
(1994) 08 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 3163 of 1991

National Textile Corporation S.M. Ltd.

APPELLANT

Vs

Shivaji Shankar Gawde and Others

RESPONDENT

Date of Decision : 10-08-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 78, 79

Citation : (1995) 70 FLR 1009 : (1995) 2 LLJ 511

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapadia, J.—By this writ petition, National Textile Corporation seeks to challenge concurrent findings of fact recorded by Judgment and order dated 29th April 1989 in Application (BIR) No. 358 of 1984 passed by the Labour Court Bombay and confirmed by the Industrial Court vide Judgment and Order dated 13th August 1991 in Appeal (IC) No. 62 of 1990.

2. The facts giving rise to this writ petition, briefly are as follows :

(a) Respondent No. 1 was in the employment of the Mill as a Turner since 1969. His last drawn salary was Rs. 1,000/- per month. From 18th January 1982, there was a strike in the Cotton Textile Industry of Greater Bombay. On account of tense situation in the Mill area, workers were not in a position to report for duty. It is claimed by the respondent No. 1 that he was one of the willing workers who could not report for duty during there relevant period. According to respondent No. 1, he did not participate in the strike. He was going to the Gate of the Mill everyday subsequent to the appeal published by the employer asking the employees to return, but he was not allowed to join duty. On 28th April 1983, the Mill asked willing workers to fill in certain forms. Respondent No. 1 also filled in the form. Other workers were allowed to join duty. It is the case of respondent No. 1 that he was not allowed to do so. In the circumstances, he had to approach the Secretary of the Union. It is the case of respondent No. 1 that the Company started discriminating in the matter of re-employment. No reason was given for

refusing work to respondent No. 1. No chargesheet was given. No memo was given. No order of termination was given. Ultimately on 30th March 1984, the first respondent sent an approach letter to the Mill. However, he was not allowed to re-join. therefore, respondent No. 1 applied under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 for reinstatement with continuity of services and full backwages with effect from 28th April 1983. The Application to the labour Court was bearing No. (BIR) 358 of 1984. In the said Application, Written Statement (Exhibit C-1) was filed. The Mills denied the contents of the application. It was contended on behalf of the Mill that the Application was not tenable because the approach letter dated 30th March 1984 was not filed within three months" period as contemplated under the Act. By the Written Statement, it was further contended that the respondent No. 1 did fill in the form and if that was so, then the approach letter was beyond period of limitation. At this stage it may be mentioned that there are two letters viz. 30th March 1984 and 10th May 1984. According to the workman, he wrote two approach letters whereas according to the Mill, letter dated 10th May 1984 was the only letter which could be construed as an approach letter. By the written statement, the mill admitted that respondent No. 1 was in the employment since 1969. By the written statement, the mill contended that the workers resorted to strike from 18th January 1982; that the strike was declared illegal by the Labour Court on 12th December 1982; that the Company had published a notice in the daily "Navakal" dated 29th February 1982 asking the workmen to re-join because the strike was declared as illegal, but respondent No. 1 did not report. According to the Company, the Mill started functioning regularly in June 1982. By the written statement, the Company also stated that in April 1983, the workman had filled in the form, but by the time, it was too late because the Mill had filled in all the posts and no work was available in the Company. By the written statement, the Mill admitted that they did not issue any chargesheet nor did they make any domestic enquiry. In the above facts and circumstances of the case, both the Courts below, inter alia, have come to the conclusion that application made by the workman was maintainable under Sections 78 and 79 of the B. I. R. Act read with Section 42 of the said Act. Both the Courts below came to the conclusion that the Mill had failed to prove that in April 1983 when the workman reported for duty, there was no vacancy and that there was no work available so as to give employment to the workman. Both the Courts below, therefore, came to the conclusion that termination of the services was illegal. Both the Courts below came to the conclusion that respondent No. 1 had approached the Mill in April 1983; that after the strike there was an Agreement between the Union and the Mill Owners" Association by which all the Mills agreed to take back workers who report upto 31st May 1983. Since respondent No. 1 had approached the Mill in April 1983 and since there was no evidence to show that the Mill did not have any work, the Courts below came to the conclusion that termination effected by the Mills was illegal. Both the Courts below have come to the conclusion that respondent No. 1 report upto 30th March 1984. In the above circumstances, the termination was held to be illegal. On the question of approach letter, both the

Courts below came to the conclusion that the approach letter was dated 30th March 1984. The Courts below found that on the facts of the case, it was no a matter of termination, but it was a case of refusal of work. Particularly when there was an Agreement between Rashtriya Mill Mazdoor Sangh and the Mill Owners' Association by which the Mills agreed to provide work to workers who report upto 31st May 1983. In the above circumstances, both the Courts below came to the conclusion that approach letter was not necessary and in any event, it was within time because the employee was approaching the Mill over the period of time. Being aggrieved by the said decision, the present writ petition is filed by National Textile Corporation.

3. At the time of admission of the writ petition, interim relief on the question of reinstatement was refused. The workman has been reinstated in October 1991. He is working in the Mill even today. The question is only with regard to backwages. Mr. Naik, the learned Advocate appearing on behalf of the Mill submits that in the present case, the question whether termination is illegal or not is not relevant because the only point which the Mill seeks to raise is that the approach letter was beyond 90 days. In the circumstances, he submits that in order to decide as to whether the approach letter was valid or not, the question of termination being legal or illegal does not arise. He relies upon the judgment of the learned single Judge (Dr. B. P. Saraf, J.) in Writ Petition No. 2878 of 1990 in the case of N. T. C. v. Mrs. Ghama decided on 2nd March 1994. In the present case, I am not inclined to examine the above submission. Firstly, the workman has been reinstated in 1991. The issue before me is only with regard to backwages. Secondly, in the present case, we have to examine the facts as they stand. The Company, in their written statement admit that in April 1983 they took forms from the workmen who were allowed to resume. It is a case of the company that respondent No. 1 also approached the Mill in April 1983. He also filled in the form given to him by the Mill. However, it is the case of the Company that since there was no vacancy, respondent No. 1 was refused work. The Company admits that the workman was a permanent employee of the Mill, since 1969. He was working as a Turner. Both the Courts below have found that there was no evidence to show that the Mill had no vacancy. There is no evidence to show that in April 1983, there was no work. In the above circumstances, in the facts and circumstances of this case, I find that although the workman reported for work in April 1983, he was refused work by the Mill. The said refusal is illegal. It is not a case of termination as contended by the Mill. No chargesheet was given to the employee, no enquiry was held. No letter of termination has been given on the ground that there was no work in the Mill. In the above circumstances, particularly when the workman reported for work for a long period of time, the Labour Court as well as the Industrial Court was right in coming to the conclusion that approach letter was within time. In the above circumstances, the ratio of the judgment of the learned single Judge in the case of N. T. C. v. Mrs. Ghama (supra) has no application to the facts of the present case.

4. For the foregoing reasons, there is no merit in the writ petition fails. Rule is discharged with no order as to costs.

5. At the time of admission of the writ petition, petitioners have deposited Rs. 65,000/- with the Industrial Court. The said amount have been invested by the Industrial Court. Since respondent No. 1 has succeeded in the matter, the Registrar, Industrial Court is directed to hand over the said amount of Rs. 65,000/- together with interest accrued thereon after the fixed deposit has matured, to the respondent No. 1. It is clarified that the workman will not be entitled to claim any amount other than Rs. 65,000/- which he is permitted to withdraw towards legal dues for the above termination.

6. Certified copy expedited.