

(2006) 04 BOM CK 0134

In the Bombay High Court

Case No : Writ Petition No. 1606 of 2003

Rachel Gunther Mathias

APPELLANT

Vs

Mahadev R. Mishra

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2006) 4 ALLMR 129 : (2006) 4 BomCR 168 : (2006) 5 MhLj 26

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Advocate : Aashish Kamata, instructed by Godfrey D'Silva, for the Appellant;
I.A. Sayyed, for the Respondent

Judgement

S.U. Kamdar, J.—The present petition is challenging the impugned order dt.2.6.03 passed by the Industrial Court in exercise of power u/s 44 of the MRTU and PULP Act, 1997 by which the revision application of the petitioner has been rejected. The revision application was preferred against the order of the Labour Court interalia holding that the complaint under item No. 1 (a), (b), (d) and (f) of Schedule IV of MRTU and PULP Act is partly allowed. Some of the material facts of the present case are briefly stated as under:

2. The respondent was in employment of the petitioner and on 5.4.97 he tendered his resignation from services. On 5.4.97 it seems that the petitioner had settled the accounts of the petitioner and paid his dues. On 20.5.97 the Union addressed a letter to the petitioner company interalia contending that the resignation was given under an impression that the company is likely to close down the factory and if it restarts the factory, all the workmen will be taken back in employment as fresh employees. It has been stated that the factory has been restarted after 10/15 days and the respondent workmen has not been absorbed. Accordingly, the petitioner was called upon to re-employ the respondent workmen. In respect to the said letter on 4.6.97 the petitioner replied and

pointed out that there is no such arrangement arrived at between the parties while tendering the resignation by the respondent. Ultimately, the respondent workman filed a complaint. The complaint is filed under item 1 (a), (b) (d) and (f) of Schedule IV of the MRTU and PULP Act, 1971. It has been inter alia contended that the petitioner is entitled to equal amount of retrenchment compensation as has been paid in respect of other workmen by treating him in employment. In para V of the said complaint it has been also contended that the respondent services were terminated on 5.4.97 and that the resignation has been obtained by force by obtaining signature on the number of blank papers. It has been contended that the respondent is an illiterate person and since he bonafidely believed that the respondents are permanently and irrevocably closing their factory, he signed on the said blank papers.

3. On the basis of the aforesaid that the matter was heard before the lower courts. Both the parties have lead the evidence. On perusal of evidence which has been produced before me by respondent workman, in my opinion, there is no evidence whatsoever led to show how and in what manner the said resignation is obtained before misrepresentation and coercion. Except repeating the pleadings in para V of the complaint in his examination in chief, he has given no evidence whatsoever either documentary or details of such allegations.

4. The learned Judge of the Labour Court after hearing the complaint between the parties has given his finding that there is no evidence on record nor it is discussed in the order that the respondent's resignation is not voluntarily but the learned Judge of the Labour Court has in para 15 and 16 of the order has adverted to the evidence about payment of retrenchment compensation to the other employees and after dealing with the said para and holding that the respondent workmen has not produced the documents indicating what amount of compensation has been paid to other workmen and holding that it was the duty of the petitioner to prove that the respondent has voluntarily resigned has given a finding that the respondent is entitled to retrenchment compensation of 60 days for each completed year of service.

5. Firstly, there is no pleading in the complaint at all about any such claim for equal payment of retrenchment compensation as the other workers ought to have been paid retrenchment compensation. In so far as the resignation is concerned, the averments are that he was asked to resign on the basis that he would be re-employed on restart of the factory. Factory is admittedly not restarted. In any event, the bare averments made in para V that the resignation was not bonafide and was obtained on misrepresentation has not been proved. There is no evidence whatsoever on record. There is no pleadings or claim of equal payment of retrenchment compensation by the respondent workers in his complaint. Evidence which has been produced also does not disclose any such case that the resignation was not voluntarily and the same was obtained on misrepresentation or coercion. It is now well settled that a person who is pleading misrepresentation or coercion in obtaining resignation letter is required

to plead the case and thereafter prove the same in the evidence. In absence of any evidence and pleadings, the Labour Court could not have gone into the case of the resignation being involuntarily.

6. I am of the view that the Judgment of the Labour Court does not consider any evidence about involuntary resignation of the respondent workman because of non-existence of the same on record but still gives a finding as if resignation from services is inconsequential. In my opinion, a wrong proposition of law has been laid down in para 18 of the impugned order of the Labour Court that the petitioner company is required to prove that the resignation was voluntary. In my view the law is other way round a person who is claiming that the resignation is by force or coercion or misrepresentation it is for him to prove that the resignation is obtained in such a manner. In the aforesaid circumstances, having no evidence produced in respect thereof the Labour Court could not have given the aforesaid finding and held resignation is not valid. In my opinion, the order passed by the Labour Court proceeded on footing that resignation is involuntary and obtained by misrepresentation and gave relief of compensation to the workman as if he was in service.

7. The learned Counsel for the respondents ha thereafter contended that the petitioner was required to await the period prescribed for accepting the resignation under the model standing order. Neither in the complaint nor in the evidence or before the Trial Court any such plea has been raised. Nor before me any such standing order has been shown to establish that any such period is prescribed for accepting such resignation. In absence of any pleading before the Labour Court or finding by the Labour Court it is not possible to accept the aforesaid contention and consider the same for the first time in writ jurisdiction under Article 226 of the Constitution of India. In my opinion, the order passed by the Labour Court suffers from patent illegality and there is an error apparent on the face of the record. A wrong proposition of law which has been laid down in para 18 of the impugned order of the Labour Court which is contrary to the well settled principles of law.

8. Industrial Court has erred in refusing to interfere with such an erroneous order of the Labour Court on the ground that it is not open to him for re-appreciating the evidence u/s 44 of the MRTU and PULP Act. In my opinion, it was not a case of reappreciating evidence. In fact the present case is such where by not accessing the power revisions vested in the Industrial Court the court has failed to exercise Jurisdiction. This court has in a Judgment of the Rebello J in the case of G.S. Khairkar v. Camlin Limited reported in 1997 2 CLR 1164 held that when a wrong test of law has been laid down by the lower court then the Industrial Court is bound to exercise jurisdiction u/s 44 of the MRTU and PULP Act.

9. In that light of the matter I find the both the impugned orders passed by the Labour Court and Industrial Court are required to be interfered with. Accordingly, I quash and set aside both the said orders and dismiss the complaint being complaint (ULP) No. 315 of 1997. Petition is made absolute accordingly. However,

there shall be no order as to costs.