
(2000) 07 BOM CK 0107
In the Bombay High Court
Case No : Writ Petition No. 1377 of 2000

Masina Hospital

APPELLANT

Vs

Mr. Hari Ganpat Kadam and another

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10(1)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2001) 2 ALLMR 372 : (2000) 4 BomCR 749

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

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

Judgement

S.S. Nijjar, J.—Respondent No. 1, a Ward boy, was dismissed from services in the year 1987. This was, according to the petitioner, done after holding a due enquiry into the charges. The respondent No. 1 filed Complaint (ULP) No. 283 of 1987. After going through the evidence and after hearing the Counsel for the parties at length, the Labour Court by an elaborate and reasoned order held that the enquiry conducted by the Enquiry Officer against the complainant-respondent No. 1 is not fair and proper. The petitioner-Hospital was given liberty to adduce evidence to prove the misconduct before the Court. This order was passed on 24th May, 1994.

2. Aggrieved against this order, the petitioner filed Revision Application (ULP) No. 78 of 1994. The Industrial Court partly allowed the revision application on the ground that the Labour Court has made certain observations in the absence of pleading and exceeded its jurisdiction and powers. It was also held that the Labour Court has given imaginary findings. The Industrial Court has held that the Labour Court without any pleadings has come to the conclusion that the charge sheet is vague. Considering this point, the order of the Labour Court has been set aside and the Labour Court has been directed to again decide the preliminary

point as to whether the enquiry held against the respondent No. 1 is fair, proper and legal. This finding has been given by the Industrial Court by meticulously examining the evidence and coming to findings of fact which are contrary to the finding recorded by the Labour Court. The Industrial Court also observes that whilst exercising its supervisory powers the Industrial Court cannot reappreciate the oral and documentary evidence. Yet this is precisely what the Industrial Court had proceeded to do. Findings of fact recorded by the Labour Court have been set aside only on the ground that the Labour Court could not have come to the conclusion that the charge-sheet was vague. I am of the considered opinion that merely because the Labour Court examined the charge sheet itself would not amount to a finding without any evidence. It is a settled proposition of law that the provisions of CPC and the Evidence Act are not applicable before the Labour Court or before the Industrial Court. Both the Courts are to be guided by the principles of natural justice. On such a technical plea, the order of the Labour Court ought not to have been interfered with by the Industrial Court. The order in revision was passed by the Industrial Court on 9th August, 1999. So by then the poor workman has been out of employment for a period of 12 years. Not satisfied with the finding returned by the Industrial Court, the petitioner moved Review Application (ULP) No. 23 of 1999. This review application has also been dismissed. Thus the position that now emerges is that the petitioner would be permitted to re-argue the preliminary issue as to whether or not the enquiry is just and fair. In my view, the Industrial Court erred in upsetting the order passed by the Labour Court. The only direction issued by the Labour Court was to the effect that the petitioner would be entitled to lead evidence to justify its action.

3. The present petition has been filed challenging both the order in revision as well as the order in review. The order in review has been passed on 4th April, 2000 and the Industrial Court has directed the Labour Court to decide all the issues together.

4. Mr. Patil has vehemently submitted that if all the issues are tried together, the petitioner will not get an opportunity to adduce evidence to prove the misconduct. Ironically this was the very relief which had been granted to the petitioner by the Labour Court. After holding that the enquiry against respondent No. 1 was not fair and proper, the petitioner was given liberty to adduce evidence to prove the misconduct before the Court. In such circumstances I am of the considered opinion that the interest of justice would be served if the order of the Labour Court is restored and the petitioner is permitted to lead evidence to prove the misconduct. It is made clear that the Labour Court will not be influenced by any observations made by the Industrial Court either in its order dated 9th August, 1999 or in the order dated 4th April, 2000. In passing this order, I am conscious of the law laid down by the Supreme Court in the case of D.P. Maheshwari v. Delhi Administration and others, AIR 1984 S.C. 153. In the opening paragraph of the aforesaid judgment the Supreme Court has observed as follows :

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Lahore Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

5. Keeping the aforesaid dicta in view, I am of the considered opinion that the present petition ought to be dismissed at the threshold. As stated earlier, the workman has already been out of service for a period of 13 years. He is still struggling at the preliminary stage of the complaint. On the other hand whilst leading evidence the petitioner will get an opportunity to establish before the Court that no prejudice was caused to the respondent-workman by making an amendment in the charge-sheet. The petitioner will have full opportunity to establish its case against the respondent and justify its action. On the other

hand, if the matter is now remanded back to the Labour Court to again decide the preliminary issue, it would expose the respondent to another round of litigation by way of revision application before the Industrial Court and thereafter proceedings before this Court under Article 226 of the Constitution of India. I am of the considered opinion that permitting such a course would be wholly inequitable and would be a travesty of justice. It is to avoid this multiplicity of litigation that the Supreme court has laid down the solitary rule to the effect that when the Labour Court comes to the conclusion that the enquiry is not fair and proper the management ought to be given an opportunity to establish in its conduct before the Court itself. Such a course does not put the management at a disadvantage at all. On the other hand a re-decision of the preliminary issue would put the clock back again for many years. In any event all questions of fact and law can be agitated by the petitioner if it becomes necessary to challenge the final award which may be given by the Labour Court. The High Court would be wholly remiss in entertaining the present writ petition. It would only be adding to the miseries which the workman must have undergone by now.

6. In view of the above, the impugned orders dated 9th August, 1999 and 4th April, 2000 are hereby set aside. The order of the Labour Court dated 24th May, 1994 is hereby restored. The Labour Court is directed to decide the complaint on merits in accordance with law. I am also of the opinion that in the present case the petitioner should be burdened with costs. However, Mr. Patil has brought to the notice of this Court that the delay in the decision of the case has occurred merely due to the non-framing of the preliminary issue. In view of the above no costs.

7. The Labour Court is directed to decide the complaint on merits within a period of 3 months of the receipt of copy of this order. Since 13 years have already elapsed since the dismissal of the workman, the Labour Court is directed to decide this case on a priority basis by continuing the proceedings on day to day basis if necessary.

Writ petition disposed of.

Parties to act on an ordinary copy of this order duly authenticated by the associate of this Court.

8. Petition disposed of.