
(2000) 08 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 809 of 1993

Mr. M.K. Bhuvaneshwaran	Vs	APPELLANT
Premier Tyres Ltd. and Another		RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2001) 1 BomCR 766 : (2000) 102 BOMLR 692 : (2001) 2 MhLj 84

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—The Labour Court in a complaint filed under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 set aside the order of dismissal of the workman in question on the ground that though the misconduct had been proved, the penalty of dismissal was disproportionate. In a Revision u/s 44 of the Act, the Industrial Court set aside the order of the Labour Court holding that the complaint which had been filed before the Labour Court, was barred by limitation and that the past record of the workman did not justify the order of reinstatement. The order of Industrial Court in allowing the revision and setting aside the order of reinstatement is impugned in these proceedings under Article 226 of the Constitution. The petitioner workman has since attained the age of superannuation and therefore, the grant of relief, if any, can only be in regard to the payment of back wages.

2. The petitioner joined the service of Respondent No. 1 on 16.2.1963 as a Peon and ultimately came to be promoted as a Junior Assistant in its establishment at Bangalore. It is common ground between the parties that Respondent No. 1 has since been taken over by Respondent No. 3 which in consequence, has been

impleaded as a party to these proceedings.

3. Sometime in September, 1984, the petitioner came to be transferred from the establishment of the First Respondent at Bangalore to its establishment at Bombay. From the record, it emerges that the petitioner had been held guilty of misconduct in a domestic enquiry wherein six out of seven charges were held to have been established. However, in order to give one more chance to the workman, he came to be transferred to Bombay. On 21.8.1985, the workman was on leave allegedly on the ground that he was suffering from a urinary infection. The allegation is that on 28.8.1985, the Personnel Manager of the Company wrote a letter to the Doctor whom the workman was alleged to have consulted to verify the veracity of the cause furnished by the workman for being absent. The charge-sheet which was issued to the workman on 14.9.1985 arises out of the sequence of events which is alleged to have taken place after the telephonic call of the Personnel Manager of the First Respondent to the Doctor. It is alleged that after the Personnel Manager made a telephone call to the Doctor, the petitioner telephoned the Personnel Manager on 11.9.1985 and asked him in an offensive tone as to why he had resorted to the aforesaid course of action. Thereafter on 12.9.1985, it is alleged that the petitioner workman attended the duties later than the normal commencement of work and entered the cabin of the Personnel Manager. The petitioner is thereafter alleged to have shouted at and insulted the Personnel Manager.

4. A charge-sheet to be issued to the petitioner on 14th September, 1985 in respect of a misconduct alleged to have committed under Model Standing Orders 24(1) - ("Commission of act subversive of discipline or good behaviour on the premises of the establishment") and 24(k) ("Indecent behaviour on the premises of the establishment"). The petitioner submitted his explanation, and a domestic enquiry came to be convened. The Personnel Manager of the Company was examined during the course of the domestic enquiry and he was cross-examined by the representative appearing on behalf of the workman on several dates. Ultimately, it transpires that, on 31.1.1986, the Enquiry Officer concluded the enquiry even though the cross-examination of the Personnel Manager was not completed, since the petitioner and his representative were absent. The Enquiry Officer was of the view that sufficient opportunities were given to the petitioner and that he had from time to time applied for and was granted several adjournments. The grievance of the petitioner was that neither the report of the Enquiry Officer was furnished to him nor was he given a second show cause notice to represent against the proposed penalty that was sought to be inflicted upon him,

5. In the meantime, the petitioner had filed a complaint of unfair labour practices being Complaint ULP No. 115 of 1986 before the Labour Court. On 5.2.1986, the petitioner addressed a letter to the Enquiry Officer seeking the reopening of the enquiry. The petitioner alleges that he had gone to his village in Kerala and upon his return he was told that a registered letter was sought to be served during his

absence. On 14.3.1986, the petitioner addressed a letter to the Personnel Manager of the Company seeking information about the nature of the communication which was sought to be served upon him. The contention of the petitioner is that on 5.9.1986, he came to know for the first time of the order dated 3.3.1986 by which his services came to be terminated. The petitioner thereupon filed a fresh complaint complaining of an unfair labour practice under Items 1(a), 1(b), 1(d), 1(f) and 1(g) of Schedule I to the M.R.T.U. & P.U.L.P. Act, 1971 together with an application for condonation of delay. The complaint filed earlier was withdrawn.

6. By an order dated 29.5.1992, the Labour Court came to the conclusion that the Enquiry Officer was justified in concluding the enquiry on 31.1.1986 since sufficient opportunities had been granted to the petitioner to defend the case. The Labour Court after taking into account the facts and circumstances of the case, came to the conclusion that the Enquiry Officer was justified in taking the view that the petitioner was delaying the proceedings. The Labour Court, however, concluded that the penalty of dismissal which had been imposed upon the petitioner was shockingly disproportionate. In arriving at this conclusion, the Labour Court did have regard to the past record of the petitioner. In paras 21 and 22 of its Order, the Labour Court considered the past record of the petitioner and noted the fact that in 1984, the petitioner had been transferred from Bangalore to Bombay after he had been found to be guilty of misconduct in a domestic enquiry in order to give him one more opportunity. After considering the past record and the facts and circumstances of the case, the Labour Court came to the conclusion that the ends of justice would be met if the petitioner were to be deprived of his back wages. The Labour Court took into account the fact that the petitioner had joined the Company in 1963 as a Peon and was ultimately promoted as a Junior Assistant. At the date on which, the Labour Court decided the case, the petitioner was about 52 years of age. The Court was of the view that he had suffered adequately since March, 1986 since when he was unemployed. In arriving at the conclusion that the punishment of dismissal was shockingly disproportionate, the Labour Court relied upon the judgments of the Supreme Court in *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, and in *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, .

7. Respondent No. 1 there upon preferred a Revision Petition u/s 44 of the Act before the Industrial Court. The Industrial Court by its impugned order dated 3.11.1992 reversed the judgment and order of the Labour Court by holding that

(i) the complaint which had been instituted by the petitioner was barred by limitation since there was a delay of 7.1 /2 months in preferring the complaint,

(ii) the delay in filing the complaint had not been duly explained, and

(iii) that having regard to the past record of the petitioner, the case for reinstatement was not made out.

8. The learned Counsel appearing on behalf of the petitioner, while assailing the

findings of the Industrial Court, submitted that having regard to the well settled position in law, it was not open to the Industrial Court in exercise of its revisionary jurisdiction u/s 44 of the Act to disturb the finding of the Labour Court, which was a possible finding based on the consideration of the facts and circumstances of the case and one which was arrived at after taking into account the past record of the workman in the present case. The finding on the question of limitation was also challenged.

9. In so far as the question of limitation is concerned, the Industrial Court has cast an unreasonable burden of explaining "day-to-day delay of 7.1/2 months" on the petitioner. The requirement of explaining delay cannot be stretched to a point where it becomes impossible of fulfillment. The order of termination of service came to be passed on 3.3.1986. Even if limitation began to run on that day, the period of 90 days prescribed by Section 28 of the Act expired on 1.6.1986. The complaint was filed thereafter, about 4.1/2 months later and not after a delay of 7.1/2 months. The petitioner had duly filed an application for condonation of delay and having heard the learned Counsel for the parties, I am of the view that a sufficient ground for condonation was made out.

10. Having heard the learned Counsel for the parties, I am of the view that the petitioner is entitled to succeed. It is a well settled principle of law that in a revision u/s 44 of the Act, the Industrial Court does not sit as a Court of appeal. As far back as in 1986, a learned Single Judge of this Court, Mr. Justice S.P. Bharucha (as the learned Judge then was) held in *Hindustani Prachar Sabha and Others Vs. Dr. (Miss) Roma Sengupta and Another*, that the jurisdiction of the Industrial Court is similar to the Superintendence which the High Court exercises under Article 227 of the Constitution of India and can be exercised only where the evidence could never justify the conclusion or where the order is perverse. The learned Judge, thus, held:-

It is a provision on part materia with Article 227 of the Constitution of India. The powers of Superintendence do not include the power to review evidence on record. The power of the Superintending Court in so far as evidence is concerned is limited to setting aside an order where the evidence could never justify the conclusion, in other words where the order is perverse. I need only to refer in this behalf to the decision of the Supreme Court in *Parry and Co. Ltd. Vs. P.C. Pal and Others*,

11. The same view has been taken by a Division Bench of this Court consisting of the Chief Justice Mr. Justice A.M. Bhattacharjee and Mr. Justice A.P. Shah in *Vithal Gatlu. Marathe v. Maharashtra State Road Transport Corporation* (1995) 1 C.L.R. 854 : 1996 (i) L.L.J. 949. There are a number of other judgments where a similar view has been taken and it is well settled so as not to merit any dispute whatsoever.

12. In the present case the order which was passed by the Labour Court took into account the nature of the service record of the petitioner. The Labour Court

was alive to and conscious of the fact that the petitioner had used language that the Labour Court termed as "hot tempered". The Labour Court referred to the fact that the Petitioner had been subject to disciplinary proceedings on that ground in the past. In the circumstances of the case, the Labour Court was of the view that the ends of justice would be met if the workman was completely deprived of his back wages. The Labour Court duly took into account the relevant judgments of the Supreme Court on the subject. The view which was taken by the Labour Court was thus, a view which was taken in the context of the facts and circumstances in the present case and with reference to the law which has been laid down to govern such cases. One significant circumstances which weighs in favour of the view, which has been taken by the Labour Court, is that the nature of the charge against the petitioner was that he had spoken to a superior in an aggressive tone and had perhaps remonstrated too strongly in the presence of the Personnel Manager. There is no charge akin to violence, assault or similar mis behaviour or that he used language which was filthy or unbecoming of the language of civilised discourses. The charge at the highest against the petitioner was of shouting at the Personnel Manager. This is not to suggest that the conduct of the petitioner was such that it would not constitute a misconduct or that it was liable to be condoned. Misconduct it was. The question was of penalty.

13. The narrow issue is that if in the circumstances of the case, the Labour Court came to the conclusion that the ends of justice would be met, while ordering reinstatement, if the workman is deprived of back wages, the Industrial Court ought not to have interfered with this finding in its limited revisional jurisdiction. Thus, having regard to the facts arid circumstances of the case, I am of the view that the Industrial Court exceeded the parameters of its revisional jurisdiction in interfering with the findings of the Labour Court.

14. As a result of the order passed by the Labour Court, the petitioner became entitled to reinstatement on and from 29.5.1992. It is stated that the petitioner has attained the age of 58 years some time in 1996. The learned Counsel on behalf of the petitioner stated that her instructions are that the age of retirement for the workmen of Respondent No. 1 was not 58 years, but was 60 years. Learned Counsel appearing on behalf of Respondent Nos. 1 and 3, however, submitted that the undertaking of Respondent No. 1 has since been closed and it is almost impossible to trace the old records. The submission of the learned Counsel for the respondents is that generally speaking, the age of retirement would be 58 years and that should be applied in the facts of this case, particularly since neither of the parties today has any definitive instructions on the applicable age of retirement to the erstwhile undertaking of Respondent No. 1.

15. At this stage, with neither of the Counsel in a position to state as to what precisely is (he age of retirement that was applicable to the erstwhile undertaking of Respondent No. 1 it would, in my view be in the fitness of things,

if the petitioner is give the benefit of the payment of back wages from the date of the order of the Labour Court, 29.5.1992 until the date on which he completed the age of 58 years in 1996. In any event, I am of the view that the payment of wages for these four years would meet the ends of justice as and by way of fair payment of compensation. The learned Counsel for the petitioner has fairly accepted this position. Though the learned Counsel for the Respondent has not been in a position to formally record a concession on behalf of the Respondents, it must be stated that the learned Counsel assisted the Court in arriving at a conclusion of this case in a manner which is both fair and in accordance with justice.

16. In the result, the petition is allowed. The respondents are directed to pay to the petitioner back wages from 29.5.1992 until the petitioner attained the age of 58 years. The petitioner will also be entitled to all the benefits to which he would be entitled under the law including gratuity and other terminal benefits. The respondents shall make the aforesaid payments to the petitioner within a period of two months from today.

17. The petitioner shall also be entitled to other incidental benefits which would be allowable to him in view of the order passed by the Labour Court. The petitioner would be entitled to the usual spread over of the benefits.

18. The petition is thus, allowed in the aforesaid terms though, in the circumstances with no order as to costs.

C.C. expedited.

P.A. to issue ordinary copy of this order. Parties to act on the copy duly authenticated by the Associate of this Court.