
(2002) 09 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 4760 of 1993

Maharashtra Industrial Development Corporation and Others

APPELLANT

Vs

Baban Nathaji Sarode and Another

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2003) 1 BomCR 680 : (2003) 2 BOMLR 130 : (2003) 1 MhLj 63

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Deepa Chavan, instructed by Little and Co, for the Appellant;

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner No. 1 is a statutory corporation established under the Maharashtra Industrial Development Act, 1961 and the petitioner Nos. 2 to 5 are officers of the Corporation. Hereinafter they will be collectively referred to as "the petitioners". They are aggrieved by the order dated 17-8-1993 passed by the Industrial Court, Maharashtra at Nasik in Complaint (ULP) No. 460 of 1989 filed by the respondent No. 1 u/s 28 read with Section 30 and Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (for short MRTU and PULP Act). The complaint of the respondent was concerning denial of promotion to him from 1973 onwards at every stage. He alleged the charge of unfair labour practices of favouritism and discrimination regardless of merits. He also alleged the unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act complaining that the petitioners did not implement the reservation policy and promotions were not given strictly in accordance with the Roster Points. The respondents prayed for a declaration that the petitioners engaged in the aforesaid unfair labour practices and sought affirmative orders to desist from engaging in the aforesaid unfair labour practice.

2. The petitioners appeared before the Industrial Court and contested the complaint by filing their written statement denying all the charges of unfair labour practices. The petitioners raised two substantial preliminary points in respect of limitation and also the maintainability of the complaint, as the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and consequently he was not an employee u/s 3(5) of the MRTU and PULP Act to be competent to maintain a complaint under the MRTU and PULP Act. According to the petitioners the duties performed by the respondent were of managerial and administrative nature and that he did not fall within the main part of the definition of workman and that he was squarely covered by the exception given in the definition. Admittedly his salary exceeded Rs. 1600/- p.m. According to the petitioners, the complaint filed by the respondent was not maintainable. On the merits of the promotions the petitioners have justified the promotions given by them at every stage. It was contended that at every stage the respondent was considered by the Departmental Promotion Committee and a decision was taken on the basis of the recommendations of the Departmental Promotion Committee. According to the petitioners, there was no unfair labour practice and no victimization or discrimination shown to any one including the respondent. The petitioners further submitted that all the promotions were on the basis of the rules governing the promotions in the establishment. The petitioners have set out various other contentions in their written statement which are not being reproduced by me as it will not be relevant. The Industrial Court by the impugned Judgment and Order has accepted the contentions of the respondent and held that the petitioners had engaged in an unfair labour practice and directed the petitioners to extend promotional benefits to the respondent in all the categories i.e. Sr. Clerk, Assistant, Assistant Area Manager as that of another employee Shri S.L. Taru who was enjoying the said benefits from the date given to him. The learned Member of the Industrial Court had also directed the petitioners to compute the monetary benefits for the entire period and pay the same to the respondent.

3. At the outset I am of the view that the complaint suffered from inordinate delay and laches particularly in the matter of promotions which were sought by the respondent in the complaint. It appears from the complaint that he made a grievance that from the year 1973 onwards at every stage he was denied legitimate promotions. In the year 1974 he was promoted as Senior Clerk. In the year 1979 he was promoted as Assistant (Head Clerk) and in the year 1981 he was promoted as Assistant Area Manager. The respondent complained that at every stage he was discriminated and that the reservation roster was not followed. He complained the aforesaid acts of discrimination and failure to maintain the roster from 1973 onwards. He filed a complaint on 28-4-1989, 16 years after the cause of action had arisen. If he was really aggrieved in the year 1974 he ought to have approached the Court of law making a grievance at that time itself. Had he done so and if he were to succeed all the other subsequent events which did injustice to him, according to me, would have been avoided.

During this long period of 16 years a large number of employees have been promoted at every stage of the promotions. It is further pertinent to note that no one who is likely to be adversely affected by any order in his favour has been impleaded in the complaint. The Industrial Court has lost sight of a fact that if his order is to be implemented the entire seniority list and the promotions will have to be re-shuffled. This will create anarchy and chaos in the organization. Those who get legitimate promotions during this period would certainly make legitimate grievance as they were also to be reverted without their fault and without hearing them. Such situation has not been considered by the Industrial Court. In my opinion the order of the Industrial Court cannot be sustained as the Industrial Court has totally lost sight of this particular aspect in the matter. By his order the promotions given to the employees from 1974 onwards will have to be quashed and set aside and the entire seniority list at every stage will have to be reshuffled, revised and reprepared. Those clerks or officers who were promoted during this period will have to be admitted or reverted without hearing them. The respondent has not impleaded any one of them in the complaint. On this aspect the Supreme court has repeatedly said that the questions of promotions should not be considered and interfered with after a highly belated stage. In the present we have 16 years of delay. The respondent wants the clock to be put back by 16 years. Mrs. Chavan, the learned Counsel appearing for the petitioners has rightly relied on the Judgment of the Supreme Court in the case of S.S. Moghe and Ors. v. Union of India and Ors., reported in AIR 1981 SC 1495. In paragraph 23 and 25 of the said Judgment the Supreme court has observed as under:

23. At this stage, it will be convenient to first dispose of the contentions urged by the petitioners against the validity of the promotions given to respondents Nos. 8 to 67 during the period between 1968 and 1975. In our opinion, the challenge raised by the petitioners against those promotions is liable to be rejected on the preliminary ground that it is most highly belated. No valid explanation is forthcoming from the petitioners as to why they did not approach this Court within a reasonable time after those promotions were made, in case they really did feel aggrieved by the said action of the Department. This Writ petition has been filed only in the year 1979, and after such a long lapse of time the petitioners cannot be permitted to assail before this Court the promotions that were effected during the years 1968 to 1975. A party seeking the intervention and aid of this Court under Article 32 of the Constitution for enforcement of his fundamental rights, should exercise due diligence and approach this Court within a reasonable time after the cause of action arises and if there has been undue delay or laches on his part, this Court has the undoubted discretion to deny him relief. (See *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*,).

25. If the petitioners were dissatisfied with the aforementioned findings entered by the Delhi High Court one should have expected them to approach this Court at least soon after that decision was rendered by that High Court in April 1972-- we are not suggesting that the findings of the High Court operate as *res judicata*

against the petitioners in these proceedings. There is no satisfactory explanation forthcoming from the petitioners as to why no action at all was taken by them to challenge the validity of the impugned promotions given to respondent Nos. 8 to 67 from 1968 onwards for a period of nearly seven years subsequent to the aforesaid pronouncement by the Delhi High Court.

The Supreme Court in the case of S.K. Saha and others Vs. Prem Prakash Agarwal and others, has observed as under :

"This Court has repeatedly struck down and decried any attempt on the part of the appointing authority to give a notional seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service."

The Supreme Court in the case of High Court of M.P. Vs. Mahesh Prakash and others, has observed as under :

"16..... Apart therefrom, the 1st respondent's delay in approaching the writ court had resulted in the creation of a long settled position as to seniority in the subordinate judiciary; disturbing the long settled position adversely affected not only the 39 Civil Judges whose seniority was displaced but also the functioning of the subordinate judiciary, responsibility for which lay with the High Court. It is, therefore, as open to the High Court to agitate the ground of delay and laches as it would have been open for the 39 Civil Judges had they preferred an appeal.

The Supreme Court also in the case of B.S. Bajwa and Another Vs. State of Punjab and Others, has observed as under :

"7..... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

In the background of the settle law as aforesaid the impugned Judgment and order of the Industrial Court has to be quashed and set aside on this point alone. Delayed complaints and applications are fatal to the cases of promotions. Any employee who is aggrieved by the decision of his employer that he was done injustice in respect of promotion he must immediately approach the appropriate forum so that the employer can be corrected at appropriate time or appropriate stage without disturbing others who are promoted contrary to the Rules. In the present case the promotion of 1974 was never challenged by the respondent, and therefore, the petitioners were right in presuming that the promotions which were given were lawful and no one had any grievance. At no stage upto 1989 the respondent made any grievance. It cannot be said in such matters the grievance or the complaint is of continuous or recurring nature. The promotions given in the year 1973 were completed and it cannot be said that the grievance of the respondent in the year 1973 still continued in the year 1989. Similarly all other

promotions which were given in the year 1979 and 1989 cannot be said that there was a recurring cause of action for the respondent, and therefore, he could file a complaint after 16 years and plead that the grievance of 1973 still continued as a recurring cause of action. This would be a total absurdity to construe the provisions of law of limitation.

4. As far as the question of competence of the respondent to file the complaint is concerned, the Industrial Court has totally misconstrued the definition of workman given u/s 2(s) of the Industrial Disputes Act, 1947. The said definition is divided in two parts. One defines positively who is a workman and what are his duties. The second part is an exception-part to cover the personnel performing the managerial and administrative duties and in supervisory capacity drawing more than Rs. 1600/= p.m. It was for the respondent to have positively pleaded and proved that he was squarely covered in the main part of definition of "workman" even from the duty list which is considered by the Industrial Court. It is crystal clear that the respondent was performing administrative duties. He was certainly not performing the duties which are enumerated in the first part of the definition though some times it could be said that he was doing clerical work which would be only a marginal or incidental work which is carried by any post or any work. From the duties which are enumerated in paragraph 13 of the Judgment it is clear that he was not a workman within the meaning of Section 2(s) of the Act and he squarely fell in the exceptional part of the definition. In my opinion therefore, the Industrial Court committed an error of law in holding that the petitioners failed to prove that he was not a workman. In fact it was for the respondent to prove positively that he was a workman as defined under the Industrial Disputes Act, 1947. The complaint filed by him was therefore, not maintainable, and therefore ought to have been dismissed by the Industrial Court.

5. There is third aspect in the matter. The respondent had only pleaded that the petitioners engaged in favouritism and discrimination. He did not give any details or particulars. He ought to have spilled out what kind of favouritism and discrimination was practised by the petitioners. Secondly he ought to have given the names of all such employees or officers who were favoured by the petitioners as against the respondent. Thirdly he ought to have impleaded all of them in his complaint as they were likely to be adversely affected in the matter if the respondent would have succeeded in his complaint. In the absence of the necessary and proper parties the complaint ought to have been dismissed by the Industrial Court.

6. It is an admitted position that in the year 1981 the respondent was promoted as an Asstt. Area Manager and since then he is in employment. It goes to the credit of the petitioners that even during the pendency of the complaint the petitioners had promoted the respondent as Area Manager in the year 1990. This fact also speaks in favour of the petitioners that they had no grudge or bias against the respondent though he was litigating against the making a serious

charge of unfair labour practice. Otherwise any bad employer would have put him in a black list not to be promoted at any time. The petitioners management has fairly promoted the respondent even during the pendency of the complaint to the higher post of Area Manager. It is not that the respondent was not promoted at any time. It is an admitted fact that he was given promotion from time to time on the basis of the recommendations of the Promotion Committee on his merits.

7. In the aforesaid circumstances the impugned Judgment and Order of the Industrial Court is quashed and set aside being illegal and improper. I do not find any unfair labour practice engaged in by the petitioners either of favouritism, discrimination or failure to implement the award, settlement and agreement as contemplated by Items 5 and 9 of Schedule IV of the Act. Assuming that the roster falls under Item 9 failure to follow the reservation roster is not established at all. No details or particulars are given by him. The petition succeeds. Rule is made absolute in terms of prayer Clause (a). No order as to costs.