

(2001) 07 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 1913 of 1997

Mohamad M. Alam

APPELLANT

Vs

Western India Automobile Association and Another

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(1), 30(2), 42, 44, 48, 48

Citation : (2002) 1 BomCR 182 : (2001) 91 FLR 326 : (2002) 4 LLJ 933 : (2002) 1 MhLj 40

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Rahul Nerlekar, for the Appellant; R.S. Pai, instructed by Sanjay Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner had filed a complaint (Complaint U.L.P. No. 501 of 1990) in which it was alleged that the First Respondent was guilty of an unfair labour practices under items 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the MRTU and PULP Act"). The petitioner was engaged as a motor training instructor by the First Respondent with effect from 15th February, 1988 on a monthly salary of Rs. 1,200/-. The grievance of the petitioner was that he had been denied the benefit of permanency as well as other benefits which were being enjoyed by the permanent workmen. The grievance of the Petitioner was also that the existing settlement extended benefits to all employees other than the motor training instructors. The complaint filed by the petitioner came to be allowed by an order dated 17th November, 1995 passed by the Industrial Court, Bombay and the following operative directions were issued by the Industrial Court:

"Complainant is entitled to all the benefits like a permanent employee and will

also be eligible for P. F., E.S.I, and Bonus after completion of 240 days of his service.

Respondents are directed to fix the salary and allowance of the complainant equal to other instructors and make all the difference of payment to complainant."

2. The First Respondent has filed Writ Petition in this Court, being Writ Petition No. 955 of 1996 which came to be dismissed by a Division Bench of this Court on 19th June, 1996. After the dismissal of the Writ Petition on 19th June, 1996, the First Respondent wrote a letter to the petitioner enclosing a statement of the difference in salary and other allowances to which the petitioner was entitled in view of the order of the Industrial Court. The petitioner was informed that he was accordingly entitled to the payment of an amount of Rs. 1,03,124/- for which a cheque was enclosed. Besides, the petitioner was also intimated that he would be entitled to other statutory benefits -- Provident Fund, E.S.I, and bonus upon the expiry of 240 days from his initial engagement on 15th October, 1988. The salary of the petitioner was fixed at Rs. 2,300/- per month upon which he was also entitled to other statutory benefits.

3. The petitioner had instituted a complaint immediately upon the order of the Industrial Court dated 17th November, 1995 allowing his complaint. The complaint which was instituted by the petitioner on 31st January, 1996 was under the provisions of Section 48 of the MRTU and PULP Act, 1971. The petitioner complained of a breach of the order passed by the Industrial Court. The Labour Court before whom the complaint was filed, issued process by an order dated 28th October, 1996. The attention of the Labour Court was drawn to the fact that on 14th August, 1996, the First Respondent had sent a cheque in the amount of Rs. 1,03,124/- together with its covering letter which as noted above had also fixed the salary of the complainant and allowed him the benefit of other statutory payments. The Labour Court, however, issued process on the complaint u/s 48 holding that on the date on which the complaint was filed- 31st January, 1996, the order of the Industrial Court had not been complied with. The Court was of the view that the dispute between the parties as regards interpretation of the order of the Industrial Court and with regard to the computation of benefits payable to the petitioner, would have to be considered after evidence was led by the parties. The First Respondent challenged the order of the Labour Court issuing process in a revision u/s 44 of the MRTU and PULP Act, 1971. The Industrial Court has allowed the revision and has set aside the order issuing process. The Industrial Court has held that the First Respondent had, upon the dismissal of the writ petition filed by the petitioner in this Court, complied with the order of the Industrial Court dated 17th November, 1995 by paying an amount of Rs. 1,03,124/- to the petitioner. The Industrial Court has also noted that the petitioner has filed a fresh complaint against the First Respondent, in which the petitioner seeks to contend that the earlier order of the Industrial Court has not been fully complied with. In the circumstances, the

Industrial Court has set aside the order of the Labour Court issuing process.

4. The learned counsel appearing on behalf of the petitioner sought to submit that against the order passed by the Labour Court issuing process, a revision u/s 44 of the MRTU and PULP Act was not maintainable. Reliance was sought to be placed on a Judgment of the learned Single Judge of this Court in Satish J. Mehta and Ors. v. The State of Maharashtra and Anr., reported in 1991 2 CLR 547. There is no substance in the first submission which has been urged on behalf of the petitioner : u/s 44 of the MRTU and PULP Act, 1971 the Industrial Court has been vested with superintendence over the Labour Court. In the decision of the learned Single Judge of this Court in Satish J. Mehta v. The State of Maharashtra (supra), a petition u/s 482 of the Code of Criminal Procedure 1973 was filed by the employer upon an order passed by the Labour Court in pursuance of a complaint u/s 48 of the MRTU and PULP Act, 1971, in which the workman had alleged that the employer had failed to abide by an order passed by the Industrial Court. One of the objections which was raised to the maintainability of the petition, u/s 482 of the Code of Criminal Procedure, 1973, was that an employer has an efficacious remedy of an appeal u/s 42 or of a revision u/s 44 of the Act. This was repelled by the learned Single Judge, who noted that u/s 42 an appeal could lie to the Industrial Court only against an order of conviction by a Labour Court, by the person convicted; against an acquittal by a Labour Court in its special jurisdiction, by the complainant; and for the enhancement of a sentence awarded by a Labour Court, at the behest of the State Government. Insofar as the revisional jurisdiction u/s 44 was concerned, the learned Single Judge held that while it is true that Section 44 gives the Industrial Court power of superintendence over the Labour Court, "this is an enabling power and not a remedy for the party". In the circumstances, it was held that the petition u/s 482 of the Code of Criminal Procedure, 1973, was maintainable. The judgment of the learned Single Judge does not advance the case of the petitioner, because it has not been held that a revision against an order passed by the Labour Court issuing process would not be maintainable before the Industrial Court. The question which arose was with regard to the maintainability of the petition u/s 482 of the Code of Criminal Procedure, 1973 and it was held that Section 44 of the MRTU and PULP Act, 1971 confers only an enabling power upon the Industrial Court. The, petition u/s 482 was held to be maintainable before this Court. There is, therefore, no merit in the first submission.

5. The second submission which has been urged on behalf of the petitioner is that the employer has not complied with the operative directions of the Industrial Court. The order passed by the Industrial Court provides in the operative directions that the petitioner is entitled to all benefits like a permanent employee and would also be entitled to Provident Fund, E.S.I, and bonus upon completion of 240 days of service. Under the next operative direction, the Respondents were directed to fix the salary and allowances of the petitioner equal to what has been paid to other instructors and to pay the differential benefits to the petitioner. The learned counsel appearing on behalf of the petitioner pointed out that there is

some inconsistency between these two directions of the Industrial Court in its order dated 17th November, 1995, in that, while under the earlier direction what is required is a grant of benefits at par with permanent employees, by the subsequent direction, the First Respondent was directed to grant to the petitioner salary and allowances equal to what has been paid to other instructors. My attention was drawn to paragraph 15 of the order of the Industrial Court; in which the Industrial Court has noted that the petitioner was drawing a monthly salary only of Rs. 1,200/-, whereas another motor training instructor was being paid Rs. 2,100/- per month. The Industrial Court has also noted that though the settlement which had been entered into by the First Respondent provided that its benefits will not be applicable to motor training instructors, there was a need to make such a provision in the settlement. The First Respondent has, in compliance with the order of the Industrial Court, furnished to the petitioner a cheque in the amount of Rs. 1,03,124/- on 14th August, 1996. Together with a statement setting out the manner in which the payment of arrears has been computed. The petitioner has been granted the benefits of Provident Fund, E.S.I, and bonus upon completion of 240 days service, as also a salary of Rs. 2,300/- per month. Having considered the letter addressed by the First Respondent, it is impossible to come to the conclusion that the provisions of Section 48 of the MRTU and PULP Act, 1971 were attracted to the circumstances of the present case.

6. Section 48 of the Act deals with contempt of the Industrial or Labour Court and Sub-section (1) provides that any person who fails to comply with any order of the Court under Clause (b) of Sub-section (1) or Sub-section (2) of Section 30 of the Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to Rs. 5,000/-. The Labour Court issued process against the First Respondent only on the basis that on the date on which the complaint was filed, 31st January, 1996, the First Respondent was still to comply with the earlier order dated 17th November, 1995 of the Industrial Court. The fact that the First Respondent had filed a writ petition in this Court which was disposed of on 19th June, 1996, upon which the payment was made to the petitioner on 14th August, 1996, was placed for the consideration of the Labour Courts despite which, process came to be issued. The Industrial Court had, in my view, correctly exercised its revisional jurisdiction in holding that there was no breach of the order passed by the Industrial Court on 17th November, 1995, so as to invoke the jurisdiction u/s 48. Besides, the petitioner has filed another complaint which is pending before the Industrial Court in which the question as to whether there has been full compliance with the order of the Industrial Court is pending consideration. In the circumstances, the exercise of the revisional jurisdiction by the Industrial Court was correct and proper. The writ petition does not call for any interference and is accordingly rejected. It is, however, clarified that the observations, contained in this order are confined to the question as to whether a case has been made for invoking the jurisdiction of the Labour Court u/s 48 of the Act. The petitioner would be at liberty to pursue

the complaint which is pending before the Industrial Court in regard to the manner in which the exercise of fitment has been carried out by the first respondent. No opinion is expressed in regard to the merits of the said pending complaint being Complaint ULP No. 1453 of 1996.

Parties to act on a copy of this order duly authenticated by the Associate of this Court on the payment of usual copying charges.

7. Petition rejected.