

(2004) 03 BOM CK 0145

In the Bombay High Court

Case No : Writ Petition No. 3481 of 2003

Manoj Amdas Ingle and Others

APPELLANT

Vs

Member, Industrial Court and Another

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

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

Citation : (2004) 102 FLR 584 : (2004) 3 MhLj 41

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : S.D. Thakur, for the Appellant; V.R. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule.

Rule made returnable forthwith. Heard finally by consent.

2. Being aggrieved by the order passed by the learned Industrial Court, Nagpur in Complaints (ULPN) Nos. 47 to 154 of 2000 dated 8th October, 2002 thereby dismissing the complaints of the present petitioners, the petitioners have approached this Court by way of present petition.

3. The complainants/petitioners had approached the learned Industrial Court by moving the complaints under Item Nos. 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred as the Act) praying for direction to the respondent/company to make them regular and permanent from 1-4-1996 by giving all monetary benefits and in the alternative for a direction to reinstate the complainants in their former posts and for payment of full back wages for the period they were treated as Semi- skilled Trainees till engagement as temporary employees and even thereafter. It was the contention of the complainants in the complaints that they were qualified employees for appointment in their

respective posts. However, the respondent/Company had deliberately appointed them as "Company Trainees" for fixed period between 1-7-1995 to 30-6-1996 and extracted regular work from them. It is further averred in the complaints that in order to deny the permanency, the respondent/company has appointed them as a semi-skilled trainees from 1-7-1996 to 30-6-1997 and extended to, from 1-7-1997 to 31-12-1997. According to the complainants, the provisions under Chapter V-B of the Industrial Disputes Act, 1947 (hereinafter referred as the ID Act) are applicable to the respondent/Company. It is further averred in the complaints that in order to deprive them from regularisation, the respondent/Company has been employing them under various schemes and categories from time to time. The complainants further averred that though they have achieved the status of regular and permanent employees as long as on 1-4-1996 on their completion of 240 days, they were continued as temporary and casual employees, it is further averred that, in spite of making various representations for making them regular and permanent, no steps have been taken by the Company. It is further the contentions of the complainants/petitioners that the respondent/ company has retrenched them with effect from 31-12-1997 without compliance of Section 25-F and G of the I.D. Act and that the respondent/ company has also failed to comply with the provisions of Section 25H of the I.D. Act.

4. The respondent/Company filed their Written Statement resisting the claim made by the complainants. The respondent also raised a preliminary objection to the maintainability of the complaints under the provisions of the said Act for being moved in an individual capacity when the representative and approved union has been functioning in its establishment. It is submitted that the representative union only had a right to institute any complaint, specifically under Item 6 of Schedule IV as provided u/s 21(2) of the said Act. It was further contended that the learned Industrial Court did not have the jurisdiction to entertain the individual complaint in view of the provisions of the said Act.

5. In view of the preliminary submissions raised on behalf of the Company, the learned Industrial Court framed preliminary issue, regarding the maintainability of the complaints, filed u/s 28 read with Items 6 and 9 of Schedule IV in view of the provisions of sections 21(2) and 22 of the said Act.

6. Upon thorough consideration of the rival contentions raised and the legal position brought to the notice of the learned Tribunal, the Tribunal came to the finding that the main contention raised in the complaints. Mere related to the termination of the employees and as a special forum was provided for challenging the termination under Item 1 of Schedule IV i.e. the Labour Court, it had no jurisdiction to entertain the said complaints and as such dismissed them vide impugned order. The petitioners being aggrieved by the same have approached this Court.

7. Heard Shri S. D. Thakur, the learned Counsel appearing on behalf of the petitioners and Shri V. R. Thakur, the learned Counsel appearing on behalf of the

respondent/Company.

8. When the matter was being heard, Shri S. D. Thakur fairly conceded that Item 6 of Schedule IV was reserved for representative union and as such he was giving up the claim insofar as it relates to Item 6 is concerned and was restricting his case only under Item 9. The main contention as raised by Shri S. D. Thakur, learned Counsel for the petitioners is as under :--

"When the petitioners are claiming regularisation and permanency in view of standing orders, which will have to be included in term "agreement" under Item 9, though by way of ancillary relief the petitioners have also challenged termination; the Industrial Court ought to have entertained the complainants."

9. In support of his contentions, Shri S. D. Thakur has brought to the notice of this Court certain provisions under the said Act. Shri S. D. Thakur relies on Section 30(1)(b) of the said Act which reads as under:--

"30. Powers of Industrial and Labour Courts.-- (1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order --

(a)...

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without backwages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;"

Shri S. D. Thakur, the learned Counsel further relies on Item 1(a) and Item 4(a) and (b) of Schedule II of the said Act, which read as under :--

"1. To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerned activities for the purposes of collective bargaining or other mutual aid or protection, that is to say --

(a) threatening employees with discharge or dismissal, if they join a union."

4. To encourage or discourage membership in any union by discriminating against any employee, that is to say --

(a) discharging or punishing an employee because he urged other employees to join or organise a union;

(b) discharging or dismissing an employee for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act)."

He further relies on Item No. 7 of Schedule IV of the said Act which reads as under:--

"7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute."

10. Shri S. D. Thakur has pointed out the aforesaid provisions, in order to substantiate his contention, that the dismissal and termination can be entertained by both the Industrial Court as well as Labour Court. It is his submission, that the powers u/s 30 are simultaneously given to the Industrial Court as well as Labour Court and, therefore, the learned Industrial Court was not justified in saying that since the complaints related to termination, the jurisdiction was only with the Labour Court, it is his contention, that the Industrial Court could have also entertained the grievance of the petitioners regarding termination, when the main grievance of the petitioners was under Item 9 of Schedule IV of the said Act.

11. Shri S. D. Thakur, the learned Counsel further submitted; that in view of the judgment of Division Bench of this Court in the case of Dattatraya Shankarrao Kharde and Others Vs. Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur and Another, and R. P. Sawant and Ors. v. Bajaj Auto Ltd., and Anr. reported in 2002 (1) M.L.J 626 - 2001 (2) CLR 982, the standing orders are included in the word "agreement". Relying on these judgments, he submits, that, since there is a violation of model standing orders and also violation of sections 25F and 25G of the I.D. Act, the case of the complainants squarely fell in Item 9, which is triable by learned Industrial Court. According to him, in view of this position, the order passed by the learned Industrial Court was not sustainable in law. He further submits that dismissal and termination can be entertained by both the Labour Court as well as the Industrial Court. According to him, the distinction is only that when the termination or dismissal is tainted with mala fides, then only the complaint will lie before the Labour Court otherwise Industrial Court will have jurisdiction to entertain the same.

12. Shri V. R. Thakur, the learned Counsel appearing on behalf of the respondent/company, on the contrary, supported the impugned order. His first submission is that since the industry, in question, is governed by BIR Act in view of the provisions of Section 30, it was only recognised union which could have filed such a complaint. He further submits that the main grievance of the petitioners in the complaint was regarding their termination from 31-12-1997. In view of the provisions of sections 5 and 7 of the said Act, he says that all complaints under Item 1 of Schedule IV are exclusively to be decided by the Labour Court. He submits that the case of the petitioners falls under Clause (f) of Item 1 of Schedule IV which reads as under :--

"1. To discharge or dismiss employees --

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste."

He thus submits, that, in view of the aforesaid provisions, the complaints of the

complainants were exclusively triable by the learned Labour Court and, therefore, the learned Industrial Court has rightly dismissed the complaints. In support of his submissions, Shri V. R. Thakur, the learned Counsel has relied on the averments made in the complaints. Shri V. R. Thakur submits that from the perusal of the complaints, it would reveal that the main grievance of the petitioners was, their termination, with effect from 31-12-1997 and the rest of the reliefs claimed in the petition were ancillary reliefs, which could have also been considered by the learned Labour Court while considering the main grievance of the petitioners.

13. Shri V. R. Thakur, the learned Counsel for the respondent/company, in support of his submissions, relies on the judgments of the Division Bench of this Court in the cases of Executive Engineer, Electrical Division, Nagpur and Anr. v. Prakash Devidas Kalasit, reported in 1985 M.L.J. 338, R. P. Sawant and Ors. v. Bajaj Auto Limited and Anr., reported in 2002 (1) M.L.J. 626 = 2001 (2) CLR 982 the judgments of the learned Single Judge of this Court in the cases of Pepsico India Holdings Pvt. Ltd. v. Noshir Elavia and Anr. reported in 2002 (2) M.L.J. 744 : 2002 (II) LLJ 721; Abhyudaya Co-operative Bank Ltd. v. S. L. Mehendale and Ors. reported in 2003 (1) M.L.J. 759 and A-Z (Industrial) Premises Co-operative Society Ltd. v. A. T. Utekar and Ors. reported in 1997 (2) CLR 1033.

14. No doubt that the contention raised by Shri S. D. Thakur, the learned Counsel for the petitioners that the complaints for dismissal or termination can be entertained by both the Labour Court as Industrial Court is with substance. On the perusal of Schedule II and Schedule IV, it would be clear as to in what circumstances, the termination could be challenged before the learned Labour Court or learned Industrial Court. If the termination falls in sub-clauses in Item (1) of Schedule IV, the complaints can exclusively be entertained only by the Labour Court. However, reading of Schedule II itself would make it clear that the provisions of Schedule II which has been relied by the learned Counsel for the petitioners would not be applicable to the termination of the nature which is subject matter of the present petition. Item 1 of Schedule II on which the learned Counsel for the petitioners relies, relates to threatening employees with discharge or dismissal if they join Union whereas, Clause (a) and Clause (b) of Item 4 Schedule II covers discharging or punishing an employee when such a dismissal or termination is related to encouraging or discouraging membership of any union. It is thus clear that the aforesaid dismissals or terminations or threat to dismiss or terminate, are intended to protect the freedom of association of the members of the Union. The aforesaid provisions are intended to protect the employees, so that by their free will, they can join any union. They are also intended, so that the management does not interfere in the rivalries of the Union and encourage or discourage a particular union by threatening the employees to join or not to join a particular union. Admittedly, the terminations in the present case are not related to encouragement or discouragement of trade unions and as such, the said items of Schedule II, which have been relied by the learned Counsel for the petitioners, are of no relevance for the purpose of present

petition. So also Item No. 7 of Schedule IV would have no relevance insofar as the present petition is concerned. The said item relates, to discharge or discrimination against an employee, for filing charges or testifying against an employer in any enquiry or proceeding related to any industrial dispute. The said item protects an employee of his freedom of filing charge or testifying against an employer in any enquiry or proceedings relating to any industrial dispute. The same is not the case here. Therefore, the aforesaid provisions which have been relied on by the learned Counsel for the petitioners would have no relevance for the present petition.

15. Insofar as the contention of the petitioners, that, model standing orders will have to be read as inclusive in the word "agreement" under Item 9 is concerned, the same question is no more *res Integra* as it is concluded by the judgments of the Division Bench of this Court in the cases of *Dattatraya Shankarrao Kharde and Anr. v. Executive Engineer, Chief Gate Erection Unit No. 2 Nagpur and Anr.* (cited *supra*) and *R. P. Sawant and Ors. v. Bajaj Auto Limited and Anr.* (cited *supra*). In view of the law laid down by the judgments in the aforesaid cases, it is clear that the model standing orders are included in the term "agreement" under Item 9.

16. The limited question that arises for consideration, in the present petition, is that when on the factual basis the main grievance raised in the complaints is regarding termination of an employee, and when they have also raised by way of ancillary grievances; whether a complaint will lie before the Labour Court or an Industrial Court.

17. Shri V. R. Thakur, the learned Counsel for the Respondents in support of his submissions, that, the termination, in question would squarely fall under Clause (f) of Item 1 of Schedule IV has relied on the judgment of Executive Engineer, Electrical Division, Nagpur and *Anr. v. Prakash Devidas Kalasit* (cited *supra*). He specifically relied on paragraph 15 of the said judgment which reads as under :--

"15. Now the words "with undue haste" which are followed by the words "in utter disregard of the principles of natural justice in the conduct of domestic enquiry" cannot be described as words of general nature so as to attract the rule of *ejusdem generis*. As a matter of fact, even the words preceding, the words "with undue haste" are specific and not in general terms. No doubt the words "in utter disregard of the principles of natural justice in the conduct of domestic enquiry" are wide enough to cover several contingencies and will include even hasty conductance of the domestic enquiry. Legislature, therefore, never intended to repeat what was already covered by the first part of the clause. Unless a separate and distinct meaning is given to the words "with undue haste", these words would be rendered superfluous. Hence keeping in tune with the rules of interpretation, the only possible conclusion would be that Clause (f) should be given its natural meaning that it also covers the cases of dismissal and discharge which will include retrenchment effected with undue haste. "Undue haste" can be inferred in the retrenchment is resorted to by the employer without complying

with the conditions precedent of giving one month's notice or notice pay or without payment of retrenchment compensation. In the present case, the petitioners have admittedly retrenched the respondent without giving him one month's notice or even offering him one month's pay in lieu of notice and even without payment of retrenchment compensation on the basis of completed year of service which are conditions precedent to retrenchment. Such a hasty action on the part of the respondent is clearly covered by Clause (f) of Item 1 of Schedule IV of Maharashtra Act No. 1 of 1972."

18. Upon reading the aforesaid observation of the Division Bench, it would be clear that the termination of the nature, with which this Court is concerned in the present petition would fall under Clause (f) of Item 1 of Schedule IV of the said Act.

19. The Division Bench of this Court in the case of R. P. Sawant, and Ors. v. Bajaj Auto Ltd. and Anr. (cited supra) observed thus :--

"48. A conjoint reading of Sections 5, 7 and 32 of the 1971 Act would make it clear that, though for the purpose of exercising initial jurisdiction into a substantive complaint, the jurisdictions have been compartmentalized inasmuch as the Labour Court has no jurisdiction to entertain complaints other than complaints falling under Item 1 of Schedule IV of the 1971 Act and conversely, the Industrial Court has been given powers to entertain complaints in all other matters, it does not mean that the Industrial Court, while exercising jurisdiction within the sphere legitimately assigned to it, cannot pass an order which is required to be done in the interest of justice. It cannot be forgotten that Section 32 starts with a non-obstante clause "Notwithstanding anything contained in this Act" and provides that the Court trying the matter shall have the power to decide "all matters arising out of any Application or Complaint referred to it for the decision under any of the provisions of this Act. "In our judgment, the decision in National General Mazdoor Union (supra) does not recognize and give full effect to the aptitude of the non-obstante clause in Section 32. In our judgment, the enumeration of the respective jurisdictional limits of the Industrial Court and Labour Court, provided in Sections 5 and 7 of the 1971 Act, when read with the non-obstante provision in Section 32 of the 1971 Act, means this : A substantive complaint can be entertained by the Court (Labour Court or Industrial Court) only with regard to the matters provided in Sections 5 or 7. If a complaint is substantively made to the Industrial Court, they by reason of Section 5(b), it has no jurisdiction to entertain a complaint relating to unfair labour practices falling under Item 1 of Schedule IV of the 1971 Act; conversely, a Complaint of unfair labour practice falling only under Item 1 of Schedule IV can be entertained by the Labour Court, but not any other complaint. This does not, however, mean that while trying a substantive complaint legitimately falling within its jurisdictional purview, the Labour Court or Industrial Court is precluded from moulding the relief as required by the facts of the case."

20. Thus, from the aforesaid observations, the jurisdiction of the Court where the

complaint lies will have to be determined on the basis of the substantive claim of the complainant. If the substantive reliefs sought in the complaints are regarding termination or dismissal as contemplated under Item 1 of Schedule IV then the complaint will lie before the learned Labour Court. However, while determining the substantive question of termination, the Court would not be precluded in entering the other ancillary issues.

21. Relying on aforesaid judgment of the Division Bench, the learned Single Judge of this Court in the case of *Pepsico India Holdings Pvt. Ltd. v. Noshir Elavia and Anr.* (cited supra) has held that the case of termination of the workman service, for which the reliefs of reinstatement with continuity of service with full back wages are claimed, are triable by the Labour Court as it is covered under Item 1 of Schedule IV. In the aforesaid judgment, this Court has held that, a complaint which was entertained by the Industrial Court for the aforesaid reliefs purportedly under Item 9 of Schedule IV, was not tenable as no case was made out so as to invoke Item 9 Schedule IV. This Court has, therefore, held that the Industrial Court was not justified in entertaining the complaint, inasmuch as the complaints squarely fell within the jurisdiction of the Labour Court. A similar view is taken by two other learned Single Judges of this Court in the cases of *Abhyudaya Co-operative Bank Ltd. v. S. L. Mehendale and Ors.* (cited supra) and in the case of *A-Z. (Industrial) Premises Co-op. Society Ltd. v. A. T. Utekar and Ors.* (cited supra). In the case of *A-Z (Industrial) Premises Co-op. Society Ltd.*, the complaint was filed for unfair labour practice under Item 1 of Schedule IV and Item 9 of the said schedule. The learned Industrial Court had held that, since one of the items was triable by it, it could also entertain the grievance insofar as Item 1 of Schedule IV is concerned. Reversing this view, this Court held that the complaint under Item 1 of Schedule IV, will be exclusively triable by the learned Labour Court and, therefore, the learned Industrial Court had committed a serious error of jurisdiction in entertaining the complaint.

22. In that view of the matter, I am of the considered view, that, since the main grievance of the petitioners, as can be gathered from the complaint is regarding termination, the complaint is exclusively triable by the Labour Court and Industrial Court was right in coming to the conclusion that it had no jurisdiction to entertain the said complaint.

23. Insofar as the Division Bench judgment of this Court, in the case of *Dattatraya Shankarrao Kharde and Anr. v. Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur and Anr.* (cited supra), on which a strong reliance is placed by the learned Counsel for the petitioners is concerned, in my view the facts in the aforesaid case are totally different and have no bearing on the facts of the present case. In the aforesaid case, the employees were terminated with effect from 30th August, 1984. However, subsequent to their termination, they were re-employed on temporary basis from September 15, 1984 to October 14, 1984. The grievance of the complaint in the aforesaid case was that, the respondents have engaged and are engaging themselves, in unfair labour

practice of employing the appellants therein, as temporary for years together and continuing them as such with the object of depriving them of the status of privilege of permanent employees. The Division Bench of this Court, therefore, found that the case was squarely covered under Item 6 of Schedule IV. As a matter of fact though the petitioners were again terminated, the said termination was not challenged even by way of amendment in the said case. Therefore, the question as to whether when the main grievance is regarding termination, whether the Industrial Court will have jurisdiction or not, was not at all for consideration before the Court in the aforesaid case. Since the Court found that the unfair labour practice, complained of squarely fell under Item 6 of Schedule IV, which is exclusively triable by Industrial Court, there was no occasion for the Court, to go into the question, as to whether the Industrial Court has a jurisdiction, to entertain a complaint, when the main grievance related to termination of the workman.

24. Insofar as the main emphasis placed by Shri S. D. Thakur, the learned Counsel for the petitioners on the findings given by this Court that the standing orders are covered under the term "agreement" under Item 9 of Schedule IV is concerned, as I have already held hereinabove that the said question is no more *res integra*. However, one is unable to understand, as to how the aforesaid ratio would come to the help of the petitioners, when on facts of the present case, it has been found that the main grievance of the petitioner relates to termination. In my view the aforesaid judgment of the Division Bench in Dattatraya Shankarrao Kharde's case, is of no assistance to the case of the petitioners.

25. In that view of the matter, I am of the considered view, that the learned Industrial Court was right in dismissing the complaints of the petitioners, on the ground that the grievance of the petitioners was exclusively triable by the Labour Court and, therefore, it had no jurisdiction, to entertain the complaints. The petition is, therefore, dismissed with no order as to costs. Rule is accordingly discharged.