
(1987) 10 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 2750 of 1980

Prafull Dattatraya Pore

APPELLANT

Vs

J.K. Chemicals Ltd. and Others

RESPONDENT

Date of Decision : 15-10-1987

Acts Referred:

Bombay Industrial Employment (Standing Orders) Rules, 1959 — Rule 21(1)

Citation : (1989) 59 FLR 306 : (1993) 3 LLJ 129

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : Anand Grover and Indira Jai Singh, for the Appellant; B.N. Srikrishna, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

H. Suresh, J.—The petitioner was employed as a Clerk-cum-Compounder on a probation for a period of six months on 7th August 1978, by the respondent. The probation period was extended by the respondent by a letter dated 1st January 1979, on the ground that the performance of the petitioner was not satisfactory. Thereafter by a letter dated 23rd March, 1979, the petitioner was informed that the respondent found the petitioner unsuitable for the job for which he had been appointed and that, therefore, his appointment could not be confirmed. In the said letter, the petitioner was informed that the respondent had already started a search for a replacement and that the respondent would get another person. The respondent further informed the petitioner that that would not take more than one and a half month from the date of the said letter. The petitioner was given an option to discontinue if he so desired in the meanwhile. Thereafter by a letter dated 22nd May 1979, the respondent informed the petitioner that the respondent had already made an alternate arrangement to replace the petitioner and that, therefore, the petitioner's services were not required with effect from 24th May, 1979. The petitioner was asked to collect his dues from the cashier on that day.

2. The petitioner filed a complaint before the Labour Court at Thane under Item I(b) of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the M.R.T.U. and P.U.L.P. Act"). In this complaint (ULP) No. 54 of 1979 the learned Labour Judge had to deal with two questions. Firstly, whether the petitioner could be said to be a probationer or whether he had become permanent by virtue of his having put in an uninterrupted service in a clerical capacity for a period of three months. Secondly, whether it could be said that the respondent had indulged in an unfair labour practice as complained by the petitioner.

3. It appears that the respondent-company is governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946. It has no Certified Standing Orders and hence it is governed by the Model Standing Orders. Having regard to the provision in the Model Standing Orders as given therein, the petitioner had to be considered as a permanent employee and that, therefore, he could not have been treated as a probationer. The Labour Court accordingly gave a finding in this behalf in favour of the petitioner. This finding has not been accepted by the respondent, in this petition.

4. Therefore, the only other question is as to whether it could be said that the petitioner's discharge from service on 24th May, 1979 was not in good faith, but in the colourable exercise of the employer's rights. The Labour Court, Thane, answered in favour of the petitioner and ordered that the petitioner be reinstated in service.

5. As against this, the respondent filed a revision application before the Industrial Court, Maharashtra, Bombay. The Industrial Court by its order dated 7th May, 1980 set aside the order of the lower Court and the complaint filed by the petitioner was dismissed without any order as to costs. It is against this order of the Industrial Court the petition has been filed by the petitioner under Article 227 of the Constitution of India.

6. The learned Judge of the Industrial Court relied on the decision of the Supreme Court in the case of the The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others, and held that the termination was not punitive inasmuch as the reason for termination of service of the petitioner was that his service was not satisfactory and that no misconduct was ever alleged against the petitioner by the management nor could it be said that any misconduct was made the foundation for terminating the services of the petitioner. In this connection, the respondent had relied on Rule 21(1) of the Bombay Industrial Employment (Standing Orders) Rules, 1959, which in terms says as follows.

"21. (1) The employment of a permanent workman may be terminated by one month's notice or on payment of one month's wages (including all allowances), in lieu of notice".

I have gone through the reasons as given by the Industrial Court and I find no fault with the reasoning. Mr. Grover appearing for the petitioner submitted that

the petitioner's services were terminated on an allegation that his services were not satisfactory and that cast a stigma on his service. He submitted that, therefore, it was necessary for the respondent to hold an enquiry and comply with the principles of natural justice before terminating the services of the petitioner. Mr. Grover also relied on the fact that when the final letter of 22nd May, 1979 was issued, the respondent chose to terminate the services of the petitioner with effect from 24th May, 1979 and in that event it could be said that there was no proper compliance of even the said Sub-rule (1) of Rule 21 of the Bombay Industrial Employment (Standing Orders) Rules, 1959. I am afraid, both these contentions cannot be accepted by this Court. It is true that the respondent could not have terminated the services of the petitioner without any reason whatsoever. But the reason need not necessarily amount to any misconduct. In the present case, initially the respondent and perhaps the petitioner also thought that the services of the petitioner were on probation till the time his services were dispensed with. It is in that context the respondent had to assess the ability and efficiency of the petitioner. They found him wanting. Therefore, they decided not to confirm him, on the assumption that the petitioner was till then a probationer. It is true that according to the Bombay Industrial Employment (Standing Orders) Rules, 1959, the petitioner could not have been treated as a temporary employee or as a probationer, having completed three months of uninterrupted service. But that does not mean that the respondent could not judge his ability and find out whether the services of the petitioner were satisfactory or not. Therefore, in my view, in the present case, it cannot be said that the services of the petitioner were terminated on an alleged ground of misconduct or any such ground was made a foundation for the purpose of discharging him.

7. Mr. Srikrishna appearing for the respondent pointed out that if one has regard for the nature of the complaint and the circumstances as established in the present case; it cannot be said that there could ever be a complaint under Item (b) of Schedule IV to the MRTU and PULP Act, 1971. Mr. "Grover for the petitioner submitted that when the respondent terminated the services of the petitioner it was by way of colourable exercise of the Employer's rights and that itself could be said to be not in good faith. His argument was that since the petitioner could be considered as a permanent employee, ordinarily the respondent could not have terminated his services at all. Therefore, when the respondent resorted to Rule 21, Sub-rule (1) of the Bombay Industrial Employment (Standing Orders) Rules, 1959, it was with the view to terminate him from the services of the respondent on the basis of a charge which they would have been otherwise required to prove. I am afraid, that cannot be the approach in this matter. Item I(b) of Schedule IV to the MRTU and PULP Act, 1971 requires two ingredients. Firstly, the discharge or dismissal of the employee must be shown to be not in good faith, and secondly, it must be in the colourable exercise of the employer's rights. Mr. Grover submitted that it is for the respondent to show that they had shown good faith while discharging the

petitioner's services. Assuming that Mr. Grover is right, in the present case I am satisfied that the respondent had taken into account the ability of the petitioner with regard to the employment that was given to him and since they found the petitioner not upto the mark, naturally they gave him sufficient opportunity and finally discharged him from the service. If that is so, I am afraid that the very complaint which was filed in the Labour Court can be said to be not maintainable at all. It cannot be said that the respondent had indulged in any unfair labour practice as against the petitioner.

8. Mr. Grover had relied on the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, for the purpose of contending that there cannot be any arbitrary termination of an employee's services. In my view this case has no application whatsoever inasmuch as there is no challenge before me that Rule 21, Sub-rule (1) of the said Bombay Industrial Employment (Standing Orders) Rules, 1959 is ultra vires Article 14 of the Constitution of India or otherwise in any event unreasonable and against public policy. In the absence of any such plea, it is not open to the petitioner to advance any argument on the basis that the exercise of powers under Rule 21, Sub-rule (1) of the Bombay Industrial Employment (Standing Orders) Rules, 1959, is arbitrary and unreasonable.

9. In the result, the petition stands dismissed. However, there will be no order as to costs. Rule discharged.