
(2023) 01 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 1838 Of 2018

Rajendra

APPELLANT

Vs

Asstt. Labour Commissioner (Central), Nagpur And Others

RESPONDENT

Date of Decision : 30-01-2023

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 17, 20(2)(b), 33A, 33(1), 33(1)(b), 33(2)(b)

Citation : (2023) 01 BOM CK 0128

Hon'ble Judges : A. S. Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : A.T. Purohit

Final Decision : Allowed

Judgement

A.S. Chandurkar, J

1. RULE. Rule made returnable forthwith and heard the petitioner in person and Shri A.T. Purohit, learned counsel for the respondent no.2.

The petitioner seeks a declaration that the order of dismissal dated 01.10.2015 having been passed by the respondent no.2-Bank of India in breach of Section 33(1)(b) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') is void ab initio and the petitioner be treated to be in continuous service.

2. The facts giving rise to the present proceedings are that on 20.01.1984 the petitioner came to be appointed in the clerical cadre of the Bank. His services however came to be terminated by an order dated 12.02.1991. Being aggrieved the petitioner challenged the aforesaid order of termination by initiating proceedings before the Central Government Industrial Tribunal. By the judgment dated 07.11.2012 the Tribunal set aside the order of termination and after declaring it to be illegal, ordered reinstatement of the petitioner alongwith continuity in service and all consequential benefits. The services of the petitioner were reinstated on 02.12.2013. According to the petitioner the Bank intended to

harass the petitioner and thus created false records of his absence and sought to treat the same as unauthorized absence. The petitioner therefore approached the Assistant Labour Commissioner raising a grievance in that regard. Accordingly on 10.12.2014 the Assistant Labour Commissioner initiated conciliation proceedings in that regard. During pendency of those proceedings the Bank on 01.10.2015 issued a punishment order and dismissed the services of the petitioner for acts of misconduct. The charges levelled were unauthorized absence, insubordination and making false complaints against the Bank. On the same day, the petitioner approached the Assistant Labour Commissioner and submitted an addendum to the complaint that was pending under Section 33A of the Act of 1947. The Assistant Labour Commissioner on 26.10.2015 refused to take cognizance of the subsequent grievance of the petitioner as regards violation of Section 33-A of the Act of 1947 on the ground that the representation had not been filed through a Registered Trade Union. The petitioner being aggrieved by the aforesaid response filed Writ Petition No. 695 of 2016 challenging the same. By the order dated 24.03.2017 this Court held that the communication dated 26.10.2015 issued by the Assistant Labour Commissioner was unsustainable and that the same had been issued by ignoring the provisions of Section 33-A of the Act of 1947. The petitioners representation was restored and a direction was issued to transfer the said proceedings to some other Officer, equal in rank to enable consideration of the same in an unbiased manner. The writ petition was allowed by imposing costs of Rupees Three Thousand on the Assistant Labour Commissioner. The proceedings were then transferred from the Assistant Labour Commissioner, Chandrapur to the Office of the Assistant Labour Commissioner, Nagpur. On 03.11.2017 the Assistant Labour Commissioner recorded failure of the conciliation proceedings and forwarded the failure of conciliation report to the Appropriate Government. This failure report was received by the Appropriate Government on 23.11.2017. The petitioner then filed Civil Application (W) No. 2629 of 2017 in Writ Petition No. 695 of 2016 raising a grievance in that regard. This Court observed that such grievance was required to be made in a fresh petition and hence did not entertain the civil application. In that backdrop this writ petition has been filed on 27.02.2018 seeking a declaration that the order of dismissal dated 01.10.2015 having been issued during pendency of the conciliation proceedings the same was null and void thus entitling the petitioner to seek necessary relief.

3. The petitioner in person referred to the facts on record and submitted that the Assistant Labour Commissioner, Chandrapur had initiated the proceedings for conciliation on 10.12.2014. It was an admitted fact that the said conciliation proceedings were pending when the order of dismissal dated 01.10.2015 came to be issued. The fact that such conciliation proceedings had been initiated on 10.12.2014 was admitted by the Bank in paragraph 2 of its reply. Since the Bank issued the order of dismissal the petitioner in person had on the same day made a complaint to the Assistant Labour Commissioner alleging breach of the provisions of Section 33-A of the Act of 1947. This Court while deciding Writ

Petition No. 695 of 2016 had clearly observed that while disposing of the said complaint on 26.10.2015 the Assistant Labour Commissioner had failed to take into consideration the provisions of Section 33-A of the Act of 1947. As a consequence the conciliation proceedings that were pending stood transferred to the Office of the Assistant Labour Commissioner, Nagpur and the same resulted in failure report on 03.11.2017. It was submitted that till the date the failure report was received by the Appropriate Government the conciliation proceedings could not be treated to have been concluded in the light of the provisions of Section 20(2)(b) of the Act of 1947. Referring to the information supplied by the Appropriate Government under the provisions of the Right to Information Act, 2005 dated 05.02.2018 the petitioner in person submitted that the failure of conciliation report was received by the Appropriate Government on 23.11.2017. Thus, the conciliation proceedings that were initiated on

10.12.2014 were pending when the order of dismissal dated 01.10.2015 came to be issued. The Bank did not seek any permission of the Assistant Labour Commissioner before seeking to change the conditions of service of the petitioner. In other words, the order of dismissal dated 01.10.2015 was passed without complying with the provisions of Section 33(1) of the Act of 1947. As a result the consequence provided would follow and the order of dismissal dated 01.10.2015 ought to be treated as null and void. In that regard the petitioner in person relied upon the judgment of the Constitution Bench in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Versus Ram Gopal Sharma & Others [(2002) 2 SCC 244], M/s Lokmat Newspapers Pvt. Ltd. Versus Shankarprasad [AIR 1999 SC 2423] as well as the decisions in Bajaj Auto Limited Versus Rajendra Kumar Jagannath Kathar & Others [(2013) 6 SCR 301] and Bhilwara Dugdh Utpadak Sahakari S. Ltd. Versus Vinod Kumar Sharma Dead by Lrs. & Others [(2011) 10 SCR 819]. It was thus submitted that the petitioner was entitled for the reliefs prayed for in the writ petition.

4. Shri A.T. Purohit, learned counsel for the Bank opposed the aforesaid submissions. According to him the petitioner had initially filed a representation dated 22.09.2014 with regard to non-payment of wages. Cognizance of that complaint was taken and the proceedings were initiated by the Assistant Labour Commissioner. The Assistant Labour Commissioner considered the reply of the Bank and thereafter observed that the petitioner may raise a dispute through a Registered Trade Union against the order of the Disciplinary Authority. By concluding the proceedings on 23.09.2015 on that count the Assistant Labour Commissioner, Chandrapur treated the matter as closed. It was therefore necessary for the petitioner to have filed a fresh grievance since the order of dismissal was dated 01.10.2015. Instead of doing so the petitioner filed an addendum under Section 33-A of the Act of 1947 which was held to be not maintainable by the Assistant Labour Commissioner on 26.10.2015. It was in that backdrop that the said order was challenged in Writ Petition No. 695 of 2016. Notwithstanding the order dated 23.09.2015 the petitioner failed to file a fresh grievance seeking to challenge the order of dismissal dated 01.10.2015.

For that reason it could not be said that there was any breach of Section 33-A of the Act of 1947 in view of the fact that the conciliation proceedings had been treated to be closed on 23.09.2015. The petitioner had received such communication from the Office of the Assistant Labour Commissioner and hence there was no substance in the stand taken by the petitioner that the order of dismissal was null and void\ having been passed in violation of Section 33(1) of the Act of 1947. It was thus submitted that the writ petition was liable to be dismissed.

5. We have heard the rival submissions and we have also gone through the documents placed on record. After giving due consideration to the contentions as urged, it would be necessary to consider the following aspects :-

(a) Whether the conciliation proceedings initiated on 10.12.2014 stood concluded on 23.09.2015 as held by the Assistant Labour Commissioner or whether the same are required to be treated as concluded only on 23.11.2017 when the failure of conciliation report was received by the Appropriate Government?

(b) Whether the conciliation proceedings were pending on 01.10.2015 when the order of dismissal came to be issued by the Bank ?

(c) If the order of dismissal dated 01.10.2015 is found to be in violation of Section 33(1)(b) of the Act of 1947, what is the effect thereof ?

6. AS TO POINT (a) :- The facts on record indicate that the petitioner had initially filed a representation on 22.09.2014 alleging commission of an unfair labour practice by not paying him wages. According to the petitioner by treating his absence as unauthorized he was not being paid his wages. Acting on the representation of the petitioner the Assistant Labour Commissioner on 14.10.2014 issued notice to both the parties. The Bank submitted its reply and took stand that despite his reinstatement on 02.02.2013 pursuant to the award passed by the Central Government Industrial Tribunal on 07.11.2012, the petitioner was not reporting for duty regularly. Hence disciplinary action was initiated for the alleged misconduct and the said proceedings were pending. It is on that basis that on 23.09.2015 the Assistant Labour Commissioner, Chandrapur treated the proceedings as closed on that day. It was observed that the petitioner could raise a dispute through a Registered Trade Union against the order of the Disciplinary Authority. On 01.10.2015 the Bank passed a punishment order based on the disciplinary proceedings initiated by it for acts of misconduct. On the same day the petitioner approached the Assistant Labour Commissioner raising a grievance that he had been dismissed from service during pendency of the conciliation proceedings. This amounted to violation of Section 33-A of the Act of 1947. The Assistant Labour Commissioner however on 26.10.2015 did not consider the said representation on the ground that it was required to be filed through a Registered Trade Union of the Bank. As stated earlier, this order was set aside by this Court in Writ Petition No. 695 of 2016 and the petitioner's representation/ application was restored and the proceedings were directed to be

transferred to another Officer equal in rank. Pursuant to this order, the proceedings were transferred to the Assistant Labour Commissioner, Nagpur.

7. In the light of the observations of the Assistant Labour Commissioner on 23.09.2015 that the conciliation proceedings had concluded and were thus closed, it would be necessary to consider the legal effect thereof. It has not been shown by the Bank that the aforesaid order of the Assistant Labour Commissioner holding the proceedings to be concluded was communicated to the Appropriate Government as required by the provisions of Section 20(2)(b) of the Act of 1947. As per the said provision when there is no settlement arrived at in the conciliation proceedings the same would be deemed to have concluded only when the report of the Conciliation Officer is received by the Appropriate Government or the report of the Board is published under Section 17 of the Act of 1947. Reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Andheri Marol Kurla Bus Service & Another Versus The State of Bombay* [AIR 1959 SC 841] wherein the question as to when conciliation proceedings could be said to have concluded was considered. It was held that though under Section 12 of the Act of 1947 it is the duty of the Conciliation Officer to submit his report within fourteen days of commencement of the conciliation proceedings, such proceedings do not come to an end after fourteen days but only when the report of the Conciliation Officer is received by the Appropriate Government when there is no settlement in view of the provisions of Section 20(2)(b) of the Act of 1947. Since the report dated 23.09.2015 has not been shown to have sent to the Appropriate Government as required by Section 20(2)(b) it will have to be held that the said conciliation proceedings are not deemed to have concluded and the same were pending till the failure report was received by the Appropriate Government. It is an admitted fact that the conciliation proceedings were initiated on 10.12.2014 and in view of the order dated 24.03.2017 passed in Writ Petition No. 695 of 2016 the said proceedings were transferred to the Assistant Labour Commissioner, Nagpur.

In *M/s Lokmat Newspapers Pvt. Ltd. (supra)*, the Hon'ble Supreme Court in clear terms held that until the failure report reaches the Appropriate Government, the conciliation proceedings cannot be said to have terminated. The breach of Section 33(1) would attract the penal liability under Section 31(1) of the Act of 1947. It is not in dispute that the failure report that was sent by the Assistant Labour Commissioner, Nagpur on 03.11.2017 was received by the Appropriate Government on 23.11.2017. It is thus held that the conciliation proceedings initiated on 10.12.2014 stood concluded only on 23.11.2017 when the failure report was received by the Appropriate Government in terms of Section 20(2)(b) of the Act of 1947.

8. AS TO POINT (b) :- Since it has been found that the conciliation proceedings that were initiated on 10.12.2014 are deemed to have concluded only on 23.11.2017 it is obvious that the punishment order dated 01.10.2015 has been issued during the pendency of the conciliation proceedings. In this regard it is to

be noted that the petitioner approached the Conciliation Officer with a grievance dated 22.09.2014 that he was being treated as absent from duty thus resulting in non-payment of his wages. Cognizance of that grievance was taken by initiating the conciliation proceedings on 10.12.2014. The Bank proceeded to initiate disciplinary action against the petitioner on various charges including his habitual unauthorized absence from 28.01.2014 intermittently till 24.12.2014. The other charges pertained to insubordination, making of false complaint and failure to intimate his local address at Chandrapur. In the said proceedings the Enquiry Officer was appointed on 09.01.2015 after which the Enquiry Officer submitted his report on 16.04.2015 holding the charges to be proved. After calling for the say of the petitioner on 23.05.2015 the Disciplinary Authority imposed the punishment of dismissal on 01.10.2015. Considering the charges levelled against the petitioner which included a charge of unauthorized absence it can be stated that the enquiry was held for an alleged misconduct that was connected with the dispute raised by the petitioner through his initial representation dated 22.09.2014. As noted above, this initial grievance was with regard to he being shown absent resulting in an unfair labour practice.

Under Section 33(1)(b) of the Act of 1947 an employer can only with the express permission in writing of the Conciliation Officer punish a workman for any misconduct connected with the dispute. In other words if the employer desires to alter the conditions of service during pendency of the conciliation proceedings or for that matter proceed to punish him for any misconduct connected with the dispute the same can be done only after obtaining the permission of the Conciliation Officer in writing. It is not the case of the Bank that it had obtained such permission from the Conciliation Officer before issuing the order of dismissal on 01.10.2015. On the contrary, it is the stand of the Bank that the order of dismissal dated 01.10.2015 having given rise to a fresh cause of action it was not necessary for it to obtain any such permission of the Conciliation Officer for the reason that the proceedings initiated were concluded by the Assistant Labour Commissioner, Chandrapur on 23.09.2015. It is thus apparent that the order of dismissal dated 01.10.2015 falls foul of the provisions of Section 33(1)(b) of the Act of 1947 for want of express permission in writing of the Conciliation Officer before whom the conciliation proceedings were pending. The petitioner in person is justified in relying upon the judgment of the Constitution Bench in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) wherein it has been held that though an order of dismissal passed by invoking Section 33(2)(b) would bring an end to the relationship of employer and employee from the date of dismissal that order remains incomplete and inchoate as it is subject to approval of the Authority under the said provision. If the approval is not given nothing further is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal had never been passed. The consequence of not making such application under Section 33(2)(b) has also been referred to. It is thus clear from the aforesaid that the Bank having failed to seek permission of the Conciliation Officer before proceeding to issue

the punishment order the same has resulted in breach of Section 33(1)(b) of the Act of 1947.

9. AS TO POINT (c) :- It thus becomes clear from the aforesaid that the order of dismissal dated 01.10.2015 has been passed without seeking permission of the Conciliation Officer before whom the conciliation proceedings were pending. The said dismissal order therefore is in contravention of Section 33(1)(b) of the Act of 1947. Such an order has been held to be invalid or void in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra). It has been stated that the employee would be deemed to have continued in service entitling him to all benefits available and there is no need of a specific order for his reinstatement. We thus find that the order of dismissal dated 01.10.2015 has to be treated as invalid and void for the reason that it has been passed in breach of Section 33(1)(b) of the Act of 1947. The conciliation proceedings initiated on 10.12.2014 were pending when the order of dismissal dated 01.10.2015 came to be passed. The Bank did not seek approval of the Conciliation Officer despite the fact that the conciliation proceedings were pending. The failure report was received by the Appropriate Government on 23.11.2017 which makes it clear that the conciliation proceedings were pending till that date in view of Section 20(2)(b) of the Act of 1947. Consequently, the petitioner would be entitled to the reliefs flowing from the voidness of the order of dismissal.

10. For aforesaid reasons, it is held that the dismissal order dated 01.10.2015 issued by the Bank is void as it has been issued in breach of Section 33(1)(b) of the Act of 1947. As a consequence thereof it is held that there was no order of dismissal issued by the Bank resulting in the petitioner continuing in service as before. The petitioner is held entitled to all benefits flowing from the aforesaid declaration.

11. Accordingly, the writ petition is allowed. Rule is made absolute in aforesaid terms with costs.