

(1995) 02 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1911 of 1992 With Writ Petition No's. 2012 of 1992, 2035 of 1992 and 2061 of 1992

Radhasingh Jokhansingh

APPELLANT

Vs

Hindustan Hosiery Mills and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 78, 79
Constitution of India, 1950 — Article 226

Citation : (1996) 1 LLJ 477

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Judgement

A.P. Shah, J.—This group of four petitions under Article 226 of the Constitution by the workmen of the Respondent Hindustan Hosiery Mills raises a common question as to whether the lower Courts were right in dismissing workmen's application u/s 78 read with Section 79 and 42(4) of the Bombay Industrial Relations Act, 1946 ("Act" for short) on the ground that the workmen did not approach the respondent within the period prescribed by Rule 53 of the Bombay Industrial Relations Rules, 1947 ("Rules", for short).

2. The fact are few and almost undisputed. There is no dispute that the workmen were in the employment of the 1st respondent. On November 10, 1979, the 1st respondent terminated their services by issuing letters of termination. The workmen thereafter by their separate letters dated April 8, 1980 approached the 1st respondents and demanded reinstatement with back wages. The 1st respondent, however, failed to comply with the approach notices of the workmen dated April 8, 1980. The workmen, therefore failed four separate application claiming reinstatement with back wages before the 2nd Labour Court, Bombay.

3. In contesting the applications made by the workmen, the 1st respondents categorically asserted that the workmen's services were not terminated, but they were retrenched. But they were retrenched. The 1st respondent also raised

a preliminary objection that the applications made by the workmen were barred by the provisions of Section 42(4) read with Rule 53, because the approach was not made within three months from the date of cause of action, as required by Rule 53 of the Rules.

4. The 2nd Labour Court was pleased to uphold the preliminary objection raised by the 1st respondent and dismissed the applications as being barred by Section 42(4) read with Rule 53. In four separate appeals filed by the workmen, the Industrial Court concerned with the view taken by the Labour Court and dismissed the appeals.

5. Mr. Kochar, learned counsel for the workmen, strenuously contended that the impugned orders of the lower Courts are based upon complete misconstruction of Rule 53. Mr. Kochar urged that the period of limitation of three months is prescribed only when the action of the employer is under the Standing Orders and the said provision has no application to the claim made by the workmen, which falls under Schedule III, Item 6 of the Act, in view of the categorical stand taken by the respondent in its written statement that the workmen were retrenched and not terminated.

6. There is considerable substance in the submissions of Mr. Kochar. On careful examination of the relevant provisions of the Act, it is seen that Section 42(4) requires an employee to approach the employer before filing an application before the Labour Court. Sub-section (4) of Section 42 of the Act reads as follows :-

"42 (4) Any, employee or a representative union desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, except item (5) thereof, shall make an application to the Labour Court and as respects change desired in any industrial matter specified in item 5 of Schedule III, to the Industrial Court :

Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

7. Section 78 of the Act confers powers on the Labour Court to decide various matters falling within Sub-section (1) of the said Section. Section 79 then provides for the commencement of the proceedings before the Labour Court and Sub-section (3) of the said Section provides limitation for filing an application in the Labour Court. Clause (b) of Sub-section (3) of the said Section 79, which is relevant for our purposes, reads as follows :-

"(b) if it is a dispute falling under sub-clause (iii) of the said clause within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of section 42;

Provided that, the Labour Court may, for sufficient reasons, admit any application in respect of any dispute made to it under this sub-section after the expiry of the period of three months specified thereof under sub-clause (a) or (b), as the case may be."

It is not disputed before me that the case of the workmen is governed by clause (b) of sub-section (3) and the application has been made within three months from the approach notice.

8. Turning then to Rule 53, sub-rule (1) thereof, which is material for our case, reads as follows :-

"53(1) Any employee or Representative Union desiring a change in respect of (i) any order passed by the employer concerned under Standing Orders or (ii) any industrial matter arising out of the application or interpretation of Standing Orders or (iii) an industrial matter specified in Schedule III shall make an application in writing to the employer. An application for change in respect of an order passed by the employer under Standing Orders shall be made within a period of three months from the date of such order. Where such application is made by an employee it may be made to the employer direct or through the Labour Officer for the local area or the representative of employees concerned. A copy of the application shall be forwarded to the Commissioner of Labour and in cases where such application is not made through the Labour Officer for the local area to that officer.

9. On a bare perusal of Rule 53(1), it is seen that it deals with three categories of matters, viz., (i) any order passed by the employer under the Standing Orders (ii) any industrial matter arising out of the application or interpretation of the Standing Orders and (iii) an industrial matter specified in Schedule III. Then the said Rule expressly provided that an application for change in respect of an order passed by the employer under the Standing Orders shall be made within three months from the date of such order. Thus, the limitation of three months is applicable only in case where the order passed by the employers under the Standing Orders. It is the specific case of the employer that the concerned workman were retrenched from the service. It is not disputed before me that retrenchment does not fall under the Standing Orders, but it falls under item 6 of the Schedule III of the Act. Therefore, the limitation of three months is clearly inapplicable in the facts of the present case.

10. I am fully conscious of the fact that the workmen approached the employer on the basis that they were terminated from the employment. Even the applications filed in the Labour Court were on the assumption that it was a case of termination. However, in view of the categorical assertion made in the written statement of the respondent, it is clear that the case is one of retrenchment and not of termination and if that is so, the case will be governed by Item 6 of Schedule I and not by Standing Orders. Thus, there was no question of applying the period of limitation of three months prescribed under Rule 53(1) to the facts

of the present case.

11. Mr. Nerlekar, learned counsel for the respondent, submitted that the workmen should stand or fall on the basis of their own pleadings and they should not be allowed to take the advantage of the case of the respondent disclosed in the written statement. Mr. Nerlekar sought to place reliance on the judgment of the Delhi High Court in *Lachman Das v. I. E. Newspapers Ltd.* (34) F. L. R. 1977 Delhi 130. The submission is required to be stated only to be rejected, because it is obvious that the workmen were labouring under misconception that they were terminated from the service, but it was disclosed only in the written statement that the action of the employer is in fact of retrenchment and not of termination. It is, therefore, clear that view taken by the two Courts below that the approach notices were not sent within the limitation is clearly erroneous.

12. In the result, all the writ petitions succeed. Rule is made absolute in terms of Prayer clause (a). The matters are remitted back to the Labour Court to decide the applications of the workmen on merits in accordance with law. Since the applications are of 1980, the Labour Court is directed to decide the same with utmost priority within six months from today.

13. Certified copy expedited.