

(1987) 09 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No's. 1599 and 2360 of 1985

R.D. Surve

APPELLANT

Vs

Tata Iron and Steel Co. Ltd., Bombay and others

RESPONDENT

Date of Decision : 28-09-1987

Acts Referred:

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

Citation : (1987) MhLj 1089

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : W. Menezes for J.P. Cama, for the Appellant; F.D. Damania with Talsania Instructed by Ghanekar and Co., for the Respondent

Judgement

H.H. Kantharia, J.—The petitioners in both the petitions were in the employment of the first respondent-company. They filed complaints in the 4th Labour Court, Bombay, presided over by the third respondent, against respondents Nos. 1 and 2 alleging unfair labour practice covered by items I(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). Along with the complaints, applications for interim relief were also made. On the said applications, directions were issued to respondents Nos. 1 and 2 to maintain status quo till the decision in the applications/complaints. It appears that thereafter the applications for interim relief were taken up for hearing but instead of disposing of the applications for interim relief, the learned Labour Judge dismissed the main complaints by a common order dated 9th August, 1983 because he was of the opinion that even if the allegations made against respondent Nos. 1 and 2 were accepted as true that the petitioners' resignations were Obtained by force, coercion, undue influence, persuasion and inducement, the same would not amount to termination of service by way of discharge or dismissal and would thus not be covered by Item 1 of Schedule IV.

2. The said order was challenged in the Industrial Court, in revision, by the petitioners. The learned President of the Industrial Court heard the revision applications and concurred with the view taken by the Labour Judge. Accordingly, by a common order dated 10th June, 1985 he dismissed the revision applications. Hence, the petitioners-workmen filed these writ petitions under Article 226 of the Constitution.

3. Mrs. Menezes, learned advocate appearing on behalf of the petitioners, argues that both the Judges of the Courts below committed grave error in law in coming to the conclusion that forced resignation would not amount to discharge or dismissal. She submits that it is a matter of evidence whether or not the resignations were so obtained and if so, whether it would amount to unfair labour practice under item I of Schedule IV. Mrs. Menezes further submits that the Labour Court was wrong in disposing of the main complaints without affording an opportunity to the petitioners to adduce evidence and the Industrial Court committed a grave mistake by not remanding the matters back to the Labour Court with directions to allow the parties to lead evidence. Mr. Damania, learned Counsel appearing on behalf of respondent Nos. 1 and 2, submits that the original complaints of unfair labour practice were argued in both the Courts below, as they were, without any oral evidence being led by the parties, because it was the submission of the Company that the allegations, even if accepted as true, would not amount to unfair labour practice covered by item 1 of Schedule IV. In the submission of Mr. Damania, it is not correct to say, as pleaded on behalf of the petitioners, that instead of disposing of the applications for interim relief, the Courts below erred in disposing of the main complaints.

4. On hearing the learned counsel on either side and on going through the record placed before me, I am more than convinced that the learned Labour Judge seriously erred firstly in disposing of the main complaints while hearing the applications for interim relief and secondly in coming to the conclusion that the forced resignation would not amount to discharge or dismissal. I am also of the view that the learned President of the Industrial Court was equally wrong in confirming the order passed by the Labour Judge. The record clearly shows that along with the complaints of unfair labour practice, applications for interim relief were made by the petitioners on which the Labour Judge had initially directed status quo to be maintained till the final disposal of the applications for interim relief/complaints. Therefore, at the next hearing, the applications for interim relief were to be heard and disposed of but instead of doing that and passing appropriate orders thereon, the Labour Judge disposed of the main complaints and dismissed them. The Labour Judge was not right in coming to the conclusion that forced resignation would not amount to discharge or dismissal. That crucial point and whether or not such discharge or dismissal would amount to unfair labour practice under item 1 of Schedule IV of the Act was a matter of evidence and, therefore, the correct approach for the Labour Judge was to record evidence of the parties with a view to find out whether the allegations made in the complaints were true or false and if true whether the same would amount to

unfair labour practice covered by item 1 of Schedule IV. He should not have shut out the evidence of the parties in ugly haste.

5. The learned President of the Industrial Court failed to exercise the jurisdiction vested in the Industrial Court u/s 44 of the Act. He should have properly exercised his revisional powers and rectified the mistakes committed by the Labour Judge instead of mechanically endorsing his views. A perusal of the revision applications shows that clear grounds were taken by the petitioners that instead of disposing of the applications for interim relief and allowing the parties to adduce their evidence, the Labour Judge disposed of the main complaints. It is quite possible that the grounds, though taken in the revision applications, might not have been pressed into service at the hearing but the record clearly showed that the petitioners went to the Industrial Court in revision with a specific case, as stated above. Therefore, in my opinion, the correct course of action open to the Industrial Court was to remand the matters back to the Labour Court with directions that the Labour Court should take the evidence of the parties and decide the matters on merits.

6. The Industrial Court also examined the issue whether forced resignation would amount to discharge or dismissal and thus be unfair labour practice under item 1 of Schedule IV and drew wrong conclusions that it would not. Forced resignation cannot be considered as voluntary act of the party resigning a particular post. It is a misnomer to call it free and genuine consent of the party resigning. Consent to do or not to do an act given under force is no consent in the eyes of law. A Division Bench of this Court in *Shiram Swami Shikshan Sanstha, Nagpur Vs. Education Officer, Zilla Parishad, Nagpur and others*, had held :

"We feel that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance, the contract of service comes to an end in such case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer."

A Single Judge of the Karnataka High Court in *M/s. Southern Roadways Ltd., Bangalore vs. V. K. Padmanabhan and another*, 1979 Lab IC 234 observed thus :

"If an employer secures resignation of any of his employees by force or against his will, in substance, it amounts to the termination of the services of the concerned employees."

Therefore, the conclusion is that forced resignation amounts to discharge or dismissal. And whether or not it would amount to unfair labour practice under item 1 of Schedule IV of the Act would depend upon the facts and circumstances obtaining in each individual case. As per item 1 of Schedule IV of the Act, it would be a general unfair labour practice on the part of employers :

"To discharge or dismiss employees -

- (a) by way of victimisation;
- (b) not in good faith, but in the colourable exercise of the employer's rights;
- (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
- (d) for patently fake reasons;
- (e) on untrue or trumped up allegations or absence without leave;
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

Hence, it was incumbent upon the Industrial Court to send the matters back to the Labour Court to allow the parties to lead their evidence which was not done and that is how the impugned order passed by the Industrial Court suffers from error apparent on the face of the record.

7. All in all, these matters have left an impression in my mind that the learned Labour Judge and the learned President of the Industrial Court disposed of the cases before them in a casual and cavalier manner. They should have indeed gone deep into the issues involved and should have been more careful in dealing with the cases. It was observed by a Division Bench of this Court in *Hatim Ali vs. R. R. Bhavsar and others* 1987 CLR 408 that:

"This shows not only the absence of proper approach by the Labour Court towards the industrial disputes brought before it but also a total non-application of mind to the material on the record. If the Labour Courts are to adopt such attitude towards the cases brought before them they may as well not exist."

It was further observed therein :

"Such casual and cavalier manner by the Courts towards the cases before it cannot be condemned in stronger terms. Apart from the fact that such approaches do not display proper work ethic, they tend to create dissatisfaction and distrust in the administration of justice itself. We hope and trust that the cavalier manner in which the reference was disposed of is not repeated in future."

8. In the premises, the writ petitions succeed and the same are allowed. The impugned order passed in the Complaints (ULP) Nos. 73 and 74 of 1983 on 9th August, 1983 by the third respondent and the impugned order passed in the revision applications (ULP) Nos. 25 and 26 of 1983 on 10th June, 1985 by the fourth respondent are quashed and set aside. The matters are remanded back to the Court of the 4th Labour Judge, Bombay with a direction that he shall allow the parties to lead their evidence and on consideration of the same, decide whether the allegations made against respondents Nos. 1 and 2 are proved and

if so, whether the same would amount to unfair labour practice covered by item 1 of Schedule IV of the Act. Parties are directed to appear in the Labour Court on 27th October, 1987. The Labour Court is further directed to dispose of the complaints as early as possible.

9. Rule in each of the petitions is made absolute in the terms aforesaid but, in the circumstances of the case, with no order as to costs.