
(1993) 09 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 3878 of 1993

Narsinggirji Mills

APPELLANT

Vs

Abdul Rashid Ladlesab Shaikh and Others

RESPONDENT

Date of Decision : 28-09-1993

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (1994) 2 LLJ 152

Hon'ble Judges : V.P. Tipnis, J

Bench : Single Bench

Advocate : I.A. Saiyad, for the Appellant; S.G. Khudale, for the Respondent

Final Decision : Allowed

Judgement

V.P. Tipnis, J.—Rule.

Shri S.G. Kudale, waives service on behalf of the 1st respondent. The respondent No. 2 and 3 are not necessary parties being the Members of the Labour Court and Industrial Court respectively.

By consent of parties Rules heard forthwith. Heard both sides. Perused the orders impugned.

2. By this petition the employer namely The Narsinggirji Mills has challenged the interim order passed by the Labour Court, Solapur directing the Mills to permit the dismissed employee to resume his duties by way of interim order pending the complaint of the employee against the alleged illegal dismissal.

3. It appears that after holding departmental inquiry the respondent No. 1 was dismissed from the post of junior clerk in the Rationing Department by an order dated August 10, 1992. The dismissed employee filed a complaint before the Labour Court. He also filed an application for injunction u/s 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act. The employer naturally opposed the interim order sought for. However, by a very detailed order dated March 17, 1993 the learned Judge of the Labour Court, Solapur directed the petitioner-Mills to reinstate the respondent No. 1 on the post from which he was dismissed during the pendency of the complaint. Being aggrieved by the decision the Mills preferred revision to the Industrial Court, Maharashtra and the learned Member of the Industrial Court by his judgment and order dated August 26, 1993 was pleased to dismiss the revision. That is how the Mill has preferred the present petition.

4. Shri Saiyad, learned Counsel appearing for the Mills vehemently contended that such an order of reinstatement by way of interim reliefs could be passed in a rarest of rare case. Shri Saiyad with some justification criticised the order passed by the Judge of the Labour Court inasmuch as the learned Judge of the Labour Court has almost approached the matter as if the employee was being convicted for a criminal charge. Shri Saiyad further contended that in any case foisting an employee who is dismissed for serious misconduct, even before the final adjudication of the dispute raised, is against the settled position of law and would create numerable difficulties for maintaining discipline in the Mills.

5. Sri Kudale, learned Counsel appearing for the employee, on the other hand contended that discretionary interim order is passed by the competent authority and this Court should not interfere with the same, in exercise of its writ jurisdiction. Shri Kudale contended that inasmuch as strong prima facie case was made out by the employee the trial Court has passed the order of reinstatement.

6. I have heard both sides at length. I have also gone through the relevant record. It is true that the approach of the learned Judge of the Labour Court is not proper. In such domestic inquiry principles of criminal jurisprudence should not be incorporated. However, after having heard both sides and taking into consideration the relevant factors I am of the opinion that though under the facts and circumstances of the case an employee should not have been foisted on the employer by way of interim reinstatement on the finding that the employee has made out strong prima facie case, he should be protected in some manner which will not be prejudicial to the interest of the maintenance of discipline.

7. In these circumstances I am allowing the petition and setting aside the order of reinstatement till the pendency of the complaint. But instead I direct that the petitioner-Mills shall pay to the respondent employee an amount of Rs. 2,500/- per month from September 1, 1993 till disposal of the complaint. The amount of Rs. 2,500/- for the month of September, 1993 shall be paid on or before October 10, 1993 and the amount in respect of each subsequent month accordingly on 10th day of the next month. The amount shall be deposited before the Labour Court and the respondent employee shall be at liberty to withdraw the same without furnishing any security.

8. After hearing the parties Shri Kudale on behalf of the respondent No. 1 employee makes a statement that he shall withdraw the contempt proceedings

which he has initiated before the Labour Court. The undertaking is accepted and accordingly the respondent No. 1 shall withdraw the contempt petition.

9. I further direct that while deciding the complaint on merits the learned Labour Judge will not be influenced by his observations and the finding made by him in the impugned order or by the observations and the findings made by the learned member of the Industrial Court, Solapur in revision petition dismissed on August 26, 1993 and decide the original complaint on the basis of the material on record and in accordance with law. I further direct that the complaint shall be disposed of as expeditiously as possible.

10. Rule made absolute in the aforesaid terms. There shall be no order as to costs. Certified copy expedited.