
(2021) 05 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No.6940 Of 2003

Meltron Engineering Industries

APPELLANT

Vs

Pune Labour Union & Anr

RESPONDENT

Date of Decision : 03-05-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 12(5), 25H

Citation : (2021) 05 BOM CK 0001

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Jay Vora, Piyush Shah

Final Decision : Allowed

Judgement

S.C. Gupte, J

1. This petition challenges an award passed by the Labour Court at Pune in a reference made to it under Section 12(5) of the Industrial Disputes Act, 1947 (â??Actâ??).

2. The reference concerned the second party unionâ??s (i.e. the Respondentâ??s) demand for reinstatement with continuity of service and full back wages to ten workmen represented by it. The Petitioner, who was the first party to the reference, opposed it. Its case before the reference court was that the unit was closed down and in accordance with negotiations with the representative union, closure compensation was paid to all workmen.

The reference court did not accept the case of the first party that all ten employees, having entered into an agreement through their representative union (Maharashtra Labour Union) with the first party for accepting such payment vide receipts dated 9 August 1997, which were on record, gave up

their right to reinstatement or re-employment and that they were no longer workmen within the meaning of Section 2(s) of the Act having given up their lien over employment. The court noted that in the first place, the first party had not produced any agreement entered into by these ten employees through Maharashtra Labour Union with the first party; the first party had also not led any oral evidence to prove this fact. Though the first party produced purported receipts (receipts dated 9 August 1997), the employeesâ?? denial of such payment was supported by certified true copies of cheques, which had been brought on record by the Manager of Oriental Bank Ltd. The court held that the first party, accordingly, had not proved that the workmen had been paid ex-gratia amounts for overriding their rights of reinstatement or re-employment. The court further observed that even assuming that the employees had accepted ex-gratia payments as per the alleged receipts, such acceptance could not deny the benefit of law to these workmen. The court observed that the parties could not enter into any agreement contrary to the provisions of law. The court observed that the employees had the right of re-employment under Section 25-H of the Act when the unit was restarted by the first party. On the question as to whether the first party had restarted its unit and whether by not re-employing these workmen, it had violated the provisions of Section 25-H of the Act, the court held that in the first place, the first party had not shown that it had bonafide closed down its business or undertaking. The court observed that even if there were to be a legally admissible closure, it was valid upto the date of restarting of the factory by the first party. The court observed that the first party had started its factory, including manufacturing activity, on 1 November 1997. The court noted that after restarting of the factory, the first party was duty bound to give notice to these employees to provide an opportunity for re-employment. Inasmuch as it had deprived the employees of such opportunity by recruiting other workmen for manufacturing activities, the aggrieved employees deserved to be granted benefits under Section 25-H of the Act. The court found that the first party had not complied with the provisions of Section 25-H and, accordingly, the ten employees, represented by the second party, were entitled to reinstatement with continuity of service and full back wages from the date of restarting of the factory by the first party.

3. If one has regard to the statement of claim filed by the second party union, in coming to its conclusion, as above, the Labour Court has clearly

misdirected itself and the proceedings. Section 25-H talks of re-employment of retrenched workmen. It provides for an eventuality where workmen

are retrenched and the employer proposes to take into his employment persons other than the retrenched workmen. The section requires the employer

to give an opportunity to the retrenched workmen, in such manner, as may be prescribed, to offer themselves for re-employment. It provides that such

retrenched workmen, who offer themselves for re-employment, would have preference over other persons. The Labour Court appears to have

confused here retrenchment of workmen with closure. The case here of the second party union was that from 8 August 1997, the first party had

closed its factory and the workers were terminated after payment of their dues. It was submitted that with effect from 1 November 1997, the work

was again restarted but these ten workmen were not called. The secretary of the second party union, who deposed on behalf of these workmen,

accepted in his examination-in-chief that on 6 August 1997, the first party closed its business with effect from 9 August 1997 and paid legal dues of all

workmen. He deposed that so far as the ten workmen were concerned, though receipts produced by the first party showed that amounts were paid by

cheques, no such cheques were given to them. Since the union's case was that the unit had closed and legal dues were paid to workmen, save

and except the ten workmen, on whose behalf the reference was made, the most that it could have asked for these ten workmen was closure

compensation payable in accordance with law to these workmen. There was no case for treating the cessation of the employments of these ten

workmen as a result of the closure as retrenchment so as to entitle the concerned workmen to the benefit of Section 25-H of the Act.

4. In fact, if one has regard to the narration in the impugned award of how the dispute was referred to the Labour Court, the claim of the second party

workmen in the demand notice clearly implied that the work in the factory was stopped with effect from 8 August 1997 and the legal dues were given

to them. It was the workmen's case that the factory was restarted on 1 November 1997, but the old employees were not called. Even the

statement of claim of the second party union averred that the factory was closed and the workmen were paid full and final settlement amount. Even in

the present petition, the secretary of the original representative union, which arrived at the settlement with the first party employer, has filed an affidavit, affirming declaration of closure of the factory through a closure notice and payment of all legal dues to the workmen arising out of that closure. There is, thus, no case of non-payment of compensation to the workmen on whose behalf the present dispute has been raised.

5. The Labour Court has accordingly misdirected itself. It wrongly invoked Section 25-H of the Act, treating the cessation of the employment of the concerned workman upon closure of the unit as retrenchment. As for the closure itself, the Labour Court noted that since the Petitioner had restarted manufacturing activity at the factory, the closure was not bonafide. As noted above, it is not the union's case that the closure was not bonafide, but that the unit having restarted itself, the workmen were entitled to re-employment. Though the unit was restarted, as noted above, there was no entitlement on the part of the workmen represented by the union to re-employment, after the closure was duly effected, and closure compensation was duly accepted by the workmen of the first party.

6. The conclusion of the Labour Court that the closure was not bonafide appears to be based solely on the fact that within a few months of such closure, the unit was restarted. The duration of closure, though relevant for determining the intention and bonafides of the employer at the time of closure, is not decisive. As the Supreme Court observed in the case of General Labour Union (Red Flag), Bombay vs. B.V. Chavan 1985 AIR SC page 297, the true test is to consider whether the closure was a device or pretence to terminate services of workmen or whether it was bonafide and for reasons beyond the control of the employer at the time of closure. The court must in such case keep in view all relevant circumstances at the time of closure. That does not appear to be the case here. The Labour Court has, in the impugned award, at best, only cursorily referred to the aspect of bonafides of the closure, on a one line observation that "when the first party on 1.11.97, or thereafter, at any time, started its factory manufacturing activity, then this clearly proves that the closure was not bonafide." This was followed by another startling observation by the court that "after restarting of the factory by the first party, the termination of these 10 employees converted into retrenchment." The Labour Court, in

other words, treated the closure, in its own words, as “valid upto the date of restarting of the factory of the first party”. This is clearly fallacious and has no basis in law.

7. The impugned order, accordingly, cannot be sustained. Rule is accordingly made absolute and the petition is allowed by quashing and setting aside the impugned award and answering the reference in the negative.