

(1999) 10 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 3924 of 1991

Prav Plast Private Ltd.

APPELLANT

Vs

Kaluram A. Chaudhari and Another

RESPONDENT

Date of Decision : 25-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2000) 1 ALLMR 644 : (2000) 84 FLR 122 : (2001) 3 LLJ 513 : (2000) 1 MhLj 378

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner is a Private Limited Company engaged in the manufacture of Cable cover from plastic powder, plastic pipes etc. At the relevant time it employed only six workmen in its establishment at Pune. The learned Advocate for the Petitioner company Ms. Doshi informed me that now the company is closed forever. She gave that information to base her submission that there will be no reinstatement now in view of the closure of the company, if at all the petitioner company fails finally in the matter,

2. This is a typical case which demonstrates how sometimes the Labour Laws work very harshly on very small employers like the present one, who are more or less self employed persons engaged in their private business activities. The respondent workman was employed as a casual/temporary helper on July 27, 1984 for the first time and his temporary employment was discontinued on completion of the work. Subsequently a settlement with the workmen was arrived at on December 3, 1985 u/s 2(p) of the Industrial Disputes Act, 1947 and as a total bargain it was agreed vide Clause 7 of the Settlement that two out of four workmen who were earlier in employment were to be employed, the Respondent No. 1 being one of the said two workmen. Pursuant to the said Settlement the Respondent No. 1 workman was employed with effect from

December 4, 1985 as a Helper. It is the case of the company that he was temporarily employed and his temporary services were discontinued on September 2, 1986 by issuing a letter that for want of sufficient work his services were dispensed with. It is also the case of the petitioner company that along with the said letter legal dues were offered but- the respondent workman had refused to accept the same. The petitioner company had sent the said letter along with legal dues by Registered Post and the same was received on behalf of the Respondent workman. According to the petitioner company since the workman had not completed 240 days of actual work from December 4, 1985 to September 2, 1986 he was not entitled to retrenchment compensation or notice wages u/s 25-F of the Industrial Disputes Act, 1947. In view of the said position the petitioner company has contended that there was no continuous service u/s 25-B of the Act and he had not completed 240 days in a period of 12 months, and therefore, the provisions of Section 25-F of the Act were not attracted.

3. The 1st respondent workman raised an industrial dispute to question the propriety and legality of the said order of termination dated September 2, 1986. In the statement of claim he has alleged that his employment was illegally terminated without any notice and without any written show cause or charge-sheet and he was not paid legal dues. It was further averred by the workman that before terminating his services principles of natural justice were not complied with and that he was illegally terminated from the employment. It may be mentioned here that in this statement of claim there is no specific plea about his completing 240 days continuous service and about violation of Section 25-F of the Act. He has not specifically stated that he was not paid retrenchment compensation u/s 25-F of the Act though he has mentioned that legal dues were not paid and that junior workmen were retained.

In the written statement the petitioner company has denied the allegation of illegality and impropriety of the termination order and it has stated that the workman was only a casual labourer and had not completed 240 days, and therefore, he could not claim permanency or reinstatement in the company. It was also stated in the written statement that along with the termination letter, statement of account and legal dues were offered to him but he refused to accept the same. The specific case of the company was that he was employed from December 4, 1985 to September 2, 1986 and had not completed 240 days of employment to attract Section 25-F of the Act.

4. On the aforesaid pleadings and oral and documentary evidence adduced by the parties, the learned Presiding Officer of the IInd Labour Court, Pune by his Award dated April 26, 1991 allowed the reference and directed the Petitioner company to reinstate the workman in the post of helper with full back wages and continuity of service. In view of the award of reinstatement being stayed by this Court the workman is getting his wages as per the provisions of Section 17-B of the Act during the pendency of this petition.

5. The said award is under challenge before me. The Labour Court had held that

the workman has completed 240 days. The Labour Court had not actually cared to compute as to number of days completed by the workman so that it could be decided positively whether Section 25-F of the Act would be attracted or not. It was the primary duty of the workman at the first instance to prove his contention raised in the statement of claim that he had completed more than 240 days of continuous service, and that he was therefore entitled to the benefit of Section 25-F of the Act. The pleadings are very vague and beyond bare word that the termination was illegal and in violation of principles of natural justice no other particulars are given. Even assuming the fact that best documentary evidence was available with the petitioner company, the workman could have taken inspection of the muster roll which was produced by the petitioner company before the Labour Court and could have prepared a chart to show that he had completed more than 240 days continuous service. In spite of the best documentary evidence available the workman has not taken any pains to prove this fact which is an essential foundation to attract the mandatory provisions of Section 25-F of the Act. Even the Petitioner company has not made any efforts to establish that the workman had not completed 240 days continuous service but lesser than that, and therefore, Section 25-F was not attracted. The petitioner company could have prepared a chart for the relevant period and could have produced the same before the Court. Even the Labour Court has not directed both the parties to go through this simple exercise of computation of actual service. Instead the Labour Court has based its findings on clear surmises and on the basis of ESI Card which will not show actual service put in by the workman. Unfortunately the Labour Court has strangely inferred that the workman was working with the company since July 27, 1984 ignoring the Clause 7 of the settlement dated December 3, 1984 which was signed by many workmen including the present respondent workman. From the settlement it is an established fact that there was a break in the service of the respondent workman and that he was taken back once again pursuant to the said settlement with effect from December 4, 1985 and therefore, the earlier period of service could not be taken into account for computing the continuous service for the relevant period from December 4, 1985 to September 2, 1986. It is futile to say that the workman should be given the benefit of continuity when his earlier discontinuance from temporary employment was not under challenge in any manner at any time. It would be totally wrong to hold that his earlier termination or discontinuation was illegal without any basis. It is possible that earlier he was employed only for some temporary work and thereafter he was discontinued after the work was over. On every occasion we cannot presume that the discontinuance of workman is illegal or an unfair labour practice. In the present case the Labour Court ought to have based its findings on concrete material which were very much before it in the form of muster roll. It could have directed the parties to compute from the muster roll the number of days of employment of the workman for the relevant period. It was not open for the Labour Court to have taken the first or initial date of employment viz July 27, 1984 to compute the period of 240 days of continuous service, when there was an admitted break

in service and when under the settlement it was clear that he was re-employed from December 4, 1985. The Labour Court has thus illegally and wrongly calculated the period of 240 days from the first date of employment that is July 27, 1984. Proceeding on the said wrong footing he came to a conclusion that the workman had completed 240 days of continuous service, and therefore, the petitioner company ought to have complied with the provisions of Section 25-F of the Act.]

6. I do not agree With the findings recorded by the Labour Court. First of all the provisions of Section 25-F of the Industrial Disputes Act, 1947 are mandatory and if there is even a slightest mistake in compliance with the said provision the consequences for the employer are particularly more serious and are very often even ruinous for small employers. If the retrenchment compensation is paid even a day after the date of retrenchment or even there is a genuine mistake or error in computing the amount of retrenchment compensation such order of retrenchment becomes illegal, null and void and the employer has to reinstate the workman with full back wages and continuity of service. On account of delay in disposal of the matter this period can be even 10 years or more. In such circumstances according to me, if these are the serious consequences which flow from non-compliance of the mandatory provisions of Section 25-F of the Act in that case the pleadings and evidence also will have to be strictly tested. A vague statement without any particulars and without actual computation of continuous service on record would be hazardous to hold that the order of retrenchment is illegal requiring reinstatement with full back wages and continuity of service. A very heavy burden is placed on the workman to prove to the hilt the failure of the employer to comply with Section 25-F of the Act. It cannot be said lightly on vague and general allegations without any proof or evidence the order of retrenchment can be struck down. In my opinion if the consequences of failure to comply with a mandatory provision are serious in that case the pleadings and evidence should also be equally serious. In the present case the workman has very vaguely stated that he was illegally terminated. He has further not bothered to put on record after taking inspection from the muster roll the number of days which he has put in service. In the absence of this very crucial and material evidence on record it can never be said that there is failure on the part of the employer to comply with the provisions of Section 25-F of the Act. According to me, there is no legal and valid proof laid by the workman that he has completed 240 days of continuous service to become entitled to say that the order of termination was illegal. I, therefore, do not agree with the findings and conclusions recorded by the Labour Court I, therefore, quash and set aside the impugned award of the Labour Court.

7. I cannot lose sight of another very important factor that the workman was employed only as a temporary helper and along with him other six or seven workmen were also discontinued for want of sufficient work. The present workman has not said that he was victimised or that he was terminated with ulterior motives etc. The petitioner company has discontinued as many as six to

seven other temporary workmen for want of sufficient work. For economy the small employers always do resort to reduction in the work force depending on the availability of orders for work. Unless it is true that such reduction of workman is mala fide we cannot straightway assume that the plea of the small employers regarding want of work cannot be accepted. Besides, the present workman has received full wages u/s 17-B of the Industrial Disputes Act from the date of the award i.e., April 26, 1991 till this date. According to me, more than substantial justice is being done to him. It is possible that during this period he might have also been gainfully employed some where else. On the other hand the petitioner company has not only lost its work but finally on account of market forces it was compelled to totally close down its manufacturing activities. Considering all the above facts I allow the Petition and make the rule absolute in terms of prayer clause (a). The interim orders stand vacated. No order as to costs.

8. Parties to act on ordinary copy of this Order duly authenticated by the Sheristedar of this Court.

9. Certified copy is expedited.