

(1995) 04 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 5002 of 1989

Maruti Dattatray Patankar

APPELLANT

Vs

Managing Director, Kolhapur Zilla Shetkari Vinkari Sahakari
Soot Girini Ltd. and Others

RESPONDENT

Date of Decision : 17-04-1995

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44

Citation : (1997) 3 LLJ 1243

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

Bench : Single Bench

Advocate : Kiran Bapat, for the Appellant; S.S. Pakale, for the Respondent

Judgement

1. This Writ Petition under Articles 226 and 227 of the Constitution of India impugns an Order of the Industrial Court, Kolhapur dated March 7, 1989 made in Revision Application (ULP) No. 44 of 1986 u/s 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as "the Act").

2. The 1st Respondent is a Cotton Textile Spinning Mill at Ichalkaranji, District Kolhapur. The Petitioner was employed as a Jobber in its service. On March 2, 1983 the Petitioner was served with a show cause notice calling upon him to show cause as to why disciplinary action should not be taken against him for an alleged misconduct which he had committed on February 25, 1983. The Petitioner by his reply dated March 4, 1983 denied that he had committed any misconduct as alleged and pointed out the circumstances under which the show cause notice needed to be shelved. By a charge sheet dated March 12, 1983 four allegations of misconduct were levelled against the Petitioner and he was directed to attend an inquiry to be held by one B. K. Chavan, Assistant Labour Officer, on March 18, 1983. The charge sheet was sent by Registered Post and apparently received by the Petitioner about 4/5 days after the appointed date of

inquiry. By his reply dated March 22, 1983 addressed to the 1st Respondent, the Petitioner pointed out that, though he had been directed to attend the inquiry on March 18, 1983 at 3.00 p.m., he had received the charge sheet only on March 22, 1983 by Registered Post A.D. and, as such, he could not remain present in the inquiry. Instead of rescheduling the inquiry, the Petitioner was straightaway served with an order dated October 19, 1983 by which he was informed that he was being given one month's wages in lieu of one month's notice as provided under the Standing Orders applicable to the establishment of 1st Respondent and forthwith discharged from service. He was also directed to collect all his dues from the office on any working day.

3. The Petitioner challenged the termination of his service by his Complaint (ULP) No. 77 of 1983 before the Labour Court at Kolhapur under Items 1(b), (d), (f) and (g) of Schedule IV read with Section 28 of the Act. The case made out in the Complaint of the Petitioner was that, though the order of termination of his service was innocuously worded, it was really punitive for reasons which had been indicated in the aborted charge sheet issued to him earlier. Strangely, the 1st Respondent refuted this stand and, in paragraph 5 of the Written Statement, contended that there was no question of producing documents and proving the charges, since it had, under the Standing Orders and under the circumstances, power to act in the interest of efficient working and discipline. It also contended in paragraph 9 of the Written Statement, "the charge sheet and proposal of inquiry have nothing to do with the ultimate termination order. The termination order is in accordance with the provisions of the Standing Orders". Finally, in paragraph 11 of the Written Statement, the 1st Respondent contended that the case was not one of dismissal or any punishment, but one of simple termination as provided under the Standing Orders. The Labour Court tried the complaint and raised the following issues which it answered as under :

4. Although when the order of discharge was served on the Petitioner he had not been served with the grounds or reasons for the said order, a copy of the said reasons was filed before the Labour Court. Though the 1st Respondent contended that there were good reasons for termination of the service of the Petitioner, apart from merely filing a copy of the reasons in support of the discharge order, the 1st Respondent did not lead any evidence to show that such reasons factually existed. Upon an appraisal of the material on record, the Labour Court came to the conclusion that the order was a punitive order of discharge and not a termination simpliciter for loss of confidence. The Labour Court held that under the circumstances it was obligatory for the 1st Respondent to have held an inquiry and failure to do so amounted to an unfair labour practice of acting with undue haste. Consequently, the Labour Court declared the act of discharging the Petitioner as an unfair labour practice and directed as relief reinstatement of the Petitioner on his original post with continuity of service and full back wages.

5. The 1st Respondent challenged the order of the Labour Court by filing Revision

Application (ULP) No. 44 of 1986. Interestingly, it was not the case of the 1st Respondent in its Revision Application that it had been denied an opportunity for adducing evidence to support the stand it had taken before the Labour Court.

6. The Industrial Court following the judgments of the Supreme Court in Chandu Lal Vs. Management of Pan American World Airways Inc., , and Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, , came to the conclusion that loss of confidence amounted to a stigma and hence it was necessary for the 1st Respondent to hold an inquiry before terminating the service of the Petitioner. Consequently the Industrial Court also came to the conclusion that the termination of the Petitioner's service was bad in law. The Industrial Court categorically rejected the contention of the 1st Respondent that the domestic inquiry was obviated because the Petitioner had admitted his guilt. Surprisingly, after having come to the conclusion that the order of termination of service of the Petitioner was illegal, because it was not preceded by domestic inquiry as required by law, the Industrial Court remanded the Complaint to the Labour Court for an opportunity being given to the 1st Respondent to prove the misconduct alleged against the Petitioner. It is this order which is impugned in the present Writ Petition.

7. Mr. Bapat, learned Advocate appearing for the Petitioner, pointed out from the Revision Application that no stand had been taken by the 1st Respondent about its having been deprived of an opportunity to lead evidence before the Labour Court. He contends, rightly in my view, that, during the trial of the Complaint before the Labour Court it was open to the 1st Respondent to adduce whatever evidence it wanted to place on record to justify its stand whether it was one of dismissal or one of loss of confidence. Having failed to adduce any evidence before the Labour Court, the 1st Respondent could not seek for any further opportunity to do so. As a matter of fact, that the 1st Respondent made no grievance about lack of opportunity of leading evidence is apparent from a perusal of its Revision Application wherein no such grievance has been made. It is surprising that, despite this factual situation, the Industrial Court seemed bent on granting further opportunity to the 1st Respondent to lead evidence on merits. If the employer wants to justify its stand -- whether it be one of dismissal of service without inquiry or one of justifiable loss of confidence for good reasons -- then the burden is upon him to place such evidence before the Labour Court from which the Labour Court could accept his case. If the employer fails to lead proper evidence, then the Labour Court would be justified in coming to an adverse conclusion. If the employer failed to utilise the opportunity available to him, then there is no reason for the Revisional Court to grant such a further opportunity to the employer to lead evidence on merits. See in this case the judgment of the Supreme Court in Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, .

8. In the impugned order of the Industrial Court, two reasons have been given for setting aside the order of the Labour Court and remanding the matter for

adducing the employer's evidence. The first reason is that the Management of the 1st Respondent was "a bit misled" by an application (Exh. U-13) which had been made by the Petitioner that his Complaint be kept pending the disposal of another allied Revision Application No. 26/24. The Industrial Court itself felt that there was no substance in this ground as seen by its finding (in paragraph 8 of the impugned order) where it clearly was of the opinion that the only request made in the said application was a prayer for adjournment and that there was no stipulation therein that the fate of the petitioner's Complaint be decided on the basis of the order made in Revision Application No. 26/24. The Industrial Court was also of the view that, in the absence of such a stipulation, the Petitioner was entitled to say that his complaint should be heard on its own merits. Surprisingly, in paragraph 16 of the impugned order, the fact that such an application was made is taken to be a ground for assuming that the 1st Respondent was "a bit misled". Interestingly, that was not even the case of the 1st Respondent. The second reason given by the Industrial Court (vide paragraph 17 of the impugned order) is that the judgments in *Kamal Kishore Laxman v. Pan American World Airways* (supra) and *Steel Authority of India Ltd. and Another Vs. Dilip Kumar Debnath and Others*, , were subsequent decisions. It is well settled law that judgments of the Supreme Court declare the law as it stands and the fact that the judgments of the Supreme Court were reported subsequent to the trial of the complaint would not justify an order of remand.

9. In my view, both the reasons for the remand order are erroneous. There was no good ground for interfering with the order of the Labour Court dated September 12, 1986 directing reinstatement with full back wages. For Some inscrutable reasons the Industrial Court appeared bent upon granting an opportunity to the 1st Respondent, which even the 1st Respondent never sought for at any point of time. The exercise of jurisdiction, therefore, is wholly irregular and contrary to law. Consequently, the order of the Industrial Court needs to be interfered with in exercise of the powers of this Court in writ jurisdiction.

10. Shri Bapat, learned Advocate for the Petitioner, brings to my notice the judgment of this Court in *Jaymala B. Chopadkar v. Maharashtra State Road Transport Corporation & Others* 1988 II CLR 396 and a judgment of learned Single Judge of this Court in *Theatre Employees' Union and Others v. S. V. Kotnis and Others* 1992 II CLR 1474. In my view, both the judgments are opposite and support the contention of the Petitioner that the remand by the Revisional Court is an unwarranted interference with the proper exercise of (sic) jurisdiction by the Labour Court.

11. In the result, the Write Petition is allowed. The impugned order of the Industrial Court dated March 7, 1989 made in Revision Application (ULP) No. 44 of 1986 is hereby quashed and set aside. Rule is accordingly made absolute. The 1st Respondent shall pay Rs. 500/- as quantified costs of this Writ Petition.

12. Issuance of the certified copy of this Judgment is expedited.