

(2015) 04 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 4042 of 2002

Ravindra and Others

APPELLANT

Vs

Divisional Controller, Maharashtra State Road Transport
Corporation and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 7

Citation : (2015) 04 BOM CK 0051

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

**Advocate : P.N. Verma, for the Appellant; A.S. Mehadia, Advocates for the
Respondent**

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—Heard Mr. P.N. Verma, the learned advocate for the petitioners and Mr. A.S. Mehadia, the learned advocate for the respondents.

2. The writ petition is filed by the workman challenging the order passed by the Industrial Court, allowing the revision filed by the respondents/employer by which the Industrial Court has set aside the order passed by the Labour Court and has dismissed the complaint filed by the petitioner.

3. The petitioner/workman had filed complaint before the Labour Court under Section 28 and Section 7 read with Item I-(a), (b) and (d) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU and PULP Act") contending that he was in continuous employment with the respondents from 1st November, 1990 till 20th August, 1995 still his services were not regularized and his services were illegally terminated without complying with the requirements of Section 25-F of the Industrial Disputes Act, 1947.

4. The respondents/employer opposed the claim of the workman and contended that the workman was engaged as per the availability of the work on daily wages and he had never worked for more than 240 days in any year and in the year preceding the alleged termination.

The Labour Court by the interim order dated 27th February, 1997, prima-facie found that the workman was in continuous employment of the respondents from 1st January, 1990 till 1st February, 1995 and his services were illegally terminated without giving one month's notice or without paying one month's wages in lieu of the notice and without paying retrenchment compensation and directed the respondents to reinstate the petitioner in service during the pendency of the complaint.

The Labour Court, after trial concluded that the respondents indulged in unfair labour practice as contemplated by Item 1-b of Schedule IV of the MRTU and PULP Act and directed the respondents to reinstate the workman in service with continuity w.e.f. 21st August, 1995 and also directed the respondents to pay full back wages.

5. The respondents, being aggrieved by the order passed by the Labour Court had filed revision which is allowed by the Industrial Court. The workman being aggrieved by the order passed by the Industrial Court has filed this writ petition.

6. Shri Verma, the learned advocate for the petitioners has submitted that the Labour Court recorded the findings that the petitioner was continuously in the employment from 1st January, 1990 till 1st February, 1995 after appreciating the material on the record. It is submitted that the petitioner specifically pleaded about his continuous employment for the above mentioned period and if the respondents wanted to prove otherwise, they should have produced the record which is in their custody to controvert that the petitioner has not worked for more than 240 days in any year. It is submitted that the respondents having failed to discharge the burden of proving that the petitioner has not worked for more than 240 days in a year, the finding recorded by the Labour Court in this regard cannot be faulted with. In support of his submission, the learned advocate has relied on the judgment given in the case of Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, AIR 2010 SC 1236 : (2009) 123 FLR 875 : (2010) 1 LLJ 3 : (2010) 157 PLR 243 : (2009) 13 SCALE 636 : (2010) 1 SCC(L&S) 1 : (2009) 15 SCR 761 : (2009) 6 SLR 632 : (2009) 10 UJ 4971 : (2010) AIRSCW 542 . The learned advocate has further submitted that the petitioner has been continuously in the employment till today as he was reinstated pursuant to the order passed by the Labour Court and then after the Industrial Court allowed the revision filed by the respondents, the Industrial Court had protected the petitioner by the order dated 9th October, 2002 and then this Court by the order dated 8th November, 2002 continued the protection. It is pointed out that the interim order passed by this Court protecting the petitioner was challenged by the respondent in Letters Patent Appeal No. 187 of 2004 in which also the protection granted to the petitioner was not interfered.

7. It is submitted that the Industrial Court has committed an error in setting aside the order passed by the Labour Court by reappreciating the material on the record and coming to a different conclusion. It is submitted that the powers of the Industrial Court while exercising the revisional jurisdiction are limited and it is not permissible for the revisional Court to reappreciate the material on the record. In support of this submission the learned advocate has relied on the judgment given in the case of Gajanan Vs. Maharashtra State Road Transport Corporation, reported in 2000 (2) Bom. LC 456 (Bom.) . The learned advocate has submitted that, as the petitioner is in continuous employment since 1990, it would be inappropriate to dislodge him and deprive him of his livelihood. In support of his submission the learned advocate has relied on the judgment given in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 SC 2532 : (2011) 130 FLR 337 : (2011) 5 JT 333 : (2011) 3 LLJ 1 : (2011) LLR 785 : (2011) 4 SCALE 631 : (2011) 6 SCC 584 : (2011) 2 SCC(L&S) 153 : (2011) 2 UJ 1612 : (2011) AIRSCW 3455 . It is prayed that the petition be allowed, the order passed by the Industrial Court be set aside and the order passed by the Labour Court be restored.

8. Mr. Mehadia, the learned advocate for the respondents has submitted that the petitioner has not produced evidence on the record to substantiate his claim that he was in continuous service from 1st January, 1990 till 1st February, 1995. It is submitted that the claim of the petitioner is based on the certificate alleged to have been issued by the Depot Manager. The learned advocate has submitted that the certificate is unreliable as there is no date on the certificate and it is not explained as to under what circumstances the certificate was issued. The learned advocate has submitted that the Labour Court could not have recorded the finding that the petitioner has worked for more than 240 days in the year preceding his termination, only on the basis of the certificate without there being appropriate material on the record to substantiate the claim. The learned advocate has further submitted that there are contradictions in the cross-examination of the petitioners which could not have been overlooked by the Labour Court. According to the learned advocate, the petitioner has accepted in cross-examination that he was paid wages on the basis of the number of days of work which supports the contention of the respondents that the petitioner was engaged as per the availability of the work. It is submitted that the claim of the petitioner that he was receiving Rs. 1,000/- per month cannot be accepted as there is no such pay scale for the employees working with the respondents. It is submitted that the petitioner has failed to discharge the burden of proving that he has worked for more than 240 days in the year preceding the termination and that there is violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and the order passed by the Industrial Court is proper and does not require any interference by this Court in the extraordinary writ jurisdiction.

9. After hearing the learned advocates for the respective parties and examining the material placed on the record of the writ petition, I find that the petitioner specifically pleaded that he was in the continuous employment from 1st January,

1990 till 1st February, 1995 and in support of the claim, the petitioner filed certificate issued by the Depot Manager stating that the petitioner was continuously in the employment for the above mentioned period. It has come on the record that the petitioner was working as Tyre Fitter and that the witness examined on behalf of the respondents has admitted that the post of Tyre Fitter was available with the respondents at the relevant time. The witness examined on behalf of the respondents has shown inability to give details of the employee who was working as Tyre Fitter at Akot Depot during the period from 1990 till 1995. In the circumstances, in my view, the Labour Court had properly appreciated the material on the record and had rightly concluded that the petitioner had continuously worked with the respondents for the period from 1st January, 1990 till 1st February, 1995 and that his services were illegally terminated. The respondents have not been able to discharge the burden by producing documentary evidence on the record to show that the petitioner was not in the employment during the above referred period and that he was working in the post available with the respondents. The Industrial Court could not have re-appreciated the evidence and could not have taken a different view without recording the finding that the conclusions of the Labour Court are perverse. The Industrial Court has committed an error in setting aside the order passed by the Labour Court.

10. Apart from this, it is undisputed that the petitioner continues to be in the employment of the respondents till today. As stated above, the availability of the post in which the petitioner had been working is also not disputed. In the circumstances, the order passed by the Industrial Court is unsustainable in law.

11. In view of above, the following order is passed:

- i. The order passed by the Industrial Court in Revision (ULP) No. 42 of 2001 on 9th October, 2002 is set aside and the Revision (ULP) No. 42 of 2001 is dismissed.
- ii. The order passed by the Labour Court in Complaint (ULP) No. 284 of 1995 on 28th February, 2001 is restored.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.