

(1988) 07 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 2039 of 1985

Maharashtra Small Scale Ind. Dev. Corporation Ltd. and
Others

APPELLANT

Vs

The Industrial Court, Maharashtra and Others

RESPONDENT

Date of Decision : 14-07-1988

Acts Referred:

Citation : (1993) 3 LLJ 646

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Advocate : V.A. Masodkar, for the Appellant; S.G. Kukday, for R2, for the Respondent

Final Decision : Allowed

Judgement

Qazi, J.—The respondent No. 2 is in the employment of the petitioners. He was appointed as a Salesman vide order dated 28.7.1975. He approached the Industrial Court, Nagpur, by way of a complaint u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). His contention in the complaint was that though he was appointed as a Salesman, but in fact he was required to work as an Assistant for several years. He, therefore requested the Industrial Court that since he has worked throughout as an Assistant to the satisfaction of the Department, he should be made permanent. The petitioners contested the claim of the respondent No. 2. According to the petitioners, the respondent No. 2 was not entitled for being made permanent as Assistant. The respondent No. 2 examined himself as a witness, whereas Prakash Ganpatrao Kapale the Divisional Manager, was examined on behalf of the petitioners. The Industrial Court after going through the evidence recorded a finding that the respondent No. 2 was working as an Assistant and that there was no justification for the petitioners in not making him permanent as Assistant. A declaration was accordingly issued that the petitioners engaged themselves in unfair labour practice under item 6 of

Schedule IV of the Act and consequently they were directed to withdraw the said unfair labour practice. It was further directed that the petitioners should appoint the respondent No. 2 as Assistant with effect from 1.6.1982. It is this order which is being challenged before me.

2. Mr. Masodkar contended that in the complaint the prayer was that the complainant should be made permanent in the post which he held and, therefore, the Industrial Court was not justified in granting the relief which was not even asked for. Mr. Masodkar further contended that the respondent No. 2 had already been confirmed as Junior Clerk and this was the post which he was holding at the time of filing of the complaint and, therefore, the grievance does not survive. Having gone through the complaint as well as the evidence on record, I find that the main grievance of the respondent No. 2 was that, though the Department was taking from him the work of Assistant, yet he was not being made permanent in that post. The petitioners also understood the case of the respondent No. 2 in that sense as can be seen from the written statement. The evidence of the Divisional Manager also confirms this inference. Thus, there is no force in this contention of Mr. Masodkar that the request of the respondent No. 2 was only for being made permanent either as a Salesman or Junior Clerk and not as an Assistant. Mr. Masodkar contended that the respondent No. 2 is not really qualified to be appointed as an Assistant since he is not a Graduate and he failed twice in the interview for the post of Junior Assistant, There is nothing on record to show what is the minimum qualification for the post of Assistant. On the other hand, as observed by the Industrial Court, there is overwhelming evidence to show that the respondent No. 2 was working for several years as an Assistant, therefore, it would be presumed that he was qualified. There is no cogent evidence to show that there was an advertisement for the post of Assistant and that the respondent No. 2 applied for the same and was interviewed. In my view, the real question that falls for determination is whether the respondent No. 2 was working as an Assistant for several years at the behest of the petitioners. This is a pure question of fact and the Industrial Court has dealt with this aspect exhaustively and has recorded a finding that the respondent No. 2 has been working as an Assistant. Had he not been qualified, as is being contended now, then surely he would not have been allowed to work in that post for such a long time. Thus I see no reason to take a view different from the one already taken by the Industrial Court on this count.

3. Mr. Masodkar then contended that the complaint was not tenable under item 6 of Schedule IV of the Act, which reads thus -

"6. To employ employee as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employee".

In my view, the complaint would squarely fall under item 6 of Schedule IV of the Act. I have already shown above that the respondent No. 2 was working as Assistant for several years and yet he was not being made permanent in that

post. The wordings of Item 6 seems to be wide enough to include the case of the respondent No. 2.

4. Lastly, Mr. Masodkar invited my attention to Section 21 of the Act and submitted that the Industrial Court had no jurisdiction to entertain the complaint from an individual employee and the respondent No. 2 could have approached only through the recognised union. The relevant portion of Section 21 of the Act, which is material for our purpose, reads as under:

"(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union:

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices".

5. Mr. Kukday for the respondent No. 2 has submitted that the above challenge is being raised for the first time at this stage. According to him, it involves factual aspects and unless it was raised before the Industrial Court, it would not be expedient to allow the said challenge at this stage. It is bound to cause prejudice to the respondent No. 2. He has further contended that in order to avail of Section 21 of the Act, it would be necessary for the petitioners to prove at least two things: (i) that the establishment is exempted from the operation of the Bombay Industrial Relations Act; and (ii) that there is a recognised union as defined in Section 2(13) of the Act. In my view, there is much substance in the contention of Mr. Kukday. Mr. Masodkar requested for time to enable him to get the information whether the establishment is exempted or not. I see no reason to adjourn the case since the request is being made when the judgment is about to be dictated. In my case, I am fully satisfied that it is a factual aspect and unless the parties had opportunity to meet the challenge, it would not be expedient to entertain the same. Having regard to these facts, I see no reason to interfere with the impugned order. The petition is accordingly dismissed, with no order as to costs. Rule is discharged.