

(1995) 03 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 3786 of 1989

Mahadeo Khanderao Chavan

APPELLANT

Vs

In-charge Managing Director, Shriram Sahakari Sakhar
Karkhana Ltd., Phaltan and others

RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 44
Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (1995) 71 FLR 379

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

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India is directed against an order of the Industrial Court, Kolhapur dated 18.8.1989 in Revision Application (ULP) No. 11 of 1989 under the provision of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. At the outset, I must observe that from the record it appears that the conduct of the First Respondent, a manufacturer of sugar, was hardly as sweet as the sugar manufactured by it or as the Industrial Court was persuaded to believe.

3. The First Respondent is a Co-operative Society manufacturing sugar in its factory at Phaltan, District Satara. The petitioner was employed in the service of the First Respondent from 1957, carried a designation of Section Incharge and was given the clerical grade II under the Second Wage Board for Sugar Industry in India. Sometimes in the year 1978 the Petitioner was transferred to the Sugar Retail Shop owned by the First Respondent and since then he was continuously in service as a Sugar Sales Shop Incharge till his service was terminated on 16th October, 1979.

4. The circumstances under which the petitioner's service was terminated make

very interesting reading. On or about 24th February, 1977, the Petitioner was served with a show cause notice which, inter alia alleged serious misconduct of misappropriation of the property and serious acts of dishonesty on his part as the Section Incharge in the Sugar Retail Shop. The Petitioner by his reply dated 26th February, 1977 gave a detailed explanation as to under whose orders memos and chits he had distributed the sugar from the retail shop to different persons. Considering the reply to be unsatisfactory, the First Respondent issues a charge-sheet to the Petitioner on 1st March, 1977, in which the same allegation of misconduct were repeated. An enquiry was started against the petitioner on 7th March, 1977. The Petitioner desired to be represented in the enquiry by one R. B. Bhagat, President, Phaltan Taluka Shriram Sakhar Kamgar Union, Phaltan and filed an application for such permission. The enquiry was adjourned from time to time for the convenience of parties. On 28th March, 1977 the said Bhagat brought to the notice of Enquiry Officer that Enquiry Officer was himself a witness of the enquiry and, therefore, disqualified for conducting the enquiry. This objection was over-ruled by the Enquiry Officer and the enquiry was conducted on several dates. On 28th July, 1977, abruptly and without any intimation to the Petitioner, the Enquiry Officer was changed and substituted by one B. N. Tadvalkar, started the enquiry in which the Petitioner was represented by his Union President, R. B. Bhagat, who was permitted to cross-examine the witnesses examined by the Enquiry Officer in the enquiry. The Enquiry Officer abruptly stopped the enquiry between 18.11.1977 to 13.4.1979 and without concluding the enquiry, submitted his findings. On 11.5.1977, the Petitioner was informed that the enquiry would recommence on 17.5.1979 on which date it was adjourned to 25.5.1979. On 26th June, 1979, the First Respondent informed the Petitioner that R. B. Bhagat could not participate in the enquiry as representative of the Petitioner in view of the objection alleged to have been representative union on or about 18th May, 1979. On 17th May, 1979, though R. B. Bhagat was present at the enquiry and represented the Petitioner, the Enquiry Officer refused to grant him permission to do so and appointed one Shaikh to represented the petitioner, much against his objections. The Enquiry Officer passed an order on 22.5.1979 preventing R. B. Bhagat, the representative of the Petitioner from representing the Petitioner.

5. The Petitioner filed Complaint (ULP) No. 22 of 1979 on 18.4.1979 before the Industrial Court, Pune. This Industrial Court Pune granted ad-interim injunction against the First Respondent restraining the Enquiry Officer from proceeding with the enquiry till the complaint could be heard and disposed of While the said complaint was still pending before the Industrial Court, the First Respondent passed an order on 16th October, 1979 terminating the service of the Petitioner on the pretext of loss confidence, as decided in the Resolution 22(13) passed by the Board of Directors on 10.9.1979.

6. The Petitioner challenged the termination of his service by his complaint (UPL) No. 1 of 1979 under the Act in which he alleged that the termination of his service was an unfair labour practice u/s 28 read with Item No. 1(a), (b), (d),

and (f) of Schedule IV of the Act. The Labour Court, Sangli, by its order dated 31.12.1986 held that the order of so-called loss of confidence resulting in termination of service of the Petitioner was malafide, illegal and deserved to be set aside as it amounted to an unfair labour practice. The Labour Court set aside the order of termination of service and directed reinstatement in service with only half back-wages. This order was challenged by the First Respondent before the Industrial Court u/s 44 of the Bombay Industrial Relations Act. I am informed at the Bar that the Respondent's Revision Application succeeded and the Industrial Court set aside the order of the Labour Court dated 31.12.1986 and remanded Complaint (UPL) No. 1 of 1979 for retrial to the Labour Court.

7. After remand, the Labour Court, Sangli, recorded detailed evidence and, by its order dated 12.1.1989, held completely against the First Respondent on all points and directed reinstatement of the Petitioner in service with full back wages from 16th October, 1979. This order was once again challenged by the first Respondent in Revision Application (ULP) No. 11 of 1989. By the impugned order dated 18.8.1989 the Industrial Court, Kolhapur, allowed the revision application and, though holding that the order of termination of service dated 16th October, 1980 was illegal, declined to grant relief of reinstatement with full back-wages, but directed payment only of retrenchment compensation and a lumpsum amount of Rs. 10,000/- (Rupees ten thousand only) as compensation in lieu of reinstatement. Hence this writ petition.

8. With the help of the learned counsel on both side. I have perused the order of the Labour Court dated 12.1.1989 and also the order of the Industrial Court dated 18.8.1989. At the outset, I may say that the order of the Labour Court appears to be a well considered order in which all facets of the case were carefully considered and clear findings given. The issues raised by the Labour Court and its findings are in paragraphs 31 and 32 of its order. They are :

"I S S U E S :

(1) Whether the Complainant has proved unfair labour practice under Item I of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971 ?

(2) Whether the respondent started an enquiry into the misconduct of misappropriation against the Complainant ?

(3) Whether the Respondent completed the enquiry and whether the findings were given by the enquiry officer ?

(4) Whether the respondent has proved the misconduct of criminal breach of trust and/or misappropriation of sugar of the Respondent factory by the Complainant ?

(5) Whether the Complainant has proved that he was victimised by the Respondents ?

(6) Whether the action of the Respondent in discharging the complainant by way

of discharge simpliciter is legal in this case ?

(7) Whether the Respondent has proved that the respondent had lost confidence in the complainant worker and therefore this action in discharging him by way of simple discharge is legal as per the Standing Orders ?

(8) Whether the Complainant is entitled to reinstatement and full back wages and continuity of service ?

(9) What Order ?

F I N D I N G S

1) Yes

2) Yes

3) No

4) No

5) Yes

6) No

7) No

8) Yes

9) As per final Order."

The conduct of the First Respondent in abruptly abandoning the enquiry and passing an order of so-called discharge simpliciter for loss of confidence was carefully scrutinised by the Labour Court which held that such action was clearly malafide and intended to get over the fact that the First Respondent perhaps did not have any evidence to prove the very serious misconduct of misappropriation and dishonesty alleged against the Petitioner. The Labour Court also considered the crucial fact that the Petitioner had produced two bundles of chits and memos issued by various Directors and other Senior Officers of the First Respondent instructing Incharge of the sugar sales shop to issue sugar to different authorities like R.T.O., Income Tax Authority, Minister and Government Officers. The Labour Court also noticed that, in the audit reports made by the Government Auditor for the years in question there was no adverse report at all about any shortage of sugar or misappropriation from the sale shop, nor was there any report that the Petitioner was responsible in any manner for any shortage. Considering the casual manner in which the property of the society was being utilised by the Officers of the First Respondent Society and the absence of any adverse report either generally or particularly against the Petitioner from the Government Auditors, the Labour Court came to the conclusion that the First Respondent's story about loss of confidence in the Petitioner, because of his alleged misappropriation of sugar under his charge, was without basis and

connected only with the malafide intention of throwing him out of employment. These are, in sum, the findings recorded by the Court on the evidence on record.

9. Most surprisingly, the Industrial Court seems to have disregarded all findings of fact recorded by the Labour Court. Though the learned Judge of the Industrial Court was him self conscious (as indicated by the observation in paragraph 11 of the impugned order) that he had no jurisdiction to interfere with findings of fact in revisional jurisdiction his observations, that the Labour Court has not appreciated the evidence properly" and, therefore, it was necessary for him to interfere indicate that he acted to the contrary. In my view. The Industrial Court would have done better to practice the precept that it had no jurisdiction to interfere with findings of fact recorded by the Labour Court. It is by now well settled that the jurisdiction u/s 44 is not an appellate jurisdiction, but only a jurisdiction of judicial superintendence, somewhat akin to the jurisdiction of the High Court in which interference with the findings of fact recorded by the Courts below is not permitted. [See in this connection the Judgment of the Division Bench in Hindustan Prachar Sabha v. Rama Sengupta 1986 I CLR 77. I am satisfied that the Industrial Court has done precisely what it had no jurisdiction to do u/s 44 of the Act. A perusal of the impugned order would show that the Industrial Court has virtually exercised appellate powers which it did not possess u/s 44 of the Act. In my view, therefore, the impugned order was clearly without jurisdiction.

10. Even the Industrial Court does not hold that the order of termination of Petitioner's service dated 16th October, 1980 was legal and proper. It also took the view that the order was illegal, as it amounted to retrenchment in contravention of the mandatory provisions of Section 25F of the Industrial Disputes Act. The reasons given by the Industrial Court for refusing relief of reinstatement and back wages are somewhat extraordinary. If the circumstances has been carefully adverted to, the Industrial Court would have realised that the case on hand was a case of gross victimisation of a subordinate employee caught in the web of machinations by Superior Officers. Unfortunately the Industrial Court seems to have lost sight of it and readily accepted the ingenuous case of bonafide loss of confidence. Even for an order of loss of confidence, it is not disputed that the Standing Orders require an order in writing contemporaneously putting on record the facts indicating the circumstances under which the Employer had lost confidence in the employee. No such order appears to have been placed on record, nor was it shown to at the bar. In these circumstances, I am of the view that the impugned order is without jurisdiction and even otherwise bad in law and deserves to be set aside.

11. In the result, the writ petition is allowed, rule is made absolute and the impugned order of the Industrial Court dated 18.8.1989 made in Revision Application (ULP) No. 11 of 1989 is hereby quashed and set aside. The Petitioner is entitled to all benefits which would flow from the order of the Labour Court dated 12.1.1989 made in Complaint (ULP) No. 1 of 1979. The First Respondent is

directed to implement the said order of the Labour Court within a period of six weeks from today.

12. The First Respondent shall pay the costs of this writ petition to the petitioner quantified Rs. 600/- (Rupees six hundred only).

13. Certified copy expedited.