

(2005) 01 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 3016 of 2001

Prakash Cotton Mills Ltd.

APPELLANT

Vs

Chandrakant Maruti and Others

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Citation : (2005) 3 BomCR 723 : (2005) 105 FLR 169 : (2005) 1 MhLj 1105

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.M. Naik and Shailesh More, for the Appellant;

Judgement

D.Y. Chandrachud, J.—This petition seeks to impugn the correctness of an order dated 26th July, 2001 passed by the Industrial Court at Mumbai. The Industrial Court has come to the conclusion that the petitioner had engaged in unfair labour practices under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The petitioner has been directed to give permanency to the 4 complainant workmen, who are respondents before the Court in these proceedings, in the Russian Department instead of the Auto Weaving Department where they were confirmed. The petitioner has been directed to pay wages at par with the wages paid to workers in the Russian Department in similar posts, for the days on which the respondents have been treated as having refused to work.

2. The facts of the case lie in a narrow compass. The respondents were badli workers who were engaged initially in the year 1986. The workmen were posted in the Plain Department and were assigned work on Plain machines. In 1990 upon the purchase of Russian looms, the Russian Department was formed by the petitioner and all the complainant workmen worked from 1990 at these Russian looms as badli workers. They worked in the Russian Department until 1st March, 1999 when they were made permanent by the petitioner. Prior to the grant of permanency, the respondents had raised a dispute claiming permanency which was admitted in conciliation. The grievance of the workers was with respect to

the grant of permanency to them in the Auto Weaving Department instead of the Russian Department. According to them, with effect from 5th August, 1999 they were not given any work and the attendance card from 11th August, 1999 was endorsed to the effect that they had refused to work. Accordingly, a complaint was filed alleging the commission of unfair labour practices under Items 3, 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The contention of the workmen was that they are entitled to work in the Russian Department alone.

3. The petitioner filed a written statement denying the allegations in the complaint. According to the petitioner the claim for the grant of permanency in a particular department viz. Russian Department was untenable. The petitioner claimed that there was no assurance to the respondents that they would be continued only in the Russian Department.

4. Evidence was adduced by the parties. The Industrial Court decided the complaint by its impugned order dated 26th July, 2001 allowing the complaint and granting relief in the terms which have already been noted hereinabove. The judgment of the Industrial Court has been impugned in these proceedings on the ground that in the absence of any settlement, agreement or award, there could possibly be no unfair labour practice with reference to the provisions of Item 9 of Schedule IV. In so far as Item 10 is concerned, there is not even a prima facie case in regard to the petitioner having indulged in an act of force or violence. Counsel submitted that the respondents were badli workers who were confirmed in service with effect from 1st March, 1999. As badli workers who were confirmed, there was no legal basis for them to claim either on the basis of a settlement, award or agreement that they should be confirmed only in a particular department. In the circumstances, it was urged that a complaint under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was clearly not maintainable. Even assuming that the respondents had a grievance to the effect that the nature of their experience required that they be confirmed in the very same department, it was submitted that this issue would warrant an adjudication under the provisions of Section 78 of the Bombay Industrial Relations Act, 1946. A complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, it has been submitted, would not be maintainable in these circumstances.

5. Reading the order of the Industrial Court, it would appear that a considerable degree of emphasis has been placed therein on the fact that the complainant workmen had been assigned work on Russian looms in the Russian Department and that they have not worked in the past in the Auto Weaving Department. The Industrial Court has again laid a considerable degree of emphasis on the fact that this part of the evidence of the complainant workmen had not been controverted. The question, however, before the Court is as to whether this by itself is sufficient to substantiate a finding that the conduct of the employer in declining

to grant confirmation to these workers in the very same department in which they had been engaged as badli workers would amount to an unfair labour practice under Item 9. The foundation, of an unfair labour practice under Item 9 of Schedule IV lies in the failure of the employer to implement an award, settlement or agreement. In the present case, there is no settlement, or agreement under which an obligation was cast upon the employer to confirm the employees in the very same department in which they had been engaged as badli workers. There is no award. In the circumstances, the foundation of a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was clearly lacking. In the course of the cross examination, the second respondent who deposed in support of the complaint admitted that he was made permanent by the mill on 1st March, 1999 and that he was furnished with a card of the Auto Weaving Department. He admitted that he had not lodged any complaint with the mills for giving him permanency in the Auto Weaving Department. He admitted that for giving permanency a vacancy was required and that it was true that in such a case permanency was given to badli workmen taking into consideration their seniority and competence. The witness admitted that his attendance card for the month of April, 1999 belonged to the Auto Weaving Department.

6. In my view, in a matter such as the present, it would be impossible for the Industrial Court exercising jurisdiction, on a complaint under Item 9 of Schedule IV to come to the conclusion that there was any breach of an award, settlement or agreement. The contention of the respondents who are badli workmen was that they should be confirmed in the very same department where they had worked in the past. Such a claim, even if it is to be sustained, must be founded on an adjudication proceeding which was an appropriate remedy for the workmen u/s 78 of the Bombay Industrial Relations Act, 1946. The industrial matters referred to in Schedule III of the Act include in Item 6 "employment including reinstatement and recruitment". A Division Bench of the Gujarat High Court has held in *Bai Chandanben Jamnadas v. I.G. Thakore* 1976 L I. C. 1753 that the expression "employment" in Item 6 of Schedule III of the Bombay Industrial Relations Act, 1946 must be construed in the widest sense. The expression "employment" or "recruitment" cannot be restricted to initial employment or recruitment and the claim of badli workmen to be made permanent falls within the purview of the expression "recruitment" Item 6.

7. In the circumstances, I am of the view that the Industrial Court transgressed the limits of its jurisdiction, in entertaining the complaint. Be that as it may, when this petition was admitted, interim relief was refused on 11th February, 2002 by the learned Single Judge, Mrs. Nishita Mhatre, J. Counsel appearing on behalf of the petitioner states that since interim relief was refused, the respondent workmen, have been assigned work in the Russian Department. Counsel fairly submits that since the workmen have now discharged their duties as permanent workmen in the Russian Department, that position will not be disturbed. The assurance is accepted. The petition has been pressed on behalf of

the petitioner in order to set right the position since the impugned order of the Industrial Court would have ramifications for the employer in other cases. In the circumstances of the case, I have arrived at the conclusion that the order of the Industrial Court is unsustainable. The impugned order dated 26th July, 2001 is accordingly quashed and set aside. The statement which has been made before the Court by the learned Counsel appearing on behalf of the petitioner with regard to providing work to the respondent workmen in the Russian Department is, however, accepted. The petition shall stand accordingly disposed of in the aforesaid terms. In the circumstances, there shall be no order as to costs.