

(1997) 10 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 2329 of 1996

People's Welfare Society and another

APPELLANT

Vs

Second Labour Court and others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30(2), 33
Maharashtra Universities Act, 1994 — Section 51, 59, 61(1), 62, 9(1)

Citation : (1998) 2 ALLMR 94 : (1998) 4 BomCR 571 : (1998) 1 MhLj 707

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : R.S. Parsodkar, for the Appellant; A.G. Mujumdar, A.G.P., B.M. Khan and V.A. Dhabe, for the Respondent

Judgement

F.I. Rebello, J.—Respondents Nos. 3 to 9 had filed complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (hereinafter referred to as M.R.T.U. & P.U.L.P. Act) against the petitioners Nos. 1 and 2 as also against the present respondents Nos. 2 and 10. It was the contention of the complainants before the Labour Court that the respondents before the Labour Court were engaged in unfair labour practice falling under Item No. 1 in Schedule IV of the Act. There are other consequential reliefs prayed for. An application for interim relief was also filed. The respondents before the Labour Court filed their reply and raised preliminary objection to the effect that in view of section 59 of the Maharashtra Universities Act, 1994 the Court has no jurisdiction to try the complaint as remedy was provided under the Maharashtra Universities Act, 1994. It is further submitted that the services of the non-teaching employees in the Colleges affiliated to the Nagpur University were governed earlier by the Nagpur University Act and after its repeal, by the Maharashtra Universities Act, 1994. It was contended that as such the

complainants could not have preferred the complaint under the M.R.T.U. & P. U.L.P. Act.

2. The application for interim relief was taken up for hearing. The Labour Court in para 7 addressed itself to the question as to whether the provisions contained under the Maharashtra Universities Act bar the jurisdiction of the Labour Court constituted u/s 6 of the M.R.T.U. & P. U.L.P. Act, 1971. Relying on certain judgments the Labour Court held that the complaint is maintainable under the provisions of the M.R.T.U. & P. U.L.P. Act, 1971.

In so far as merit is concerned, the Labour Court held that the services of the complainants were terminated in contravention of the principles of natural justice and as such the termination orders dated 29-8-1996 are illegal and improper. It was the contention of the petitioners herein that they have acted on the letter dated 22-5-1996 wherein the Deputy Director informed them that there were excess employees and salary grant would not be sanctioned by the Government and the responsibility would be that of the management. It may be mentioned that the services of the complainants were terminated on the ground that they have become surplus as per the norms prescribed by the Government Resolution dated 22-2-1980. The Labour Court held that the petitioners had not proved that there is fall on the strength of the students for the academic season of 1996-97 and in the absence of proof it had to be held that the complainants had not become surplus as per the norms prescribed by Government Resolution dated 22-2-1980 and, therefore, directed the petitioners to continue the services of the complainants.

3. The petitioners had issued notice dated 29th August, 1996 to the respondents Nos. 3 to 9 informing that the Joint Director, Higher Education, Nagpur, had disapproved the salary of 10 non-teaching employees appointed in excess. It is further pointed out that their appointment to the posts is illegal and that the management of the society had decided to terminate their services by giving one month's prior notice and that their services will be terminated with effect from 30th September, 1996. The respondents Nos. 3 to 9 preferred the complaint on 12th September, 1996. The period of one month would have expired on 30th September, 1996. Interim relief was granted on 25-9-1996. The said order came to be challenged in this petition. On 2nd November, 1996 this Court issued Rule. However, interim relief was refused.

4. With this background the issue as to whether the jurisdiction of the M.R.T.U. & P. U.L.P. Court to entertain an application by non-teaching employees has to be considered. Section 59(1) of the Maharashtra Universities Act, 1994 reads as under:-

"59. Right of appeal.---(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any University, affiliated college or recognised institution (other than that managed and maintained by the State Government, Central

Government or a local authority) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the University or management and who is aggrieved, shall have a right of appeal and any appeal against any such order should lie to the Tribunal :

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on which this Act comes into force and in which case the period for filing an appeal has expired."

From this it is clear that the right of appeal is restricted to an employee who is dismissed or removed or his services are otherwise terminated or who is reduced in rank by the University or management. Therefore, the recourse to appeal is limited if services are terminated under any of the circumstances mentioned above.

5. Section 61(1) of the Maharashtra Universities Act, 1994 reads as under :--

"61. Powers of Tribunal to give appropriate reliefs and directions.--(1) On receipt of an appeal, where the Tribunal after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in sub-section (1) of section 59 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the University or management, it may dismiss the appeal."

What it contemplates is that the Tribunal can entertain only those matters specified in sub-section (1) of section 59. It has no jurisdiction to decide any other matter.

6. The question involved, therefore, in this petition is whether the complaint filed by the complainants i.e. the Respondents Nos. 3 to 9 based on the notice and before they were actually terminated could be decided by filing an appeal u/s 59 of the Maharashtra University Act.

7. It is sought to be contended on behalf of the petitioners that the recruitment and conditions of service in so far as the employees of Colleges affiliated to Universities covered by the Maharashtra Universities Act, is by framing Statutes in terms of section 51 of the Act. Attention has been invited to sub-section (8), (13) and (15) of section 51 of the Act which are matters pertaining to qualification, recruitment, reservation of posts, disciplinary action, etc. It is then pointed out that the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code is applicable which provides for the terms and conditions of service of non-teaching employees. Recruitment is also provided for therein. The Rules also provide for imposition of penalties which includes dismissal from service and/or removal and/or compulsory retirement in terms of Rule 43. It is

then contended that in the matter of termination Appellate authority has been created in terms of section 58 of the Act and right of appeal is provided in terms of section 59 of the Maharashtra Universities Act. It is then stated that u/s 62 the decision of the Tribunal is made final and no suit, appeal or other legal proceedings shall lie in any Court or before any other Tribunal or Authority in respect of the matter decided by the Tribunal, it is, therefore, submitted that the Act has created the right. It has provided forum for redressal of grievances. The Tribunal has to be headed by a person, who has been or is a Judge of the High Court or qualified to be so appointed. It is, therefore, contended that in these circumstances, it must be held that the Maharashtra Universities Act is a special Act and to that extent the jurisdiction of the courts under the M.R.T.U. and P.U.L.P. Act is excluded. Reliance is placed on the judgment of the Division Bench of this Court in the case of Shriram Swami Shikshan Sanstha v. Education Officer, Zilla Parishad, reported in 1984 M.L.J. 31. This is a judgment under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978. In that case the Division Bench of this Court held that the School Tribunal u/s 9(1) of the Act could decide the issue of forced resignation, as section 9 included all forms of termination of services. The next judgment relied on is a judgment of the Single Judge of this Court in the case of National Education Society's High School and Junior College Vs. Lulomool Monachary (Mrs.), . This again is a judgment under the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977. In that case the services of an employee who was appointed temporarily against a vacancy reserved for Backward class were terminated. The question there again was whether such a termination would fall within section 9 of the said Act. The answer was in the affirmative. Similar reference is made to the case of Janata Janardan Shikshan Sanstha v. Dr. Vasant P. Satpute, reported in 1986 M.L.J. 260. This was again under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act. What was under consideration was section 9 of the Act and section 9 of the Code of Civil Procedure, M.H. Kania, Acting Chief Justice (as his Lordship then was) on consideration of the matter held that the bar of jurisdiction of a Civil Court is only in respect of a decision given by the Tribunal in a matter covered by section 9. In that case the Court held that there was no bar to a Civil Suit being filed by the employee for a declaration that the termination of the services is null and void. The next judgment relied upon is in the case of Sindhu Education Society v. Kacharu Jairam Khobragade, reported in 1996 (1) B.O.M C.R. 404 : 1994 M.L.J. 524. In that case the learned Single Judge of this Court was considering the provisions of the Private Schools Act and the provisions of the M.R.T.U. & P.U.L.P. Act. The employee was a watchman. The services of the watchman were terminated without holding an enquiry as contemplated under the Maharashtra Employees' of Private Schools (Conditions of Services) Rules. A complaint was filed u/s 28 of the M.R.T.U. & P.U.L.P. Act. The Labour Court entertained the petition and set aside the order of dismissal. The same was confirmed by the Industrial Court. In that case the Court held that the complaint was maintainable before the Labour Court as the School Tribunal had not been constituted on the

date when the services were terminated. The Court, however, held that the conditions of service under the Private Schools Act and the Rules framed thereunder would be applicable. Another judgment relied upon is in the case of Maharashtra Shikshan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur, reported in 1995 (1) M. L.J. 875. In that case the issue was again pertaining under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act. Therein the Court upheld the right of the Tribunal to grant interim relief by way of mandatory injunction. The Court, however, felt that the School Tribunal should mould the interim relief in the matter which would be just and proper in the case before it.

Reliance has also been placed on the judgment in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , on the ouster of jurisdiction of the Court under M.R.T.U. & P.U.L.P. Act, wherein the Apex Court has laid down the following principles for exclusion of the jurisdiction of the Civil Court :--

"23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus :

- (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other rights under the Act the remedy lies only in the Civil Court.
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
- (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA when the remedy for its enforcement is either section 33-C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle 2 stated above hasten to add that there will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an sponsored workman which in view of the provision of law contained in section 2-A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial dispute by and large, almost invariably, are bound to be covered by principle 3 stated above."

Reliance also is placed on the judgment of the Apex Court in the case of R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, , to

point out that the jurisdiction of the courts under the I.D. Act is excluded. It may be mentioned at this stage that by virtue of section 93 of the Societies Act, the provisions of the M.P. Shops and Establishments Act, 1958, the M.P. Industrial Workmen (Standing Orders) Act, 1959 and the M.P. Industrial Relations Act, 1960, is excluded in respect of a society registered under the M.P. Co-operative Societies Aw. In terms of section 55 power is given the Registrar to frame Rules governing the terms of employment and conditions of service.

8. The above authorities, however, do not answer the point raised in the present petition. What is in issue presently is whether the complaint of the Respondents Nos. 3 to 9 filed even before their services were terminated could have been heard and decided by the Tribunal constituted u/s 59 of the Maharashtra Universities Act. None of the judgments cited in support under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act lay down such a proposition. Even in the case of Maharashtra Shikshan Sanstha (supra) the complaint was filed after the services were terminated. The issue involved was whether interim relief could be granted in an appeal pending before it. The Division Bench was not seized with the issue nor has answered the issue whether the School Tribunal could entertain an appeal even before the services of an employee were terminated. The judgments cited, therefore, are of no assistance.

9. The employees involved in this petition are non-teaching employees. Such non-teaching employees could fall within the definition of workmen within the meaning of section 2(s) of the I.D. Act. Even in respect of the I.D. Act they could not have moved the courts under the said Act as section 59 of the Maharashtra Universities Act would then squarely cover the case of such individual employees in so far as termination of their services are concerned as set out in section 59 of the Maharashtra Universities Act. However what is to be borne in mind is that the M.R.T.U. & P.U.L.P. Act for the first time by virtue of section 30(2) has conferred power on the courts constituted under the Act to prevent an employer from terminating the services of employees falling within the definition of section 2(s) of the I.D. Act. Such a remedy is not provided for either in the Maharashtra Universities Act or in the Industrial Disputes Act, 1947. The scheme of the I.D. Act and the M.R.T.U. & P.U.L.P. Act has been considered by the Apex Court in the case of Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, , wherein the Apex Court has held that (he M.R.T.U. & P.U.L.P. Act is supplemental Legislation to the I.D. Act. Section 30 of the M.R.T.U. & P.U.L.P. Act has for the first time given right in the form of remedy to a person who falls within the definition of section 2(s) of the Act to move the Court under the M.R.T.U. & P.U.L.P. Act to preempt his termination from service. Such a right is not traceable u/s 59 of the Maharashtra Universities Act. On the contrary section 61 of the Maharashtra Universities Act it has been made clear that an appeal filed will have to be rejected if it does not come within the predicates of section 59 of the Maharashtra Universities Act. Thus clearly the Tribunal will have no jurisdiction to decide a case of threatened dismissal or termination. Even otherwise it can be seen that the jurisdiction under the M.R.T.U. & P.U.L.P. Act is not totally ousted.

It is only in the matter of dismissal, removal or where services are otherwise terminated or where an employee reduced in rank would a remedy be available to an aggrieved employee. In other matters pertaining to his conditions of services the remedy is not available u/s 59 of the Maharashtra Universities Act. Thus there is no total ouster of jurisdiction in so far as Maharashtra Universities Act is concerned. If that be so it is not difficult to hold that even a case of threatened dismissal would not fall u/s 59 of the Maharashtra Universities Act as the words used are "who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank". It is only after such an event has taken place as stated earlier that the right of Appeal is provided. In these circumstances I am of the opinion that the jurisdiction of the Labour Court is not ousted and to that extent the contention on behalf of the petitioners has to be rejected.

10. The next issue is as to whether the Court below was right in granting the interim relief. The services of the Respondents Nos. 3 to 9 were terminated on account of the letter dated 22-5-1996 issued by the Deputy Director of Higher Education. All that is stated in the said letter is in terms of norms for grant of salary there were excess employees, and as such the Government would not pay salary grants for these employees. From the letter dated 22nd May, 1996 it cannot be spelt out that the Deputy Director of Higher Education has directed the petitioners to terminate the services of the employees. The petitioners can always employ persons to discharge the duties and pay such employees from their own funds. The only requirement is that appointment of such staff also has to be in terms of the Rules framed pertaining to recruitment. In the instant case admittedly the Respondents Nos. 3 to 9 have worked for quite some period. Their services were terminate without offering them any compensation. The Labour Court has found that the services were terminated in violation of the principles of natural Justice. This finding cannot be supported as in the matter of termination if an employer complies with the requirements as set out in the Act and the Rules framed thereunder there is no question of the provisions of principles of natural justice being imported when there are Rules of recruitment and conditions of service. The judgment referred to seems to be the case where the employees are either Government employees or employees of other authorities to whom the provisions of Article 14 of the Constitution would apply. In the instant case the employees are of Private School. Be that as it may, it is clear that the services of the Respondents Nos. 3 to 9 were terminated pursuant to the letter dated 22nd May, 1996 issued by the Respondent No. 2. It would not be appropriate to interfere with the orders of the courts below.

11. In the circumstances Rule discharged. There shall be no order as to costs.

12. However, considering that the petitioners are an Educational Institution and if the matter is not disposed of early heavy financial burden may be put upon them. The Respondent No. 1 is, therefore, directed to dispose of the Complaint within four months from today.

13. It is made clear that in so far as the merits of the matter is concerned, these are only prima facie observations and will not be binding on the Court below when it decides the matter finally on merits.

14. Order accordingly.