

(2001) 02 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 83 of 2000

Nashik Workers Union

APPELLANT

Vs

M/s. Trimbak Rubber Industries Ltd. and Others

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2, 25

Citation : (2001) 3 BomCR 91 : (2001) 2 BOMLR 558 : (2002) 92 FLR 789

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

Bench : Single Bench

Advocate : Mr. Colin Gonsalves, for the Appellant; Mr. C.J. Sawant and Mr. M.S. Karnik, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent. Petition is taken up for final hearing.

2. The present Writ Petition arises out of an order of the Industrial Court at Thane dated 30.11.1994 in three Complaints alleging unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Two of these Complaints, Complaint (U.L.P.) Nos. 20 and 21 of 1990, had been filed by the Petitioner while one Complaint, Complaint (U.L.P.) No. 22 of 1990, was filed by the Respondents.

3. Briefly stated, the facts of the case are that the Respondents manufacture Automobile Tubes and rubber products in their factory at Nashik. The Respondents employed at the material time about 130 employees. The workers on whose behalf the complaints were filed, had been engaged in 1988 by the Respondents. According to the Petitioner, the workers were engaged as employees to do work of a regular nature. Some time in June, 1989, the workmen joined the Petitioner-Union and, according to them, they had raised certain grievances relating to the non-payment of even minimum wages and of exploitation in the form of extended hours of work for which they were required

to perform duties. In June, 1989, the Union approached the Respondent Management with the grievances of the workers after which, according to the Complainants, the Respondents started issuing ante-dated appointment letters to the workmen to the effect that they were appointed as trainees. It is alleged that the Respondents kept 29 workmen out of employment from 23.6.1989 when they resisted the action of the Company. On and from 5.8.1989 until 13.8.1989 the workmen were alleged to have been laid off on the ground that there was a shortage of raw material without complying with the provisions of Section 25-N of the Industrial Disputes Act. 1947. In the meantime, it is alleged that suspension orders and charge-sheets were issued to a large number of workmen in order to coerce them into giving up Union activities. On 14.8.1989, it is alleged that the Works Manager of the Respondents declined to permit the workmen to attend their duties insisting, that the workmen give an undertaking admitting to an illegal strike.

4. The first Complaint, being Complaint (U.L.P) No. 536 of 1989, had been filed by the Petitioner on 21.6.1989 complaining of the conduct of the Respondents and, inter alia, for an order restraining the Respondents from terminating the services of the employees.

5. According to the Union, the conduct of the management in preventing the workers from attending their duties with effect from 14.8.1989 amounted to the imposition of an illegal lock out. After the workers were thus prevented from attending their duties, it is alleged that the Respondents thereafter employed fresh recruits for carrying out work. On 14.9.1989, the second Complaint came to be filed by the Petitioner in which relief was sought in the form of a direction to the Respondents to lift the lock out and allow all the employees to resume their duties, these employees being persons who were in employment before 14.8.1989.

6. A Complaint was also filed by the Respondents on 28.8.1989 in which it was alleged that the workmen/trainees were resorting to unlawful activities Including the obstruction and slowing down of work. The case of the Respondents was that the Company was in a position to commence its operations on 13.8.1989 but instead of attending to their duties and training programmes, the workers remained absent in concert and were spotted outside the gate of the factory premises. The complaint by the Respondents adverted to alleged acts of misbehaviour by the workmen including damaging the property of the Respondent Company.

7. At the interim stage, the Industrial Court passed an order on 25.4.1990 by which the Respondents were directed to allow the concerned employees to resume work without prejudice to their rights and contentions. The Court appointed an Investigating Officer for overseeing the process and the workers we're directed to furnish undertakings in the modified form as approved by the Court to the effect that they would be ready and willing to resume work, to give normal production and to observe discipline.

8. In pursuance of the interim order passed by the Industrial Court, the Investigating Officer submitted his report setting out that the employer had not allowed even a single workman to report for work in the factory and that the Respondents had failed to comply with the order of the Industrial Court despite ample opportunities. The Investigating Officer noticed that though the workmen were willing to furnish an undertaking as directed by the Court at the time of reporting for work, they were not allowed to report for work by the employer. A further order came to be passed by the Industrial Court on 21.8.1991 directing the Respondents to allow 69 workmen referred to in the order to resume work on their furnishing an undertaking as directed earlier. The Respondents were directed to deposit the wages of the workmen for a period commencing on the date on which they presented for work, in the Court. The learned Counsel for the parties have stated at the Bar that the interim order of the Industrial Court came to be stayed by this Court in Writ Petition No. 4389 of 1991. By the time the aforesaid Writ Petition came up for final hearing, the Industrial Court had already disposed of the Complaint and the Petition was therefore rejected as infructuous.

9. The Industrial Court by its impugned order dated 30.11.1994 dismissed all the Complaints including the two Complaints filed by the Petitioner Union as well as the Complaint filed by the employer. The Industrial Court in its order held that neither the Complainant Union nor the Respondents had placed on record any appointment letters issued to the employees when they were recruited in 1988. This, according to the Industrial Court, supported the contention of the Respondents that the employees were recruited as trainees and not as labourers as contended by the Union. The Court held that the statement by the Union's witness that the employer started issuing appointment letters in June, 1989 showing the workers as trainees after the service of the ad interim order passed by the Industrial Court in Complaint (U.L.P.) No. 20/90 negated the case of the Union that the concerned employees were employed as helpers. The Industrial Court held that these workers being trainees were not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The contention of the Respondents that there was an illegal strike by the workmen was rejected and, therefore, the Complaint filed by the Respondents was also dismissed. Finally, the Industrial Court held that since all the concerned employees were employed as trainees, the action of the employer in suspending the training programme resulting in their unemployment from 14.8.1989 cannot confer upon the workers a right to resume work and claim back wages.

10. The learned Counsel appearing on behalf of the Petitioner submitted that the impugned order passed by the Industrial Court suffers from a clear error apparent on the face of the record. Learned Counsel submitted that the Industrial Court had not had regard to the evidence which was recorded in the proceedings and the order was unsustainable in its failure to even consider the evidence. Learned Counsel referred to the relevant extracts of the evidence recorded in the proceedings before the Industrial Court and the submission was that the evidence of the witness for the Union had virtually gone un rebutted. The

workmen had deposed to the fact that all the workers were employed as helpers and that at no stage had they been issued letters of appointment as trainees. The admissions made in the evidence of the Company's witness had been completely ignored by the Industrial Court and the Impugned Award was, therefore, liable to be quashed and set aside.

11. On the other hand, the learned Counsel for the Respondents submitted that the Award of the Industrial Court was of November, 1994 and the Writ Petition in the present proceedings was filed only in November, 1999 which disentitled the Petitioner to any relief. The learned Counsel submitted that the services of the workers were legitimately terminated by the Respondents. In response to the argument based on the delay in the filing of the petition, the learned Counsel for the Petitioner submitted that these were poor workmen who had exhausted their resources in fighting an earlier round of proceedings in the Industrial Court and in this Court and at the final hearing of the Complaint. The order of the Industrial Court being ex-facie unsustainable, the workers should not be disentitled to relief only on the ground of delay. The delay on their part in moving this Petition may, according to the learned Counsel, be ground enough to deny the workers the back wages for the past period. In other words, the submission was that delay may be taken into consideration in modulating the ultimate relief to be granted but the workers should not be completely deprived of their rights and entitlement on that ground.

12. In dealing with these submissions, regard must be had to the findings which have been recorded by the Industrial Court in the impugned order and the material which has been placed on record in the form of the depositions of witnesses. The Industrial Court has prefaced its findings on Issue Nos. 1 to 6 by proceeding on the basis that "admittedly the Respondent treated all these employees as trainees and paid them Rs. 300/- per month". The Industrial Court, thereafter, referred to the evidence of the witness for the Union, Ramnivas Vishwanath Yadav who was one of the affected workmen in the Complaint. Yadav deposed to the fact that he was employed by the Company in 1988 as helper in the Maintenance Department. According to him, the wages paid to the employees were low and he was paid Rs. 12/- per day as wages like the other employees. The working hours ranged between 8 to 10 hours with no over time wages. In June, 1989 the Complainants became members of the Nashik Workers Union and the Union thereafter informed the Company about the workmen having become its members. The Union filed a Complaint complaining of Unfair Labour Practices being Complaint (U.L.P.) No. 536/1989 which was thereafter numbered as Complaint (U.L.P.) No. 22 of 1989. In the Complaint, the Industrial Court granted an ad interim protection to the workmen restraining the Respondents from terminating their services and from effecting a lock out without due process of law. According to the witness for the Union, since this order was served on the Company on 23.6.1989 it started issuing antedated appointment letters to workmen purporting to appoint them as trainees. The workers were not allowed to discharge any duties in the month of July, 1989 on the ground of a shortage of

raw material. On 14.8.1989, when the lay off came to an end and the workers reported for work, the Company demanded an undertaking from them to the effect that they were on an illegal strike which they were withdrawing. In fact, the Company had declared a lockout. Reference was made in the Examination-in-chief of the witness on behalf of the workers to the report furnished by the Investigating Officer who was appointed by the Industrial Court to which, I shall shortly refer. In cross-examination, the witness stated that the Company had not issued any letter of appointment to him as a helper. The witness denied that the Company had appointed him as a trainee and stated that he had never received the alleged letter of appointment as a trainee dated 1.12.1988. The witness denied that he was given any letter of suspension pending enquiry. The witness denied that he was issued any charge-sheet or a letter of termination by the Company.

13. In this regard, the learned Counsel for the Petitioner has placed reliance on certain extracts from the evidence of the Management witness, Surendra Dattatraya Aphale. The answers of the witness during the course of cross examination are significant and may now be considered. Insofar as the appointment of the workers allegedly as trainees is concerned, the witness stated as follows :-

"The respondent Company does not have any licence for giving training to the employees who are employed as Trainees. The training scheme followed by the Respondent Company was under the Apprenticeship Act. The respondent Company has no authority or licence for implementing scheme of training of any workmen.

The concerned employees were giving production. It is true that no other workmen except the concerned workmen were employed for production."

This extract was relied upon for the purpose of emphasising that there was in fact no training scheme with the Respondent Company. What emerges therefore is that the employer had no authority or licence under the Apprentices Act to implement any scheme for training. Further more the workmen in question were doing work in connection with the actual production work of the Company and no other workers were admittedly employed except the said workmen for discharging the production work.

14. Insofar as the events which transpired on 14.8.1989 were concerned, the witness admitted that he was not aware of what had transpired at the factory gate. The following statement was made in the course of the cross-examination by the witness.

"I was not witness to the happenings at the factory gate at 7 a.m. on 14th August. 1989.

As the concerned workmen failed to report for work despite call given by the Respondent-Company, they were suspended pending enquiry. I say that during

the period from 14th August, 1989, and the date of order of termination, the concerned workmen came to the gate of the factory but did not work. I do not know why they did not work."

Insofar as the report of the Investigating Officer was concerned, the witness was not even aware of whether an Investigating Officer was appointed by the Labour Court and, what was the report of the Officer. In that regard, the witness for the Company stated as follows in his cross-examination :-

"I do not know if this Court has appointed Investigating Officer for observing implementation of the said order by the Respondent-Company. I do not know if the Respondent Company refused to allow the concerned workmen to resume work in presence of Investigating Officer. I do not know if there is such report of the Investigating Officer on record."

The order passed by the Industrial Court ex-facie shows that the evidence which has been adduced in the proceedings was not noticed or considered by the Court. In fact, the admissions on the part of the witness for the Management were not taken into consideration at all. In para 17 of the Award of the Industrial Court, the finding which had been arrived at was as follows :-

"It may be stated that neither the complainant union nor the Respondents have placed on record any appointment letters issued to the employees when they were recruited in 1988. This would rather support the contention of the respondents that the concerned employees were recruited as trainees and not as helpers as contended by the Union. Now, on the complainant unions" own showing the respondents started issuing appointment letters appointing the concerned employees as trainees after 23.6.1989 when they were served with ad interim order passed by the Industrial Court. Nasik in Complaint (U.L.P.) No. 20 of 1990, in my opinion, this assertion on the part of Shri Yadav in para 8 of his affidavit would clearly negative the case of the complainant union that the concerned employees were earlier employed as Helpers."

In my view, these findings of the Industrial Court reflect a clear error apparent on the face of the record and, with respect, a non-application of mind to the material on the record. The absence of any letters of appointment in 1988 to the employees has been held by the Industrial Court to support the stand of the Company that the employees were recruited as trainees. This reasoning of the Industrial Court is without any basis or foundation. The absence of letters of appointment can, by no stretch of imagination, be regarded as a circumstance to establish that the employees were trainees. Similarly, the case of the Union that antedated letters of appointment came to be issued in June, 1989 after the ad interim order of the Industrial Court was served on the Company has been held by the Court to negative the case of the Union that the concerned employees were earlier employed as helpers. This finding, with respect, suffers from a clear error apparent on the face of the record and the inference which is sought to be drawn by the Industrial Court is clearly one which could not possibly be arrived

at on the basis of the material on the record.

15. In para 18, the Industrial Court proceeded then to frame a question as to whether a trainee could be regarded as workman u/s 2(s) of the Industrial Disputes Act, 1947. The Industrial Court answered that question by holding that though the amended section 2(s) included within its purview an apprentice, a trainee could not be equated with an apprentice because he was not paid wages as a consideration for the work rendered by him. There was no basis for the Industrial Court to hold that the workmen in this case were not paid wages as a consideration for the work rendered by them. In fact, the attention of the Industrial Court was expressly drawn to the statement of the witness for the Management to the effect that the workmen were engaged on production work. The Industrial Court, however, dealt with that submission by stating that the fact that the workers were employed for performing regular nature of work would not itself make them workmen u/s 2(s) of the Act. The Industrial Court then held that, unless there is sufficient evidence of the existence of an employer-employee relationship, a trainee would not be a worker within the meaning of Section 2(s). These findings of the Industrial Court speak for themselves. The findings and the conclusions which have been arrived at by the Industrial Court in paras 17 and 18 of the impugned Award are ex-facie contrary to law and to the weight of the evidence on the record. In fact, the Industrial Court has not considered the material on record at all.

16. In para 19 of the Award, the Industrial Court rejected the case of the Respondent management that the workers had proceeded on an illegal strike. According to the Respondents, since the employees had failed to report for work, their services were terminated after holding an enquiry. In this regard, the Industrial Court held as follows :-

"However, when it is found that all the concerned employees were employed as trainees and were not the workmen, the respondents" action of suspending or terminating the training programme resulting in their unemployment from 14th August, 1989 cannot confer upon them right to resume work and claim back wages. I find that there existed no employer relationship between the Respondent and the concerned employees at any time and as such the incidence of lock out or strike will have no relevance in deciding the controversy Involved in all three complaints."

The above extract clearly shows that the Industrial Court once again misdirected itself in law and arrived at a conclusion which was clearly contrary to the record before it. Reference must be made to the fact that the Industrial Court had, at the Interim stage, appointed an Investigating Officer. The report of the Investigating Officer is material to the dispute In the present case. The Investigating Officer has in his report (Exhibit J to the Petition) given a chronology of events which took place on 14.5.1990. The report of the Investigating Officer shows that despite the fact that the workers were willing to work and had reported for work, the Respondents had declined to allow them to

discharge their duties. The report of the Investigating Officer refers to the conduct of one Shri Sawant, the Personnel Officer of the Company who initially handed over a letter on 11.6.1990 containing a list of 72 workmen who were claimed to be trainees and whose services had been allegedly terminated. The Personnel Officer declined to sign the noting prepared by the Investigating Officer contending that he was not even associated with the Respondent-Company.

17. The material on record, in my view, points to one conclusion and one conclusion alone. That conclusion is that the workers had moved the Industrial Court complaining of unfair labour practices in that they were not allowed the basic benefits of industrial law such as minimum wages and regulated hours of work. The workers had approached the Industrial Court in order to ventilate their grievances. As a reprisal for the workers having moved the Industrial Court, the Respondents consistently chose to obstruct them from performing their work and from discharging their duties. The theory that these workers were trainees, was clearly an after thought in order to deprive them of the benefit of regular employment with the Respondents. The Respondents had in fact no scheme for engaging or employing trainees and it is clear that the workers performed regular work in relation to the production activities. No other employees but these workers were discharging the regular work in connection with production. The workers were sought to be excluded from service because they had chosen to assert their rights by unionizing themselves and approaching the competent industrial forum. There is absolutely no substance in the theory that the services of the workers were terminated because they did not come forward despite a call by the Management. In fact the Industrial Court has itself concluded that there was no illegal strike by the workers. In the circumstances of the case, therefore, the conclusion which has been arrived at by the Industrial Court suffers from a clear error apparent on the face of the record and by a failure to take into account or even consider the evidence before the Court. The Petitioner has in the" circumstances of the present case clearly established that the Respondents have committed unfair labour practices within the meaning of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Under Item 1 of Schedule II to the Act, it is an unfair labour practice on the part of the employers to interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerned activities for the purposes of collective bargaining or other mutual aid or protection, that is to say, inter alia, threatening employees with discharge or dismissal if they join a union. Item 9 of Schedule IV deals with a failure to implement an award, settlement or agreement. Compliance with the provisions of the Industrial Disputes Act, 1947 it is now well settled, must be read into the provisions of Item 9 of Schedule IV of the Act. In the present case, the workers had unionized themselves and were seeking to espouse their basic rights to a minimum wage, fair hours of work and other conditions of work. They have been excluded from work and employment by resorting to a device, on the supposed

justification that they were trainees. These were workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. They were engaged in regular production activities, and there were no others save and except this body of workmen. The dispensing of their services on the supposed ground that they were trainees is illegal, without following the mandatory requirements of law and constitutes an unfair labour practice within the meaning of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

18. I am conscious of the fact that there are limitations on this Court in the exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution. This Court would not reappreciate the evidence for the purpose of arriving at a conclusion in variance with the conclusion which has been arrived at by the Industrial Court. It is equally well settled that the proceedings under Articles 226 and 227 are not in the nature "of an Appeal and the Court would not differ with the view taken by the Industrial Court merely because another view is possible. Conscious as am I of these restraints on the exercise of the writ jurisdiction, I have, upon careful consideration of the case, come to the conclusion that the Award of the Industrial Court has resulted in a manifest failure of justice to a body of workers. The Award fails to consider material aspects of the evidence on the record. The conclusion of the Industrial Court is completely unsupportable by the material to which the Court has itself adverted in paras 17 and 18 of the impugned order.

19. In the circumstances, the Writ Petition is allowed and the impugned order passed by the Industrial Court is quashed and set aside. The workers to whom the petition and Complaint U.L.P. 728 of 1989 relates will be entitled to reinstatement in the service of the Respondents. In the circumstances of the case, however, I am of the view that there has been a delay on the part of the workers in approaching this Court. This delay should not stand in the way of a just order being passed in order to protect the workers whose livelihood depends upon the outcome of these proceedings. The learned Counsel for the Petitioner has fairly submitted that the delay must be taken into consideration in determining whether any back wages should be ordered to be paid to the workers. In the facts and circumstances of the case, I am of the view that while the workers are entitled to be reinstated forthwith, this should be without any order as to the back wages. In the circumstances, the petition succeeds. The Respondents shall reinstate the workers in service forthwith. The workmen shall not be entitled to the payment of back wages. Before concluding, it may be recorded that after the arguments in the case were concluded and the judgment was reserved, the Petition was mentioned on behalf of the Respondent management by the learned Counsel. On the request of the learned Counsel, the parties were granted time because they desired to explore the possibility of a settlement. Eventually, the learned Counsel for the management has informed the Court that no settlement has been arrived at. Consequently, the matter has been proceeded with to judgment.

Rule absolute in the aforesaid terms. However, in the facts and circumstances of the case, there will be no order as to costs.

Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.