

(2014) 10 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 6144 of 2006

Pradip

APPELLANT

Vs

First Labour Court

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2015) 1 BomCR 97

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : D. Duvvuri, Advocate for the Appellant; D.M. Kale, A.G.P. and S.G. Karmarkar, Advocate for the Respondent

Judgement

A.P. Bhangale, J.—Heard the learned Counsel for the respective parties.

2. Petitioner has questioned validity and legality of the Award dated 5th September, 2005 passed by the 1st Labour Court, Nagpur in Reference No. IDA -53/2005 under the Industrial Disputes Act. 1947.

3. The facts, briefly stated are as under :

Yugantar Education Society is carrying on activities such as running of educational institutions, hospital etc. in Nagpur. The petitioner was appointed as a peon in the Office of said Yugantar Education Society, Nagpur pursuant to letter dt. 10.9.1980 on a consolidated salary of Rs. 200/- per month. The petitioner was promoted to the post of clerk w.e.f. 1.9.1983 and was posted as a Storekeeper -cum -Clerk in the Family Welfare Centre in Smt. Nimbunabai Tirpude Hospital, Kamptee Road, Nagpur. He was serving in the pay scale of Rs. 950-20-1150-EB-25-1550 plus allowances as admissible and was paid Rs. 4700/- per month. He was working under the supervision of Medical Officer at the Centre and under over all incharge of the Medical Superintendent of the hospital. It is the case of the petitioner that his services were terminated pursuant to notice No. YES/2004-2005/30th June/06 dt. 30.6.2004 mentioning that, in view

of the public notice dt. 31.3.2004 in respect of closing down Family Welfare Centre, the petitioner's services with the Centre will come to an end w.e.f. 30.6.2004 after working hours.

4. The petitioner approached the Conciliation Officer at Nagpur seeking his intervention in the matter. The Conciliation ended in failure. Reference was made for adjudication of industrial dispute relating to reinstatement, full backwages and continuity of service to the Labour Court, Nagpur vide Reference No. IDA -53 of 2005. According to the petitioner, he was working continuously for more than 240 days in the year preceding the date of termination and the respondent/ employer had not prepared and displayed any seniority list of the cadre of clerks in the organisation and notice of one month or notice pay was not paid to the petitioner and the principle of last come and first go was not complied with as contemplated u/s. 25-G of the Industrial Disputes Act. According to the petitioner, he remained unemployed and idle and thus, he was victimised. He is entitled to be reinstated by setting aside the impugned Award with full backwages and continuity of service.

5. On behalf of the petitioner, it is submitted that there were no allegations of misconduct and no enquiry was conducted against the petitioner. Respondent No. 2 did not prepare and display seniority list of the cadre of clerk and also failed to comply with the provisions of Section 25-F of the Industrial Disputes Act. Therefore, termination of the petitioner without notice pay and without payment of retrenchment compensation was illegal. It is contended that the procedure u/s. 25-F was a condition precedent for retrenchment of workman. Thus, the petitioner has sought the relief of reinstatement with full backwages.

6. Reliance is placed on behalf of the petitioner on the ruling in the case of Pramod Jha and Others Vs. State of Bihar and Others, to argue that payment of retrenchment compensation was not made to the petitioner along with the notice. However, by the impugned Judgment and Order, the Labour Court has already directed for payment of notice pay, retrenchment compensation and other legal dues. Hence, the said ruling needs no consideration. Otherwise also, the learned Counsel for the petitioner has placed reliance on many rulings dealing with different aspects when only the aspect which requires consideration in this petition is whether the petitioner is entitled for reinstatement with full backwages and continuity of service. Some of the rulings, though they do not support the case of the petitioner for grant of reinstatement with full backwages and continuity of service, are mentioned down below :

a) Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), .

b) R.D.Pillay .vs. Indian Dyestuff Industries Ltd., 1992 I CLR 1005.

c) GM, Tanda Thermal Power Project .vs. Jai Prakash Srivastava and another, (2009) 1 SCC (L and S) 450.

d) Management of Ramesh Hydromachs .vs. The Presiding Officer, Labour Court, Hubli and another, 1985 LAB.I.C. 1806.

e) Rajendra Shendge Vs. Shobhatai Ravate and Another, .

f) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, .

7. On behalf of the second respondent/Society, continuous service of the petitioner in the post of peon is denied. It is also contended that the second respondent/ Society was running Family Welfare Centre and it is not an "industry" and therefore, alternate remedy of preferring revision was available to the petitioner against the impugned order instead of filing present Writ Petition. It is argued on behalf of the respondent that there was sufficient compliance of Section 25-F of the Industrial Disputes Act. Respondent no. 2/Society has referred to public notice dt. 31.3.2004 in respect of closing down Family Welfare Centre. Consequently, therefore, services of the petitioner with the Family Welfare Centre came to an end w.e.f. 30.6.2004 after working hours upon service of notice dt. 30.6.2004. The petitioner was advised to collect dues by informing him about closure of Family Welfare Centre as well as termination of his employment w.e.f. 30.6.2004. It is contended that there were no pleadings in the Statement of Claim regarding non -display of seniority list.

8. The learned Counsel for the respondent making reference to the ruling in the case of Bajaj Auto Limited Vs. Shri Ashok Dnyanoba Dhumal and Shri B.M. Khodade, Presiding Officer, First Labour Court, submitted that failure to maintain seniority list by itself would not result into termination order being declared illegal. Reference was made to observations in para 13 of the said ruling indicating that it is now well established that requirements in clauses (a) and (b) of Section 25-F of the Industrial Disputes Act are mandatory while requirement under clause (c) thereunder is only directory and therefore, failure to maintain seniority list by itself would not result into termination order being declared as illegal merely on the ground that seniority list was not maintained.

9. Regarding the aspect of closure of the establishment was informed to the petitioner, reference is made by learned Counsel for respondent no. 2 to the ruling in the case of District Red Cross Society Vs. Babita Arora and Others, , wherein it is observed that it is not necessary that entire establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25-F of the Act.

10. Reference is also made to the ruling in the case of Engineering and Ancilliary Manufacturers Vs. Salim Khan, in order to argue that the letter of retrenchment was absolutely clear requiring the workman to collect legal dues. However, the workman did not go to the Office to collect dues and refused to accept the same. Thus, action of the employer was held not violative of Section 25-F of the Industrial Disputes Act. Thus, it is submitted that there was compliance of

Section 25-F and G of the Industrial Disputes Act in view of notice calling upon the petitioner to note about closure of Family Welfare Centre and termination of his services w.e.f. 30.6.2004 after working hours and advice given to the petitioner to collect his dues from the Office during working hours. Thus, admittedly, when employer's establishment was closed down and notice of closure was sent, it was well within the knowledge of the petitioner and since the Family Welfare Centre was not fetching any income from the Management, it is contended that the impugned notice was given. The evidence of the petitioner was contrary to his own pleadings indicating that he did not come with clean hands to the Court. Since the petitioner was the only workman left, it cannot be said that he was terminated unlawfully. The petitioner did not plead as to how many employees were in the cadre of clerks nor listed them. Under these circumstances, when he was only workman left, there was no necessity to retrench him on account of closure of department along with payment of dues. The contention of petitioner regarding display of seniority list was also meritless. Thus, there was no illegality committed and the petition being meritless, ought to be dismissed.

11. I have heard the rival submissions advanced in the facts and circumstances of the case with reference to the Statement of Claim before the Labour Court. The learned Labour Court Judge, Nagpur went through the affidavit by way of evidence and the contents of notice indicating closure of establishment and information to the petitioner to collect his dues and considering the reason of closure of the Family Welfare Centre, the Labour Court held that it will not be proper to direct party no. 1 to reinstate this petitioner in service. The Labour Court held that the petitioner was not entitled for reinstatement with continuity of service and backwages. However, looking into the facts and circumstances of the case, the petitioner was held entitled to the relief of retrenchment compensation, notice pay and his legal dues as per law. The petitioner was, in fact, called upon to collect his legal dues. Under these circumstances, the Award by the Court below is sustainable in the absence of any serious infirmity. No interference is required in exercise of extra -ordinary Writ jurisdiction of this Court to interfere with the impugned Award as it was based upon the evidence led before the Court. Hence, the petition appears meritless and liable to be dismissed. The petition is accordingly dismissed with no order as to costs.