

(1995) 06 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 4729 of 1993

Pune District Central Cooperative Bank Ltd.

APPELLANT

Vs

Hiralal Ramchandra Gaikwad

RESPONDENT

Date of Decision : 30-06-1995

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 28(1)

Citation : (1998) 3 LLJ 7

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

Bench : Single Bench

Advocate : Vijay Patil, for the Appellant;

Judgement

B.N. Srikrishna, J.—This writ Petition under Article 227 of the Constitution of India is directed against the order dated October 29, 1992 made by the 1st Labour Court, Pune, in Complaint (ULP) No. 13 of 1991 and the order of the Industrial Court, Pune, dated September 17, 1993 made in Revision Application (ULP) No. 83 of 1992, both Proceedings under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The Respondent has remained absent despite service.

2. The Respondent joined the service of the Petitioner Bank as back as in the year 1973. During the year 1984/85, the Respondent was frequently remaining absent without intimation or leave. On August 8, 1985 he was given a show cause notice calling upon him to show cause as to why action should not be taken for his frequent absence without leave and consequent disruption of the Bank's work. Not only did the Respondent not give a reply to the show cause notice, but he continued to remain absent from work without leave or authorisation. On December 16, 1985, a charge sheet was served on the Petitioner alleging against him the following misconducts.

"24 (i) willful insubordination or disobedience of any lawful and reasonable order of a superior.

24 (viii) Habitual absence without leave or absence without leave for more than 3 consecutive days.

24 (x) Repeated breach of any law applicable to the Bank or any rules made thereunder or of standing orders.

24 (xiv) Doing any act, or engaging in any business prejudicial to the interest of the Bank.

24 (xv) Aiding or abetting or conniving at the commission of any act of misconduct in Clause (xiv)

24 (xvii) Commission of any act subversive of discipline or good behaviour in the premises of the Bank.

24 (xxxx) Habitual breach of any rules or instructions for the maintenance and running of any department or the maintenance of the cleanliness of any portion of the Bank.

The Respondent was called upon to attend a domestic inquiry to be held into the charges alleged against him. The Respondent Participated in the inquiry and the inquiry resulted in the Inquiry Officer making a report finding the Respondent guilty of the charges alleged against him. The Executive Committee of the Petitioner Bank, in its meeting dated April 30, 1986, considered the report of the Inquiry Officer and resolved to dismiss the Respondent from service. Consequently, by a Communication dated May 2, 1986 the Respondent was informed that he stood dismissed from service of the Petitioner: Bank with effect from May 5, 1986.

3. On January 18, 1991 (after four years and seven months of his dismissal), the Respondent moved Complaint (ULP) No. 13 of 1991 before the Labour Court at Pune u/s 28(i) read with Items 1 (a), (b) (d), (f) and (g) of Scheduled IV of the Act. Along with the Complaint, an application for condonation of long delay in filing the Complaint was also filed. The application for condonation of delay was seriously contested by the Petitioner and the Respondent led evidence therein. The Labour Court by its interim order dated October 29, 1992 allowed the application and condoned the delay. Being aggrieved thereby, the Petitioner Bank moved the Industrial Court, Pune, by their Revision Application (UPL) No. 83 of 1992. Although, the Industrial Court was of the view that the evidence shown in support of condonation of such long delay was hardly satisfactory, yet the Industrial Court decided not to interfere in the matter and dismissed the Revision. Hence this Writ Petition.

4. I am in agreement with the critical comments made by the Industrial Court as to the quality of evidence before the trial Court in support of the application for condonation of delay. The story of the Respondent was that he was prevented from filing the Complaint within 90 days of his dismissal (i.e. May 5, 1986) because of his long continuing illness. He sought to support his story by production" of Medical Certificate from one Dr. S. V. Taware, M. B. B. S.,

Baramati, who certified that the petitioner was under his treatment from June 15, 1986 to January 7, 1991 and he was having "Pul-Kocks" (Sic) and that during the above period, he was advised to take rest and treatment. The symptoms of the disease bearing the unusual name was explained by Doctor Taware when he was examined before the trial Court. From his evidence before the trial Court, it appears that the Respondent was suffering from Pulmonary Kocks or, in other words, tubercular infection of the lungs. Interestingly, however, the Doctor who treated this patient for almost five years, admitted in his evidence that he did not get any pathological examination done. There is also no mention of any x-rays of the chest being taken. It does not require expertise in medical science to realise that diagnosis and treatment of tubercular infection of the lungs would require to say the least, examination of blood, examination of sputum and, of course, examination of the x-rays of the lungs. One wonders what sort of diagnosis the learned Doctor carried out and what kind of treatment he administered to the patient. Further, interestingly, when the Doctor was pointedly asked as to whether he had brought the case papers pertaining to the Respondent's treatment, the Doctor conveniently stated that he had not brought the case papers as they were old documents and he was not in possession of them. This is the gist of evidence before the Labour Court in support of the Respondent's story that he was afflicted with a disease which prevented his from filing the Complaint in good time. The Industrial Court, therefore, without difficulty adversely commented upon the quality of this evidence and, in my opinion, rightly. There was no cogent evidence to indicate what was the disease, what were the medicines given to the patient or the circumstances which could have prevented the Respondent from filing the Complaint for a long period of four years and seven months. The evidence on record before the trial Court does not in any manner explain why it required a period of four years and seven months for the Respondent to file his Complaint, even if it be assumed that he was suffering from the disease as described by Dr. Taware and was undergoing treatment. Under these circumstances, I am not at all satisfied that there was any adequate reason which prevented the Respondent from filing the Complaint for a period of 4 years and 7 months.

5. The only reason which seems to have weighed with the Labour Court for condoning the long delay is the Supreme Court's observations made in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , In that judgment, the Supreme Court made certain general observations with regard to the attitude of the Court while confronted with the question of condoning delay. Most interestingly, the delay in the said case was only of 4 days, and in order to condone the said delay, the Supreme Court went into proposition of general import. (One wonders what the Supreme Court's reaction would have been if it was confronted with the delay of more than four and half years). In any case, I am not satisfied that the present is a case where the power of condonation of delay ought to have been exercised in favour of the Respondent. If the Respondent had a good case on merits, he ought to have

moved the Court within reasonable time, even if not within the period of 90 days from the date of cause of action. Condoning a delay of this nature would only encourage such improbable stories being put forward. I am of the view, therefore, that the Industrial Court ought to have exercised its powers u/s 44 of the Act and interfered with the order of the Labour Court. It erred in not doing so.

6. In the result, both the orders of the Labour Court dated October 29, 1992 and of the Industrial Court dated September 17, 1993 are hereby quashed and set aside. It is held that there was no sufficient reason for condoning the delay of more than 4 years in presentation of Complaint (ULP) No. 13 of 1991 before the Labour Court at Pune. Consequently, the Complaint is liable to be, and is hereby, dismissed.

7. Rule accordingly made absolute. There shall, I however, be no order as to costs.

8. Issuance of certified copy of this Judgment is expedited.