

(2013) 11 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 1494 of 2012

Machindra Chandrabhan Dange

APPELLANT

Vs

Siddhi CNC Private Limited

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 4 ALLMR 39 : (2014) 2 BomCR 475 : (2014) 5 MhLj 173

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : P.V. Barde, for the Appellant; V.N. Upadhye, for the Respondent

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J.—Heard learned Advocates for the respective parties. Rule. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

2. Question raised before me is, "Whether it is expected of the Industrial Court to remand matters to the Labour Court, as a matter of routine course?"

3. The grievance of the petitioner is that he had filed Revision (ULP) No. 49 of 2010 before the learned Member, Industrial Court, Ahmednagar challenging the correctness of the judgment and order dated 4.12.2010 and part-I order, on the legality of the domestic enquiry dated 4.2.2009., passed by the Labour Court, Ahmednagar. Vide the final judgment, the complaint of the petitioner was partly allowed on 4.12.2010, by the Labour Court.

4. The respondent was aggrieved only with the final judgment dated 4.12.2010 to the extent of the complaint of the petitioner having been partly allowed. The respondent supported Part I order dated 4.2.2009 but challenged the judgment dated 4.12.2012 by filing Revision (ULP) No. 41 of 2011.

5. Both the Revision (ULP) Nos. 49 of 2010 and 41 of 2011 were taken up together for hearing by the Industrial Court, Ahmednagar. Vide common

judgment dated 11.11.2011, the final judgment and order of the learned Judge, Labour Court dated 4.12.2010 was quashed and set aside. There is no observation in the impugned order, as to whether the Industrial Court is remanding the matter back to the Labour Court for fresh decision of Complaint (ULP) No. 25 of 2002. It has simply been ordered that the complaint be expedited as early as possible. For clarity, the operative part of the said order is reproduced herein below:-

ORDER

1. The Revision (ULP) No. 49 of 2010 is hereby allowed.
2. The Judgment and order passed by learned Judge, Labour Court dt. 4.12.2010 in Complaint (ULP) No. 25/2002 is hereby quashed and set aside. The Revision (ULP) No. 41 of 2011 in view of the same became redundant.
3. The learned Judge, Labour Court to expedite the complaint as early as possible as the complaint is of 2002.
4. R & P be sent to the Labour Court forthwith.
5. In the circumstances there is no order as to costs.

Ahmednagar Date: 11.11.2011

(P.S. Shinde) Member Industrial Court, Ahmednagar

6. Shri Barde, learned Advocate for the petitioner contends that the reasons in the impugned order commence from paragraph No. 8 at Page No. 84 of this petition. In the very opening sentence, the Industrial Court records that the arguments of the Advocates for both the parties are heard on judgment dated 4.12.2010. There is no mention of the Part I order dated 4.2.2009 having been considered in the said paragraph. The learned Advocate has stressed that the said paragraph No. 8, which has culminated into the order at the end of paragraph No. 8 is restricted only to the judgment dated 4.12.2010 and cannot be read or construed to be an observation on the Part I order of 4.2.2009.

7. Per contra, learned Advocate for the respondent Shri Upadhye submits that though it is not so mentioned in the reasons as regards order dated 4.2.2009, one has to draw an inference that the learned Member of the Industrial Court desired to make his observations on the order dated 4.2.2009.

8. It is an admitted position that a compressive revision petition was filed by the revision petitioner to assail both the orders passed by the Labour Court in Complaint (ULP) No. 25 of 2002 i.e. the order dated 4.2.2009 and order dated 4.12.2010. Revision of the respondent was only to the extent of assailing order dated 4.12.2010. There is no dispute as regards the order dated 4.2.2009 having been challenged by the petitioner herein before the learned Industrial Court.

9. I find from paragraph No. 8 of the impugned judgment that the Industrial Court has made references to the extent of the findings of the Enquiry Officer

and the evidence recorded in the enquiry. The Court also observes as under:-

.... It is settled law that preliminary issue regarding fairness of enquiry and perversity of findings of the enquiry officer are required to be framed and decided when the dismissal was on the basis of enquiry conducted against employee. As such the findings to that effect drawn by the learned Judge, Labour Court in my opinion are perverse...

10. One has to exert to gather an impression from these observations that the Industrial Court may have found the reasons in support of the order dated 4.2.2009 to be perverse. However, no conclusion has been drawn, as to whether the said order is being sustained or set aside. Similar are the observations while concluding the reasons in paragraph No. 8 which are quoted herein below.

... In my opinion, that is expected when specific clauses made and alleged by the employee in his complaint. In view of the aforesaid discussion, I am of the opinion that, since learned Judge, Labour Court failed to frame the issue regarding perversity of the findings as well as having taken shelter of Section 11(A) of I.D. Act the findings drawn by the learned Judge, Labour Court deserves to be as perverse and contrary to law. I, therefore, answer point No. 1 in the affirmative...

11. Shri Barde, learned Advocate, therefore, makes a serious grievance about the manner in which both the revisions were dealt with and the impugned judgment resulting in not only miscarriage of justice but travesty of justice. He takes a strong exception to the impugned judgment whereby the case has been remanded to the Labour Court.

12. Shri Upadhye, learned Advocate for the respondent has vehemently advanced his submission in support of the impugned order. He contends that though the learned Industrial Court has not specifically given reasons and has not arrived at his conclusions with specific observations, yet from the contents of paragraph No. 8 as well as the operative part of the order, one can deduce that the final judgment and order dated 4.12.2010 passed by the Labour Court is set aside. Shri Upadhye, learned Advocate for the respondent further canvasses that the issue of perversity of the findings of the Enquiry Officer was never a matter of challenge before the Labour Court.

If that be so, then the Industrial Court had no reason to come to a conclusion that Rs. failure to frame the issue regarding perversity of the findings leads to the conclusion that the observations of the Labour Court deserve to be branded as perverse and contrary to law." The Industrial Court cannot be oblivious of the law laid down in the case of Bharat Forge Company Ltd. Vs. A.B. Zodge and another, .

13. I am not in agreement with Shri Upadhye's contentions, in view of certain observations made by the Industrial Court in paragraph No. 8 of the impugned order, which are reproduced above. In fact, the said observations, if at all are to

be taken as conclusions, would mean that even the order dated 4.2.2009 is found to be perverse by the Industrial Court. What prevented the Industrial Court in exercising jurisdiction duly vested in it by law and draw unambiguous conclusions, is a mystery.

14. Shri Barde, learned Advocate has placed reliance upon various judgments of the Honourable Apex Court as well as this Court on the point of remand, as follows:-

(a) Maya Devi (dead) through Lrs. Vs. Smt. Raj Kumari Batra (dead) through Lrs. and Others, :-

16. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the appellate Court should remit the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation.

(b) Cricket Club of India and Others Vs. D.R. Shyam and Another, :-

9. As regards the third ground of challenge that the Revisional Court could not have itself decided the issue regarding the status and ordered reinstatement and at the most could have remanded the matter to the Labour Court, as already observed above, once it was found that the undisputed material on record apparently disclosed the status of the respondent to be that of an employee within the meaning of the said expression under the said Act and there being no other defence raised by the appellant in support of their decision to terminate the services of the respondent, we fail to understand what could have been the occasion for the Industrial Court to remand the matter to the Labour Court and to keep the parties engaged in the litigation merely for the sake of the pleasure of the employer.

(c) Gangagar Ingole died thorough his L.Rs. (Rajaram Gangaram Ingole and Dropadabai Ingole) and Subhash Ingole Vs. Malkarjun Hundekar, Ravindra Hundekar and Sanjay Hundekar, :-

5. Perusal of the Order 41, Rule 23 of the CPC empowers the Court to remand the matter back to the trial Court for fresh adjudication. However, in the instant case, the lower appellate court has remanded the matter back to the trial Court second time instead of deciding the matter itself by framing necessary points. The Supreme Court in case of Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, held that the power of the appellate Court under Order 41, Rule 23 should not ordinarily be exercised merely because in its view reasoning of lower court in some aspects was wrong. When the material is available before the appellate court, the appellate Court itself should decide the appeal, one way or the other. The same view is reiterated by the Honourable Supreme Court in subsequent pronouncements

15. He then has referred the following judgments/orders passed by this Court pertaining to the impugned orders passed by the very same learned Member, Industrial Court, Ahmednagar.

(a) Rajendra Bhalchandra Joshi Vs. Shaskiya Sevetil Abhiyantyanchi Patpedhi [Writ Petition No. 6424 of 2011 - Aurangabad - dated 24.1.2012].

7. With the assistance of the learned counsel, I have gone through the judgment. Remand of matter can not be as a matter of course. Endeavour has to be made by the Court to put an end to the lis. The whole evidence was before the Industrial Court. It is not that any of the parties want to lead evidence and the matter is remitted for the said purpose. In the present case, the matter is remitted to the Labour Court only on the ground that the Labour Judge has not properly differentiated between the non-payment of suspension allowance and less payment of suspension allowance. There was no impediment for the Industrial Court to consider the said aspect on its own merits. Remanding the matter for the said purpose would not be proper. The course of remand has to be adopted sparingly and only in a case where the Court comes to the conclusion that the evidence is inadequate or the opportunity was not given to the party. The Industrial Court could have given a finding on the aspect of less payment of suspension allowance and/or non-payment of suspension allowance and its effect on the inquiry. Moreover, the Industrial Court was also required to consider the order passed in earlier Revision (ULP) No. 4 of 2003 and its effect on its own merits. Whether the said revision was maintainable, whether it was dismissed as not maintainable. All these aspects were required to be considered by the Industrial Court. There was no reason to remit the matter to the Labour Court for the said purpose.

(b) Maharashtra State Road Transport Corporation Vs. Arjun Shankar Wagh [Writ Petition No. 674 of 2011 - Aurangabad - dated 23.3.2011].

7. I, therefore, find application of mind by the Industrial Court insufficient and the Industrial Court appears to be confused in the matter. This has resulted in refusal to exercise jurisdiction available to it in accordance with law. The grievance of respondent/employee needed to be considered on merits in

accordance with law. The defence of the petitioner/employer also, therefore, needed to be looked into accordingly. As that has not been done, the impugned judgment will have to be set aside.

(c) Shivaji Karbhari Badak Vs. Indian Seamless Metal Tube Ltd. [Writ Petition No. 10396 of 2012 - Aurangabad - dated 21.2.2013].

5. No doubt, the order of remand cannot be passed in a casual manner. If the Industrial Court is not agreeing with the view taken by the Labour Court, then it can pass independent order. The Industrial Court has dilated upon the nature of enquiry and has come to the conclusion that the enquiry was fair and proper, but only because the decision on the preliminary issue is being set aside for the other issues, the matter appears to have been remanded.

(d) Raosaheb Nana Chavan Vs. Parner Sahakari Sakhar Karkhana [Writ Petition No. 2717 of 2012 - Aurangabad - dated 2.5.2013].

8.... Therefore, in my opinion, the Industrial Court should not have remanded the matters back to the Labour Court. The Industrial Court has further observed that, the Labour Court has granted full back wages without examining legal aspects. In that respect, it can be safely observed that, if the Industrial Court was of the opinion that, the findings recorded by the Labour Court on the point of back wages are not in accordance with the material placed on record or in accordance with law, it was possible for the Industrial Court to decide the said aspect in the Revisions itself. In revisional jurisdiction, the Industrial Court is competent to set aside the findings of the Labour Court which are perverse and contrary to record. Therefore, in my considered opinion, viewed from any angle, the Industrial Court was not correct and justified in remanding the matters back to the Labour Court. The Industrial Court should have decided the revisions on merits there itself and there was no question of remand of the matters to the Labour Court.

(e) Sumant Waman Jawale Vs. Vruddheshwar Sahakari Sakhar Karkhana Ltd. [Writ Petition No. 1994 of 2013 - Aurangabad - Dt. 17.6.2013].

5. It is not a case that the parties wanted to adduce some evidence. If the Industrial Court had come to the conclusion that the Judge of the Labour Court has not applied its mind properly, the Industrial Court could have decided the matter on merits by appreciating the application, say and the order.

(f) Balasaheb Bhanudas Bhosale Vs. Laxmi Saw Mill [Writ Petition No. 2747 of 2013 - Aurangabad - Dt. 8.10.2013].

8. It is not the case that the Industrial Court has allowed the parties to adduce fresh evidence. If the reasons are not properly given by the Labour Court, the Industrial Court may give reasons and if it does not agree with the reasons and conclusions of the Labour Court, it may take a different view as is permissible under the law. But, for the said purpose, remand is not required.

16. Shri Barde, therefore, concludes his submission by stating that it is the same Industrial Court, Ahmednagar, which has mechanically passed the orders of remand in various revision petitions. He further contends that the observations made by this Court in the above referred orders pertain to the same Industrial Court, Ahmednagar. He also submits that there are about 200 such orders, where the same learned Member of the Industrial Court, Ahmednagar has mechanically remanded the matters to the Labour Court for reconsideration.

17. It is clear from the matter at hand that the petitioner has raised two fold contention. Part I order dated 4.2.2009 as well as the final judgment dated 4.12.2010 were challenged in Revision (ULP) No. 49 of 2010. The conclusions drawn by the Industrial Court in the impugned order, has in fact, resulted in creating confusion. The two fold challenge before the said Court, at the behest of the petitioner, should have been dealt with independently and the Industrial Court ought to have drawn it's conclusions on each of these orders. Instead of doing so, the Industrial Court has merely made it's observations as if they are "off the cuff" remarks and it is difficult to trace out from contents of paragraph No. 8 as to which amongst the two impugned orders have been criticized by the Industrial Court or is it that only the judgment dated 4.12.2010 has been set aside. Remanding of a case for re-hearing or fresh consideration is not a formality and certainly not an option so as to enable a Court to abdicate its powers and jurisdiction.

18. From the orders cited before me, which have been passed by this Court, it does appear that the concerned Industrial Court has been mechanically remanding the matters back to the Labour Court at Ahmednagar. I am convinced that this is a fit case wherein the impugned judgment deserves to be quashed and set aside. Nevertheless, the said learned Member, Industrial Court needs to exercise jurisdiction duly vested in him by law instead of mechanically deciding Revision Petitions and remanding them back to the Labour Court.

19. In the light of the above, Rule is made absolute in following terms:-

(a) Present Writ Petition is allowed. The impugned order dated 11.11.2011 passed by the Member Industrial Court, Ahmednagar in Revision (ULP) No. 49 of 2010 and 41 of 2011 is quashed and set aside.

(b) Both the revision petitions be heard and finally disposed of by the Industrial Court, Ahmednagar within a time frame of six months.

(c) The Industrial Court shall strive to look into the challenges posed against both the impugned orders, which are subject matter of challenge in the said two revision petitions in accordance with law and on their merits.

(d) The Industrial Court shall take into consideration the observations made by this Court in the above referred orders as well as this order as regards the mechanical remanding of matters back to the Labour Court.

(e) In the event, the Industrial Court is convinced that the matter needs to be

remanded back to the Labour Court, Ahmednagar, it shall be done by adducing reasons for such remand and after taking into account the observations of this Court in the said orders referred above.

(f) Parties are at liberty to bring to the notice of the Industrial court, full text of the above referred orders.

(g) No opinion is expressed by this Court on the merits of Revision (ULP) Nos. 49 of 2010 and 41 of 2011.

(h) Both the parties consent to appear before the Industrial Court, Ahmednagar on 16.12.2013, as such, separate notices for appearance of parties by the Industrial Court, Ahmednagar are dispensed of.

There shall be no order as to costs.