
(1991) 09 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 1657 of 1985

Pralhad Narayan Malawade

APPELLANT

Vs

Shriram Sahakari Sakhar Karkhana Ltd. and Others

RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N

Citation : (1993) 3 LLJ 748

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : A.V. Bukhari, for the Appellant; M.S. Naik, Pankaj Patel and N.M. Naik for R-1, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—This writ petition, under Article 227 of the Constitution of India, impugns an order of the Labour Court, Kolhapur, dated 31st March, 1982, made in complaint (ULP) No.9 of 1977 as confirmed by the order of the Industrial Court, Kolhapur, dated 20th March, 1985, made in Revision Application (ULP) No. 12 of 1982, Both proceedings were under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act).

2. The first respondent is a Co-operative Society engaged in the business of manufacturing sugar at its factory situated at Phaltan, District Satara. The petitioner joined the services of the first respondent on 3.11.1958 as a Clerk and was thereafter promoted as Sectional Head with effect from 1.11.1969 by an order issued on 2-10.1972. By an order issued on 11.4.1974, with effect from 1.2.1974, he was promoted as Transport Superintendent. On 19th February, 1977, the petitioner was served with an order terminating his services by which he was informed as under:

"In pursuance of the Resolutions of Board of Directors No. 8(1) dated 4th

February 1977, we have every reason to believe that your continuance in the employment of the Karkhana is detrimental to the interest of the Karkhana. Your services are, therefore, terminated from 21,2,1977 after office hours in accordance with Section 21 of the Standing Order applicable to you."

3. The first respondent-Karkhana is governed by the provisions of the Bombay Industrial Relations Act. Standing Orders, which govern Industrial Relations between the first respondent and its employees, have been settled in accordance with the provisions of Chapter VII of the Bombay Industrial Relations Act. Standing Order 21 empowers the first respondent-employer to terminate the services of a permanent employee by giving him one month's notice or by payment of one month's wages in lieu of notice. It is, however, required under the Standing Order that an order of termination of employment shall be made in writing, signed by the Managing Director and a copy thereof shall be supplied to the employee at the time of discharge. It also requires that the reasons for termination of the employment shall be recorded in writing and be communicated to the employee at the time of discharge, unless such communication in the opinion of the Managing Director, is likely directly or indirectly, to lay any person signing the communication open to criminal or civil proceedings at the instance of the employee. These Standing Orders also contain detailed provision defining misconduct and procedure to be followed for dismissal of an employee for misconduct. In the case of the petitioner, though the action was purported to have been taken under Standing Order 21, by way of what is popularly known as discharge simpliciter, the petitioner was neither served with a copy of the resolution of Board of Directors, nor was he served with the copy of the reasons required to be recorded according to Standing Order 21(2). Such reasons, as a matter of fact, do not appear to have been placed on the record of the Trial Court also.

4. The petitioner challenged the termination of his service by his complaint before the Labour Court, Kolhapur, u/s 28(1) read with Section 30 and Clauses (a), (b), (d) and (f) of Item 1 of Schedule IV of the Act. He specifically alleged therein that a copy of the Resolution No. 8(1) dated 4.2.1977 passed by the Board of Directors referred to in the order of termination of the service had not been supplied to him. He described the circumstances under which he was removed from service and contended that his removal from the service was for patently false reasons, by way of victimisation, with undue haste and that the order passed against him was not in good faith but in colourable exercise of the first respondent's right as an employer. It was also his grievance that no domestic enquiry had been held before removing him from service and hence also the order was bad in law. On these allegations the petitioner prayed for an appropriate declaration of unfair labour practice and consequential relief of reinstatement with full back wages.

5. First respondent contested the complaint of the petitioner. In the written statement filed before the Labour Court, the first respondent took up a plea that

the service of the petitioner had been terminated by way of discharge simpliciter under Standing Order No. 21 of the Certified Standing Orders. It also contended that the petitioner had been discharged for loss of confidence by the order dated 19th February, 1977. While denying the allegation of the petitioner that the termination of his service amounted to dismissal, the first respondent maintained that the discharge was in bonafide exercise of its right under Standing Order No. 21 for loss of confidence and hence, there was no question of holding any enquiry as no punishment had been meted out to the petitioner by the said order. It was asserted by the first respondent that continuing the petitioner in the employment of the Karkhana would have been detrimental to the interests of the Karkhana and hence he was removed from the service. For the first time there was reference in the written statement to the details of Resolution No. 8(1) dated 4.2.1977 passed by the Board of Directors. It was stated that the Director of Sugar, Government of Maharashtra, who exercises supervisory function over the Co-operative Sugar Factories, had made adverse comments regarding the expenses incurred on such departments like Transport, Guests House, Civil Construction, Telephone etc. The Government Auditor had also commented that because of imprudent expenses the cost of sugar manufactured in the Karkhana has become higher as compared to that of any other Karkhana in Western Maharashtra. The first respondent pleaded that the resolution dated 4.2.1977 was promoted by these considerations and was binding upon the first respondent since it had subsequently been ratified by resolution passed in the General Body Meeting of the members of the Co-operative Society. Apart from pleading thus, the first respondent also pleaded that pursuant to there solution passed by the Board of Directors and ratified by the General Body of the first respondent, the first respondent went about collecting further details regarding the work, efficiency, performance and on job competence of the petitioner. This investigation had revealed that the petitioner had not faithfully served the Karkhana and had not been diligent in his work inasmuch as there were instances when he had taken large amounts by way of advances under the pretext or the other without making payments To the authorities for which purpose the advances had been taken. It was indicated that an amount of Rs. 19,057/- was still outstanding from the petitioner. Summing up, it was contended that the act of taking such large amounts by way of advances for "fraudulent reasons", in itself, was sufficient ground for loss of confidence in the petitioner. It was further alleged that the petitioner lacked the qualities requisite to exercise cost control and effect prudent purchase policies and his conduct in making purchase had given rise to doubts regarding his honesty and integrity. Certain instances of the so-called dishonesty on the part of the petitioner were alleged in the written statement. Finally, a prayer was made that if the Court came to the conclusion that the termination of service was by way of penal discharge, the first respondent be permitted to lead evidence to substantiate his action.

6. Though, initially, the parties had filed affidavits before the Labour Court, subsequently they requested the Court not to act on the affidavits. The petitioner

did not choose to lead any oral evidence. The first respondent applied for and obtained from the Labour Court permission to lead evidence to substantiate the bonafides of the order of termination of the service of the petitioner. Despite this opportunity prayed for and given, the first respondent also did not choose to lead any oral evidence. It appears that the first respondent had placed on record certain vouchers, though it is not clear as to how they were proved or marked as exhibits by the Court, as Mr. Bukhari, learned Advocate for the petitioner, maintains that the petitioner had not admitted the said documents. Thereafter the case was posted for hearing. Then the Presiding Officer changed. At this juncture, the new Presiding Officer of the Labour Court realised that an application which had been made earlier by the first respondent for administering interrogatories to the petitioner, had remained pending without action thereupon. Though the matter had been posted for orders, the Labour Court decided to act on the application for administering interrogatories. The interrogatories were administered to the petitioner. Neither party has cared to produce before this court a copy of interrogatories or replies given by the petitioner. I am told by Mr. Bukhari, learned Advocate for the petitioner, that the interrogatories were not answered on oath. Mr. Naik, pleads want of instructions on this issue. This is the state of affairs so far as the interrogatories are concerned, though the answers supposed to have been given by the petitioner to the interrogatories constitute the linchpin of the first respondent's case.

7. The Labour Court dismissed the complaint by holding that no malafides, no victimisation, no undue haste and no colourable exercise of power had been proved by the petitioner. It fully accepted the case of the first respondent that the termination of service of the petitioner was for bonafide reasons as the first respondent had justifiable reasons to believe that it would be detrimental to the interests of the Karkhana to continue him in service. The Industrial Court, in the revision application, took the view that there was no unfair labour practice u/s 28, as termination of service had been preceded by a resolution passed by the Board of Directors which was later ratified by the General Body of the first Respondent-Society. Hence there was no undue haste, according to the Industrial Court. It also took the view that the replies given by the petitioner to the interrogatories showed that he had taken huge amounts as advance for paying taxes, etc. and had not accounted for the amount which fact was itself sufficient to show that, prima facie, at least, the petitioner had temporarily misappropriated those amounts or used them for his own purpose and not for the purpose for which the said advances were drawn. Therefore, there was no lack of good faith or colourable exercise of the employer's rights, says the Industrial Court. When laced with the contention of the petitioner that the first respondent's stand been shifting from time to time and that its defence had been inconsistent, the Industrial Court gave it short shift by saying that at the most it could be said that the first respondent had failed to prove the reasons for termination mentioned in the written statement, but that fact shall not affect the termination, as loss of confidence had been proved. The Industrial Court,

therefore, confirmed the findings of the Labour Court and dismissed the revision application of the petitioner. The petitioner being aggrieved, is before this Court to impugn the orders of both the Courts below.

8. Mr. Bukhari, learned Advocate for the petitioner, made a two fold argument in support of the petitioner's case. He contended that if the stand of the first respondent that if the termination of service was discharged simpliciter was to be accepted, then it would amount to "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act as held by the Supreme Court in a series of judgments (see in this case. *L. Robert D'Souza v. The Executive Engineer, Southern Railway and Anr.* 1982 LIC 811 and also the decision of the Supreme Court in *Mohan Lal v. The Management of Bharat Electronics Ltd.* 1981 LIC 806. Since the first respondent Karkhana admittedly employed more than thousand employees, the provisions of Chapter V-B of the Industrial Disputes Act were applicable to it. It is not disputed that the provisions of Section 25-N, which apply to retrenchment of workmen in an Industrial Establishment covered by the provisions of Chapter V-B of the Industrial Disputes Act, 1947, have not been complied with. Thus, the order of termination of service, which amounted to retrenchment without complying with the mandatory provisions of law, would amount to an order of discharge made "with undue haste" within the meaning of Item 1 (g) of Schedule IV of the Act and hence an unfair labour practice. Mr. Bukhari relied on the judgment of the Division Bench of this Court in *Executive Engineer (Elec. Div.) P.W. and Health Deptt. and Anr. v. Prakash Devi-dar Kalsait* 1985 (51) FLR 553 for this proposition of law. Alternatively, it is contended by Mr. Bukhari that the language used in the order of termination dated 19th February, 1977, in unmistakable terms, tells the petitioner that he was being removed from service because it was "detrimental to the interests of the Karkhana" to continue him in service. This is nothing but casting a blot on the escutcheon of the petitioner. Hence also, the order of termination must be held to be a punitive dismissal as laid down by the Supreme Court in *Chandu Lal Vs. Management of Pan American World Airways Inc., and Kamal Kishore Lakshman v. Mgmt. of Pan American World Airways and Ors.* 1988 I CLR 492 and a host of other judgments, which I have not referred to here in order to avoid multiplying authorities. Once we reach the conclusion that the order was a punitive dismissal, contents Mr. Bukhari, the provisions of the Standing Order relating punitive dismissal not having been complied with, the order of dismissal is bad for want of compliance with the requirement of the Standing Order as also of the principles of natural justice. In the submission of the learned Advocate, whichever way the wind blows, the result would be the same, namely, that a finding of unfair labour practice is ineluctable; that both the Courts below have misdirected themselves in law and committed an error patent on the face of the record curable by exercise of this Court's powers under Article 227 of the Constitution.

9. Mr. Naik, learned Advocate for the first respondent, vehemently rejoined that the orders of both the Courts below were completely sustainable in law. According to him, there is no manner of doubt whatsoever that the order of

termination passed against the petitioner was an order of discharge simpliciter, which the first respondent was fully competent to pass under the Standing Orders. He urged that it was a valid and bonafide exercise of powers vested in the employer and there was nothing colourable in the exercise of the powers, nor was there any proof of victimisation or mala fides of any nature. According to him, the evidence on record clearly showed that there was enough material on the basis of which the employer could have entertained a legitimate belief that the service of the petitioner ought to be removed.

10. Though Mr. Naik faintly attempted to argue that the order of discharge issued to the petitioner was sustainable even on the footing that it was a penal discharge, he gave up this line of argument when the reasons stated in the order of discharge were squarely put to him. He thereafter pursued the alternative contention that the order could be sustained as an order of simple discharge. Even otherwise, as we shall see presently the first stand was unsustainable as it was contrary to the record.

11. Though, from the record, it appears that the pleadings of the first respondent are inconsistent and self-contradictory, this difficulty is resolved by going back to the resolution dated 4th February, 1977, which is the genesis of the problem. The order of discharge served on the petitioner was the order dated 19th February, 1977. Though it has the dubious merit of being cryptic, it does indicate that it is a sequel to the Resolution No. 8(1) of the Board of Directors to ascertain the real motivation. The resolution of the Board of Directors is on the record of this Court. After indicating generally the nature of adverse comments made by the Director of Sugar, the relevant part of the resolution, in so far as it pertains to the petitioner, reads as under.

"Shri Malawade working in the Transport Department of the Karkhana as Transport Superintendent does not have the requisite educational qualifications. Further, this department is to be gradually reduced. If the responsibility for this department is entrusted to the Chief Engineer, he will be able to keep control. Hence the present incumbent Transport Superintendent, Shri Malawade, shall be removed from service.""

The minutes of the resolution on record indicate that there was a division of opinion on this resolution and though it was passed by majority, some of the Directors were of the opinion that removal of the petitioner from service on the ground of being unqualified may not be legal and therefore appropriate legal opinion be sought on this issue. This resolution came to be ratified by resolution of the General Body of the first respondent dated 12.2.1977, which reads as under:

"This body is completely in agreement with the Resolution passed by the Board of Directors at the instance of Shri Vijayrao Baravake that Shri Karkhanis, Civil Engineer, Road Section, Transport Superintendent and Labour Officer should be removed from service. This body congratulated the 14 Directors in respect

thereof. The above three officers are not worthy of confidence....'''

12. A careful reading of these two resolutions would therefore indicate that the primary motivation of the first respondent for removing the petitioner from service was to reduce expenditure and rationalise the working of the departments which were adversely commented upon by the Director of Sugar, including in the Transport Department. Though the Director of Sugar does not appear to have recommended any specific measures of economy, his suggestions were interpreted by the first respondent to mean that they should effect economy by chopping down dead wood in the departments. Notwithstanding the arguments of Mr. Naik to the contrary, I am of the view that these reasons clearly spell out a situation of retrenchment. It is true that expressions like "unworthy of confidence" and "detrimental to the interests of Karkhana" have been elaborately used. I do not attach significance to them, in the context as indicating an intention to punish. In my view, what the Karkhana intended to do was to eliminate unnecessary expenditure in the Transport Department. Hence the necessity of removing the Transport Superintendent from service. In my judgment, this clearly amounts to retrenchment from service. Since it is not disputed that the provisions of Section 25-N of the Industrial Disputes Act, were applicable to the Karkhana and that no procedure prescribed thereunder has been complied with, there should have been no difficulty in holding that the termination of the petitioner's service amounted to a discharge with undue haste and hence an unfair labour practice within the meaning of Item 1(0 of Schedule IV of the Act, as held by the Division Bench of this Court in Prakash Kalsait's case (Supra). Both the Courts below appear to have completely lost sight of this aspect of the matter and misdirected themselves in denying relief to the petitioner. For this reason, the orders of both the Courts below deserves to be quashed and set aside.

13. The impugned orders of the two Courts below are quashed and set aside. It is held that the termination of the petitioner's service amounts to "retrenchment" without complying with the mandatory provisions of Section 25-N of the Industrial Disputes Act and, hence, an unfair labour practice within the meaning of Item 1(f) of Schedule IV of the Act.

14. Coming to the question of relief, there is no reason shown as to why the order of termination should not be set aside and the petitioner reinstated in service with full back wages. I, therefore, set aside the order of termination of petitioner's service, dated 19th February, 1977, and direct that the petitioner be reinstated in service with full back wages and continually in service from the date of his discharge. The order of reinstatement to be carried out within four weeks from today. The amount of back wages due shall be calculated and paid to the petitioner on or before 1st November, 1991, failing which in addition to other legal consequences, the said amount shall carry simple interest at 12 per cent per annum from the said dale.

15. Petition is allowed and rule made absolute accordingly with no order as to

costs.

16. Certified copy to be given out of turn as a dead-line has been fixed for compliance with this order.