

(2017) 08 BOM CK 0094
In the Bombay High Court
Case No : 6 of 2017

Raju Purushottam Warurkar

APPELLANT

Vs

Bokey Printers, Through its Proprietor, Prakash Wamanrao
Bokey

RESPONDENT

Date of Decision : 14-08-2017

Acts Referred:

Citation : (2017) 08 BOM CK 0094

Hon'ble Judges : S.C. Gupte

Bench : SINGLE BENCH

Advocate : S.M. Vaishnav, P.A. Kadu

Judgement

1. Heard learned counsel for the parties. Rule. Rule made returnable forthwith and taken up for hearing by consent of counsel.

2. This writ petition challenges the revisional order passed by the Industrial Court at Amravati, under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short, "Act").

3. The petitioner herein (original complainant), who was working as a printer with the respondent firm, was terminated on 28/08/2002. The petitioner, who was appointed in the year 1985 and whose services were confirmed in the year 1987, had been working with the respondent till his termination on 28/08/2002. Just before his termination, on 05/08/2002, a notice was served on the petitioner alleging various acts of the misconduct on his part. After serving him with this notice and before he could show cause thereon, a notice of termination was issued to him on 28/08/2002. That notice was purportedly a notice of retrenchment, which is said to be in compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947. The petitioner challenged the termination before the Labour Court in a complaint of unfair labour practices filed before it under Section 28 read with Item No.1(a), (c), (d), (e) and (g) of Schedule IV of the Act, for reinstatement with continuity of service and full back

wages. The Labour Court, vide its order dated 02/08/2010, partly allowed the complaint declaring that the respondent herein did engage in unfair labour practices under Item Nos.1(a), (b), (d) and (f) of Schedule IV of the Act. The petitioner was ordered to be reinstated in the original post with continuity of service and 30% of back wages from the date of his termination till his reinstatement. This order was challenged in revision by the respondent herein before the Industrial Court at Amravati. By its order dated 04/08/2016, the Industrial Court quashed and set aside the judgment and order of the Labour Court and remanded the matter to the Labour Court for a fresh decision of the complaint in accordance with law. This order is challenged by the petitioner in the present writ petition.

4. It cannot be gainsaid that the scope of the revisional jurisdiction under Section 44 of the Act is limited. It is really in the nature of a supervisory jurisdiction. No doubt, in a case where the Labour Court arrives at its conclusion by ignoring certain material portion or aspect of evidence, it may be permissible for the Industrial Court to appreciate that portion or aspect of evidence in the light of overall evidence and such appreciation would not fall within the prohibited area of reappraisal, reassessment or reappraisal of the evidence before the Revisional Court. The judgment of the learned Single Judge of our High Court in the case of *Sadanand Ramesh Samsi Vs Kirloskar Cummins Ltd. and others*, 2002(4) Mh.L.J. 804, cited by learned counsel for the respondent, clearly makes this point. If one has regard to the facts of the present case, however, it is apparent that in the face of a show cause notice issued to the petitioner alleging misconduct immediately before the alleged retrenchment on 28/08/2002 and in the face of the petitioner's plea that such termination was in fact on account of alleged misconduct and that the alleged order of retrenchment was merely a colourable device, it was incumbent on the respondent to make out a case for retrenchment. The case of retrenchment urged by the respondent is said to be based on a so-called reduction of work at the respondent's printing press. It is submitted by the respondent that the work of screen printing in the press was reduced due to offset printing and general competition and that there was no need for two screen printers; and that, accordingly and the petitioner being the juniormost workman working as a screen printer, his services were terminated. The onus to show that, in the premises, the retrenchment was in fact on account of reduction of work at the printing press as alleged in the purported retrenchment notice of 28/08/2002, was squarely on the respondent. These are matters which can be said to be within the special knowledge of the respondent and it is practically impossible for the employee to lead independent evidence to prove the negative. If one has regard to the evidence led in this behalf by the respondent, it is apparent that apart from broad generalizations, there is nothing to indicate that the work of screen printing was reduced over a period of time or that there was no need for two screen printers for the printing press. There are no particulars of average screen printing jobs over a period of time or the current jobs on hand as compared to the past. In the absence of these particulars, it is

not possible for the Court to form an opinion on the alleged reduction work at the printing press simply on the basis of general statements made by the employer's witness.

5. In the backdrop of these facts, strangely enough, the revisional court proceeds on the footing that the complainant has in fact admitted in the crossexamination that his services were brought to an end because of reduction of work in the screen printing section of the press. One fails to notice any such admission in the evidence of the petitioner. Learned counsel for the respondents contends that considering the fact that there was practically no crossexamination on the aspect of reduction of work at the printing press, the court must read this failure on the part of the complainant virtually as an admission and on that basis, the uncontroverted evidence of the employer must be acted upon. Learned counsel relies on the judgment of Calcutta High Court in the case of A.E.G. Carapiet VsA. Y. Derderian, AIR 1961 Cal 359 and the judgment of our Court in the case of Bhika Cullianji and Co., Bombay VsAvon Electric Company, Bombay and others, 1995(1) Bom.C.R. 377 in support.

6. There is no such general proposition laid down in either of these judgments. When evidence is led by both sides, it is for the court to see if a case of retrenchment is actually made out. If, on the basis of the evidence led by the employer, no case is made out, mere want of crossexamination on the part of the employee, will make no difference. In the case of A.E.G. Carapiet VsA. Y. Derderian, Calcutta High Court was concerned with a case where the matter in question before the court was the testamentary capacity of the deceasedtestator; though the testamentary capacity was disputed, none of the witnesses brought before the court by the proponent of the will including the Doctors and Nurses, who were examined in this behalf, were questioned on such testamentary capacity. Not a suggestion was put to either the propounder or any of his witnesses when they were in the box, about the testator being physically or mentally unfit. Here was a case of complete failure to put the case of want of testamentary capacity to the witnesses who were brought to depose to such capacity. These facts are clearly distinguishable from the facts of our case where the employer's witness merely came up with a simplistic platitude about the reduction of work in the printing press. If one has regard to the crossexamination, the basic case appears to have been put to this witness of there being no such reduction and the petitioner being very much in the position of doing the work of other departments anyway.

7. This is not a case, where some important evidence was missed out or not considered by the trial court. If after considering the material before it, the trial court came to a conclusion which is permissible and supported by some evidence and which does not disregard any relevant material or proceed on the basis of any nongermane or irrelevant material, it was impermissible for the revisional court to undertake the exercise of reappraising the evidence. The court, in fact, does not even do that exercise; indeed there is no occasion to do so. The court,

simply on the basis that the socalled unchallenged version of the respondent was not taken into consideration by the trial court, remanded the matter to the trial court. That is clearly impermissible.

8. For all these reasons, the revisional order of the Industrial Court cannot be sustained. The Writ Petition is, accordingly, allowed and the impugned order of the Industrial Court dated 04/08/2016 is quashed and set aside and the order of the Labour Court is restored.