

(1995) 04 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 3881 of 1990

M.S.E.B. Workers Federation, Pune

APPELLANT

Vs

Maharashtra State Electricity Board and others

RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2, 25B, 25F, 25G, 25L

Citation : (1998) 3 LLJ 293

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India challenges an order dated 11th October, 1989 made by the Industrial Court, Pune, in a Complaint (ULP) No. 311 of 1984 dismissing the complaint under the provision of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The petitioner is a trade union representing the employees of Nominal Muster Roll (N. M. R.), who were working in the Civil Construction-cum-Maintenance Department of the First Respondent-Electricity Board at Pune.

3. By Circular issued on 12th September, 1984, the First Respondent-Board directed the Superintending Engineer, Civil Circle, Pune, to terminate the services of 8 of the workmen working in the Civil Division. Pursuant to the said direction, the 8 workmen working in the Civil Division were removed from service.

4. The petitioner filed a complaint before the Industrial Court, Complaint (ULP) No. 311 of 1984, on behalf of the 8 workmen whose names were indicated in Annexure "A" to the complaint. Inter alia, the petitioner alleged that they were all employees of the Civil Division and that their services had been terminated without complying with the provision of Sections 25F, 25G and 25N of the Industrial Disputes Act, 1947. It was also alleged that the N. M. R. employees

were not given the benefits of two settlements dated 25th November, 1975 and 3rd February, 1983 providing for absorption of N. M. R. employees who had completed 5 years of service in the regular employment of the first respondent. Thus, it was alleged that the first respondent had indulged in unfair labour practices under Items 9 to 10 of Schedule IV of the Act.

5. Before the Industrial Court one Avinash Nana Shelar, one of the retrenched workmen, filed an affidavit, which was treated as examination-in-chief, and he was cross-examined thereupon. Shelar stated in his evidence that he was appointed by the Executive Engineer in Civil Division and that Civil Division was a part of the Civil Circle, that the Junior Engineers etc., of the Civil Division used to allocate work to him and supervise his work and that the wages were also disbursed by the Civil Division. In paragraph 4 of the cross-examination, he admitted. "At present, there is in the Civil Division no workman in service who is junior to me in service. At present in the Civil Division, there is no N. M. R. employee, in service, who is junior to any of us 8 employees, for whom the present complaint is filed". He was put a question in re-examination : "At present, which seniority is applicable to you ?", to which he replied : "Our seniority is on the Zone basis, i.e., the seniority in the Pune Zone is taken as the basis. Head Office of Pune Zone is at Kolhapur. There are other zones also under Urban Circle. The District Pune, Satara, Sangli, Kolhapur and Solapur come under Pune Zone". In Cross-examination, he denied that, at the time of his termination of service, there was no system of maintaining seniority on zonal basis and asserted that the seniority list maintained on the zonal basis had not been shown to them. He also stated that he did not know if there was any seniority list on Circle basis, as no such seniority list was shown to them.

6. The first respondent examined one Bandappa Timredi Koli, Head Clerk in the Pune Office of the first respondent, who admitted in the cross-examination that, despite a notice to produce the seniority list, the first respondent had not produced the seniority list. He also admitted that the seniority list as on 7th December, 1984 was not shown to the 8 concerned workmen or to the petitioner-Union, nor was it affixed on the notice-board. Thereafter, he made certain important admissions as under :-

"9. It is true that for its working the MSEB has prepared different zones in the State of Maharashtra and under Pune Zone falls Pune, Satara, Sangli, Kolhapur and Solapur Districts. Civil Construction-cum-Maintenance Sub-Divisional 1, and Pune Urban Circle fall under the Pune Zone. It is true that for the purpose of seniority for all employee including nominal muter employees, for the purpose of retrenchment and transfer, one seniority list for the entire Pune Zone is considered. I cannot say if the persons mentioned in Ex. U-32 i.e., Suleman Bapu Lashkare and others are junior or not to the above said 8 persons in the Pune Zone. I have not verified if the persons mentioned in affidavit Ex. U-32 are junior or not to the above said 8 persons in Pune Zone after this affidavit was filed".

7. The Industrial Court raised 10 issues and answered them as under :-

"1) Does the Complainant prove that the Agreements dated 25.11.1975 and 8.2.1983 apply to the workmen, whose names are set out in Annexure-A (Ex. U-6) to the complaint ?

No

2) Did the termination of the said employees w.e.f. 7.12.1984, by the Order dated 5.12.1984 amount to retrenchment ?

Yes

3) Does the said termination attract provisions of Section 25N of the Industrial Disputes Act, 1947 ?

No

4) Does the Complainant prove that there was failure on the part of the respondents to comply with the requirements of the provision of Section 25F of the Industrial Disputes Act, 1947 ?

No

5) Does the Complainant prove that while effecting this termination, there was failure on the part of the respondents to comply with the requirements of Section 25G of the Industrial Disputes Act, 1947 and Rules made thereunder ?

No

6) Has this Court no jurisdiction to entertain and decide the present complaint ?

Not pressed

7) Whether the Complainant proves that the failure on the part of the respondents to implement the agreements dated 25.11.1975 and 3.2.1983 in respect of the concerned 8 workmen and also on the part of the respondents to comply the statutory requirements of Section 25N of the Industrial Disputes Act, 1947, to attract Item No. 9 to Schedule IV of the Act ?

No

8) Do the actions and omissions on the part of the respondents, complained of by the Complainant, amount to acts of force, attracting Item 10 of Schedule IV of the MRTU and PULP Act, 1971 ?

No

9) Does the Complainant prove that the Respondents engaged in unfair labour practices complained of ?

No

10) Are the Complainant and 8 workmen in question entitled to the reliefs claims" ?

No

Consistent with the above findings, the Industrial Court dismissed the complaint. Hence this writ petition.

8. Though Mr. Bapat, learned Advocate for the Petitioner, contended that the finding made by the Industrial Court on the issue as to applicability of Chapter V-B of the Industrial Disputes Act, 1947, was erroneous, I am not inclined to accept the contention. The Industrial Court has given good reason and pointed out that the evidence of B. T. Koli, on behalf of the first respondent, to the effect that only 35 persons were employed in the Civil Division has gone unchallenged. Again, the evidence does not show, nor does the record indicate, the nature of industrial establishment in which the retrenched workmen were employed. In view of the definition of "industrial establishment" in Section 25L, which is the one relevant for the purpose of application of Chapter V-B, Mr. Bapat did not further pursue the point.

9. Mr. Bapat next urged that the finding on issue No. 5 by the Industrial Court that there was no contravention of the provision of Section 25G of the Industrial disputes Act, 1947, is erroneous. There is merit in this contention that the Industrial Court has misread the evidence of the petitioner's witness Avinash Nana Shelar and arrived at the conclusion that there was no junior workmen in service in the Civil Division. While doing so, the Industrial Court completely ignored the important admission made by the witness of the first respondent B. T. Koli to the effect that seniority of all the workmen is maintained on zonal basis for the purposes of retrenchment, transfer and so on. The fact that there were no juniors to Avinash Nana Shelar, in the Civil Division was, therefore, immaterial. What was required to be examined was, if there were any junior workmen retained in the entire Pune Zone. There appears to be singular lack of evidence to demonstrate it. The Industrial Court has proceeded on the wrong basis that there is nothing on record to show that a consolidated seniority list for all classes of employees was, in fact, maintained by the first respondent. This conclusion is directly contrary to the admission made by B. T. Koli in his cross-examination, which I have reproduced. Further, though Avinash Nana Shelar, the petitioner's witness, had specifically given the names of the workmen junior to the retrenched workmen retained in service, there is no evidence worth the name adduced by the first respondent to meet the same. In fact, B. T. Koli under cross-examination, conceded that he had no idea whether the persons named by Shelar were junior to the retrenched workmen or not. If that be so, there was no reason for the Industrial Court not to accept the evidence on oath given by Avinash Nana Shelar, which clearly showed that several workmen junior to the 8 retrenched workmen had been retained in service. I am, therefore, of the view that the Industrial Court's findings on issue No. 5 as to the contravention of Section 25G of the Industrial Disputes Act is perverse and needs to be set aside. I am also of the view that the evidence on record clearly demonstrates that the retrenchment of the 8 workmen was contrary to the mandatory requirements of

Section 25G of the Industrial Disputes Act and, consequently, they were entitled to reinstatement.

Tuesday, the 25th April, 1995

10. Mr. Baxi, learned advocate appearing for the first respondent-Board, strenuously contended that the 8 retrenched workmen were N. M. R. employees, who had admittedly put in less than five years' continuous service, and, therefore, they were not entitled to get several benefits like permanency and others flowing from permanency. Consequently, in her submission, Section 25G of the Industrial Disputes Act, 1947 itself would not apply to the case of the 8 retrenched workmen. It is not possible to accept this contention. The provisions of Section 25G of the I. D. Act are attracted as soon as a "workman" is "retrenched" from service after completion of one year's continuous service. That the 8 workmen had completed one year's continuous service is not in dispute. That the situation was one of "retrenchment" is also not in dispute. If that be so, Section 25G of the I.D. Act makes no distinction between permanent or non-permanent employees, but is only concerned with whether the person retrenched is a "workman" and has completed one year's continuous service within the meaning of Section 25B of the I.D. Act. Further, the expression "workman" defined in Section 2(s) of I.D. Act, does not make any distinction between a permanent or a non-permanent employee. The contention, therefore, is unsound and has to be rejected.

11. Mr. Bapat brings to my notice a judgment of the Division Bench of this Court in *Navbharat Hindi Daily, Nagpur v. Navbharat Shramik Sangha* 1985 Mh. L.J. 483, in which it has been held that even a contravention of Rule 81 of the Industrial Disputes (Bombay) Rules, 1957, would vitiate a retrenchment. The authority is apposite, since in this case not only was there contravention of Section 25G of the I.D. Act, but there is also no material to show that a seniority list within the contemplation of Rule 81 was displayed in accordance with the provisions of Rule 81. For this reason also, the retrenchment of the concerned workmen is illegal.

12. In the result, the writ petition is allowed. The impugned order of the Industrial Court, Pune, dated 11th October, 1989 made in Complaint (ULP) No. 311 of 1984 is hereby quashed and set aside. It is held that the retrenchment of the 8 workmen named in Annexure-A, Exhibit U-6, to Complaint (ULP) No. 311 of 1984 was not in compliance with Section 25G of the I.D. Act and Rule 81 of the industrial Disputes (Bombay) Rules, illegal and non-est. The concerned workmen are, therefore, entitled to reinstatement in service with full back wages. The first respondent is directed to reinstate Avinash Nana Shelar, Rajendra Nana Shelar, Suresh Chandar Sonawane, Vilas Ganpat Harpale, Rahu Balu Pate, Shankar Ganpat Rokade, Balasaheb Tukaram Lende and Harishchandra Mukinda Gunjal in service with continuity and pay them full back wages from the respective dates on which they were retrenched. The direction given in this order shall be carried out not later than 15th June, 1995, failing which the first respondent shall be

liable to pay simple interest at 12% per annum on the amount of back wages apart from any liability for failure to implement the order of this Court.

13. Rule is, accordingly, made absolute. The first respondent shall pay Rs. 500/- as quantified costs of this writ petition.

14. Certified copy expedited.