

(1996) 08 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 4320 of 1996

Motor Industrial Co. Ltd., Nasik

APPELLANT

Vs

Deelip Daulat Deore and others

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 17
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (1997) 2 BomCR 138 : (1997) 75 FLR 464 : (1997) 2 LLJ 1162 : (1996) 2 MhLj 967

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : P.K. Rele and S.S. Pakale, for the Appellant; Ms. Seema Sarnayak and V.P. Malvankar, for the Respondent

Judgement

1. Rule, Returnable forthwith. Ms Seema Sarnayak, Adv. waives service for Respondents Nos. 1 and 2. Mr. Y. P. Malavankar, A.G.P. waives service for Respondents Nos. 3 and 4. By consent the writ petition is taken up for final 5 hearing at this stage.

2. The question, that may be of some importance is whether the Industrial Court exercising its power of superintendence u/s 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short M.R.T.U. and P.U.L.P. Act, 1971) could give directions contemplated u/s 17B of the Industrial Disputes Act, 1947 (for short I.D. Act, 1947) assuming the power of High Court under Article 227 of the Constitution of India.

3. The Respondents No. 1 and 2 were employed in the Petitioner company which is public limited company corporate under the Companies Act, 1956. "Me Respondent No. 1 herein was employed as Operator G-1 in Quality Control Range of the Petitioner company, while Respondent No. 2 herein was initially employed on October 15, 1971 and later on promoted as a setter in "A" category in

production Range with effect from February 1, 1974. On 1 September 15, 1989 theft of some 17 1 0 nozzles of the value of Rs. 2,21,000 was alleged to have been committed by two persons. An offence was registered and during the course of police investigation it transpired that some of the Petitioner's employees were accomplices in the crime. The involvement of Respondents No. 1 and 2 here in the said theft was suspected and both of them were suspended, pending issuance of charge sheet, enquiry and the final order. Later on the Petitioner company by the order dated August 30, 1990 dismissed the Respondents No. 1 and 2 herein. The Orders of dismissal were challenged by Respondents No. 1 and 2 herein by filing two separate complaints 1 under the M.R.T.U and P. U.L.P. Act, 1971. Both of them also made applications for grant of interim relief. The Respondent No. 3 herein viz. the Labour Court, Nasik by order dated December 8, 1995 held that the Petitioner had engaged 3 in unfair labour practice in dismissing the services of Respondents No. 1 and 2 and directed the Petitioner to reinstate both of them with continuity of service and full back wages from the date of their dismissal. The Petitioners preferred two revision applications separately against the two orders passed by the Labour Court, and the said revision applications came up before Respondent No. 4 herein viz, Industrial Court, Nasik. On December 27, 1995, the 4th Respondent herein i.e. Industrial Court, passed an order directing the Petitioner herein to deposit full monthly wages and in compliance thereto Petitioner has been depositing full monthly wages for Respondents No. 1 and 2 before the Industrial Court, Nasik. It appears that Respondents No. 1 and 2 herein made an application Exhibit U-4 before the Industrial Court that the amount deposited by the Petitioner may be allowed to be withdrawn since the Respondents No. 1 and 2 herein were facing financial difficulties. By the impugned order dated June 3, 1996 though the application made by Respondents No. 1 and 2 herein Exhibit U-4 was rejected, but the Industrial Court, Nasik held that while exercising the powers u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it assumes the power of the High Court and, therefore, there is nothing wrong if the provisions of Section 17B of the I.D. Act, 1947 is its placement by the Industrial Court till the revision application is heard and finally disposed of, and, accordingly in para 2 of the operative order held that it has jurisdiction u/s 44 of the M.R.T.U. and P.U.L.P Act, 1971 to direct the Petitioner herein to deposit the amount of back wages and thereby to comply with the provisions of Section 17B of the I.D. Act, 1947.

4. Mr. Rele, learned counsel for the Petitioner is aggrieved by para 2 of the operative order wherein Industrial Court has held that it has jurisdiction u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971 to direct the Petitioner herein to comply with the provisions of Section 17B of the I.D. Act, 1947. Mr. Rele contends that Industrial Court while exercising its powers u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971 cannot invoke and direct the compliance of Section 17B of the Industrial Disputes Act, 1947.

5. On the other hand, Ms. Samayak, learned counsel for Respondents No. 1 and 2 would strenuously contend that since the Industrial Court was seized of

revisional applications against the order Versed by Labour Court, it was definitely h Ir Court visais the Leered bour Court Ad, crefore, did not commit any error of jurisdiction in holding that the Industrial Court can issue direction to the Petitioner in compliance of the provisions of Section 17B of the 1. D. Act, 1947.

6. Section 17B of the I.D. Art, 1947 reads thus :

"Section 178. Payment of full wages to Workman ending proceedings in higher Courts. Mere in any case, a Labour Court Tribunal or National Tribunal by its award directs reinstatement of any work and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High 5 Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an ic affidavit by such workman had been filed to that effect in such Court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme is Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be."

7. Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971 is as follows :

"Section 44. The Industrial Court shall have superintendence over all Labour Courts and may,

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and. procedure of such Courts in matters not expressly provided for by this Act and in particular, tor securing the expeditious disposal of cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any, such Courts; and

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court

8. It is true that u/s 44 of the M.R.T.U. and P.U.L.P Act,1971, the Industrial Court exercises power of superintendence over Labour Courts, and, while exercising power of superintendence, Industrial Court may exercise all such powers which may be exercised by any revisional Court or Court of Superintendence, and. that may in a given case be akin to the powers which High Court may exercise under Article 227 of the Constitution of India : but such power will not make that Industrial Court a "higher Court" as understood in its term. The expression "higher Court" occurring in title of Section 17B embraces only Supreme Court) and High Court and that is obvious from the text of Section 17B itself, and other

Court in the hierarchy of Courts cannot be termed as higher Court even if such Court exercises appellate power or revisional power. Therefore, title of 5 Section 17B of the I.D. Act, 1947 which uses the expression "higher Court" cannot empower the Industrial Court to issue directions u/s 17B simply because it exercises power of superintendence over Labour Courts u/s 44 of M.R.T.U. and P.U.L.P. Act, 1971. Even otherwise title of the Section cannot govern the section when the language of Section 17B of the I.D. Act 1947 is very clear and invites of no ambiguity. According to Section 17B 5 where any Labour Court, Tribunal or National Tribunal passes an Award directing reinstatement of any workman and such award is under challenge in High Court or the Supreme Court, the said Section mandates the employer to pay) such workman full backwages last drawn by him during the tendency of proceedings in the High Court or Supreme Court. On the face of such clear provision u/s 17B, it is very difficult to comprehend how the Industrial 5 Court can assume the power of the High Court and issue directions u/s 17B of the I.D. Act, 1947. The Industrial Court was not justified when it held that while exercising power u/s 44 of the M.R.T.U. and) P.U.L.P. Act, 1971, it assumed the power of the High Court and, therefore, there is nothing wrong if direction..; to implement the provisions of Section 17B of the I.D. Act, 1947 are given pending revision application. It would be alto; gather a different matter if the Industrial Court while considering an application for the grant of stay order or interim relief in the revision application challenging the reinstatement of workman directs the employer to pay wages if it did) not want to reinstate after taking into consideration the facts peculiar to such case but exercising the power u/s 17B assuming itself as a High Court cannot be justified.

9. The Industrial Court in the present case has misconstrued Section 17B of the I.D. Act, s 1947 and its power u/s 44 of the M.R.T.U. and P.U.L.P Act, 1971, and, assumed jurisdiction of High Court not vested in it under law and acted without jurisdiction in invoking the power u/s 17B. As already observed, in suitable cases, the Industrial Court while considering a prayer for interim relief, pending revision application u/s 44, of the M.R.T.U. and P.U.L.P. Act, 1971 may pass an appropriate order which may advance the cause of justice and that may include directing the employer either to reinstate the employee during the pendency of revision application when such reinstatement has been granted by the Labour Court, and if the employer does not want to reinstate the employee pending revision application, appropriate directions for payment of, wages may be made, but such discretion has to be exercised in accordance with law after taking into consideration facts and circumstances of each case.

10. By the order dated December 27, 1995, the Industrial Court has already directed the petitioner to deposit monthly wages of Respondents No. 1 and 2 and which is being complied with by the Petitioner and, therefore, even other while rejecting the application Exhibit U-4, there was no necessity for the Industrial Court to direct the Petitioner to comply with the s provisions of Section 17B of the Industrial Disputes Act, 1947.

11. In view of the foregoing reasons, para 2 of the operative order cannot be sustained, and o is accordingly set aside and quashed. Rule is made absolute in aforesaid terms. No costs.