the 1st respondent founded on false grounds.

In the result, writ petition fails and the same is dismissed with costs. Rule discharged with costs.

On the application of Mr. Shetye, interim order dated 15.11.1983 passed at the time of admission of this writ petition to continue till 1st August 1991. Petitioner-Company through their counsel undertake to give two days' notice to the 1st respondent before applying for interim relief in the higher Court.