

(1993) 07 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 3303 of 1989

New Hind Textile Mills

APPELLANT

Vs

Ramnath Dagdu Mungse and Others

RESPONDENT

Date of Decision : 20-07-1993

Acts Referred:

Citation : (1994) 1 LLJ 592

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

Bench : Single Bench

Advocate : I.A. Saiyeed, for the Appellant; R.S. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—By this writ petition under Article 226 of the Constitution, Petitioner Mill seeks to challenge Order dated January 29, 1987 passed by the Labour Court in Application (BIR) No.383 of 1987 as also Order dated March 31, 1989, passed by the Industrial Court in Appeal No.42 and 49 of 1988.

2. Writ Petition No.2131 of 1990 is filed by the workman against the said Order of the Industrial Court, seeking to recover wages for the period January 18, 1982 to July 14, 1983 which have not been awarded to the workman. Hence both the writ petitions are decided together by a common judgment.

3. The facts giving rise to the Petition are as follows:

(a) The workman joined the Mill in 1974. He was working as a Junior Clerk in the Grain Shop of the Mill.

(b) The Textile workers of Bombay commenced indefinite strike from January 15, 1982 On January 18, 1982 none of the workers reported for work. On January 18, the strike was declared as an illegal strike by Labour Court, According to the workman he used to go to the Grain Shop for work. However, the Grain Shop was closed on February 14, 1982. The worker in question was not issued any instructions as the Grain Shop not was closed. Consequently, was denied work

from February 14, 1982.

(c) This situation continued till September 1982. The employees of the Mill had a Credit Co-operative Society. Shri Nagvekar, was the incharge of the Grain Shop as he was the Secretary of the Credit Society.

(d) On 2nd June 1982, there was a meeting of the members of the Society and at that time enquiry was made about the Chief Executive Officer and the Ex-Officio President of the Society Shri Joshi. Shri Joshi replied that the Management would open the Mill when the strike is called off. This was on June 2, 1982.

(e) On October 2, 1982, the workman went to his native place.

(f) On November 20, 1982, the workman heard an appeal of the Central Government to the striking workmen in the Textile Mills in Bombay appealing for resumption of work before November 30, 1982. Accordingly, the workman went to the Mill and found that the Administrative Officer was on leave. The workman met Shri Sawant, the Security Officer, when he was told that Clerks who had reported for work upto November 15, 1982 were allowed to join the duty as the applicant presented himself for work on November 30, 1982, his name was noted down by Shri Sawant in the list maintained at the gate of the Mill.

(g) On December 15, 1982, he was told by one Shri Thakkar, the Labour Officer, that chargesheet had been sent to the applicant and he should remain present for enquiry on December 25, 1982. According to the workman, he was told to collect the copy of the charge-sheet from the Post Office at Tardeo. The workman presented himself for enquiry on December 25, 1982 and submitted his written explanation to the Enquiry Officer. After obtaining the signature of the applicant-workman, the said workman waited for communication. He wrote letters to the Mill on February 21, 1983.

(h) On February 26, 1983, he received Order of dismissal which was passed on January 10, 1983.

(i) According to the workman, he had sent his approach letter on 31st May 1983 which was replied on June 2, 1983. By the said letter, the workman challenged the Order of dismissal as illegal and also the enquiry which conducted as violative of rules of natural justice. By the said letter, he sought reinstatement from January 1, 1982. It was in these circumstances that application (BIR) No. 383 of 1983 came to be filed.

(j) The Mill filed its Written Statement and submitted that the application was barred by limitation. It was further submitted that the Order of dismissal was passed on January 10, 1983 and the applicant had forward his letter of approach on May 30, 1983 and therefore, the application was not maintainable.

4. Mr. Saiyed, the learned counsel appearing for the Mill, at the very outset, stated that the workman has been reinstated and although he has been

reinstated back into service, subject to the out-come of the writ petition the Company would not disturb his reinstatement. In view of the statement made by the learned counsel for the Mill, it is not necessary to go into the question as to whether the Order of dismissal was passed correctly or not.

5. The only question, therefore, which is agitated was that the workman was not entitled to back wages, particularly in view of the fact that both the Courts below had come to the conclusion that the enquiry was fair and proper and also in view of the fact that the workman had taken part in an illegal strike. It was submitted by the Company that in view of the above position, both the Courts below had erred in granting reinstatement with back wages at the rate of Rs. 300/- per month, with continuity of service, from the date of filing of the application till reinstatement. It was further submitted that under Rule 53 of the Rules framed under the Bombay Industrial Relations Act, the approach letter was required to be filed within three months. According to the Company, the Order of dismissal is dated January 10, 1983 and the worker addressed his approach letter on May 31, 1983 and, therefore, the application filed by before the Labour Court was not maintainable.

6. The Labour Court rejected the above contentions and came to the conclusion that although the dismissal Order was passed on January 10, 1983, it was not received by the workman and the worker was informed about the dismissal only on February 26, 1983 and, therefore, the approach letter dated May 31, 1983 was within three months. Consequently, the application filed by the workman before the Labour Court on July 14, 1983, was held to be within time. On merits, the Labour Court found that till May 31, 1983, the Company had permitted the employees to resume. In the present case, according to the Company, the Order was passed in January 1983 and the enquiry was held prior to May 31, 1983. Therefore, the worker who had filed the approach letter on 31st May 1983 was entitled to be employed. To the same effect is the decision of the Industrial Court by its Order dated August 31, 1989. Both the Courts below have given cogent reasons and findings and there is no reason to interfere with the said findings. Both the Courts below have come to the conclusion that although the Order of dismissal was passed on 10th January 1983, the Company had informed the workman on February 26, 1983. This is a finding of fact. Hence the approach letter dated 31st May 1983 was well within time. In the circumstances, the application under the B.I.R. Act made to the Labour Court on July 14, 1983 was also within time. Mr. Saiyed, however, vehemently contended that in the present case, the workman had taken part in an illegal strike. He contended that his finding was recorded in the domestic enquiry which was held to be fair and proper. He further contended that in view of the fact that the workman had taken part in the illegal strike, the Labour Court should have refuse back wages. There is no merit in the said contentions for the reason that according to both the Courts below, the workman had not actively participated in the strike and therefore, it did not call for severe penalty of dismissal. Secondly, the Mill had declared that all the workmen who were dismissed should report for duty on or

before 31st May 1983 and if so, they would be taken into service. Admittedly, the workman had given an approach letter on May 31, 1983, requesting the Company to allow him to resume duties. No reason has been given as to why the said workman was not allowed to resume his duties while rest of the employees were allowed to do so. In the circumstances, both the Courts below directed reinstatement with back wages only from the date of the Application to the Labour Court dated July 14, 1983. the workman had sought wages even for the period prior to July 14, 1983.

7. In Writ Petition No. 2131 of 1990, the workman seeks wages right from January 18, 1982. Both the Courts below have directed wages to be paid to the workman only from July 14, 1983 when Application under the B.I.R. Act to the Labour Court was made. Both the Courts below have examined the question of back wages and have come to the conclusion that on the facts of the case it would be in the interest of justice that back wages are given only from the date of Application. It is the discretion that they have exercised on facts. In the circumstances, there is no reason to interfere with the Orders of the Court below, granting reinstatement with back wages from July 14, 1983.

8. In the circumstances, both the Courts below who have recorded concurrent findings of facts and no interference is called for with the said findings under Article 226 of the Constitution.

9. In the circumstances, both the writ petitions fail and are dismissed with no order as to costs.