
(2015) 06 BOM CK 0094
In the Bombay High Court
Case No : Writ Petition No. 9052 of 2013

Sahebrao Khemaji Kale

APPELLANT

Vs

Paras Agro Engineering Work

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citation : (2015) 147 FLR 947 : (2015) 3 LLJ 368 : (2016) 1 MhLj 70

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Barde Parag Vijay, for the Appellant; Upadhye Vinayak Narayan, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.

1. Rule.

2. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioner/workman is aggrieved by the common judgment and order of the Industrial Court dated 21.08.2013 delivered in Revision ULP No. 87/2007 filed by the Respondent/ Management and Revision ULP No. 1/2008 filed by the Petitioner/ workman.

4. Learned Advocates appearing for the respective sides were heard at length.

5. The submissions of the workman are as follows:-

(a) The workman joined duties with the Employer as a Painter on 07.07.1980.

(b) Subsequently, he was allotted the duties of a Moulder.

(c) On 14.06.1993, a charge-sheet for absenteeism of 65 days was served upon

the workman.

(d) On 19.07.1993, a charge-sheet for absenteeism of 30 days and for assaulting the Supervisor Mr.D.D. Gatne was served upon the workman.

(e) A domestic enquiry under the Model Standing Orders was conducted and the Petitioner/ workman was held guilty of all the charges levelled upon him.

(f) On 31.03.1994, the workman was dismissed from employment by way of punishment.

(g) The workman preferred Complaint ULP No. 53/1994 before the Labour Court at Ahmednagar.

(h) All the charges were denied and the workman averred that the charges levelled upon him have not been proved as there was no evidence before the Enquiry Officer.

(i) The issues were framed by the Labour Court.

(j) By an order dated 19.10.2000 with regard to the fairness of the enquiry, the Labour Court concluded that the enquiry is vitiated on account of non adherence to the principles of natural justice by the Enquiry Officer.

(k) A de-novo enquiry was conducted before the Labour Court.

(l) By judgment and order dated 22.11.2007, the Labour Court allowed the Complaint and directed reinstatement with continuity of service and 50% back-wages by setting aside the order of termination dated 31.03.1994.

(m) The Employer/ Management preferred Revision ULP No. 87/2007 challenging the order on a preliminary issue dated 19.10.2000 as well as the final judgment dated 22.11.2007.

(n) The workman preferred Revision ULP No. 1/2008 challenging the judgment of the Labour Court dated 22.11.2007 only to the extent of denial of 50% of back-wages.

(o) By common judgment and order dated 21.08.2013, which is impugned in this petition, the Industrial Court allowed Revision ULP No. 87/2007 and dismissed Revision ULP No. 01/2008.

(p) The Industrial Court set aside the judgment of the Labour Court dated 19.10.2000 on the preliminary point as well as the final judgment dated 22.11.2007 by concluding that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are not perverse. It was also concluded that the punishment of dismissal was fair and proper.

6. Mr. Barde, learned Advocate appearing for the Petitioner/ Workman, further submits as under:-

(a) The Management Witness No. 1 (MW-1) Mr.D.D. Gatne was examined on

23.01.1994 and the matter was adjourned to 25.01.1994 by the Enquiry Officer for enabling the workman to cross-examine MW-1.

(b) On 25.01.1994, mother-in-law of the workman died and as such, the Enquiry Officer adjourned the matter to 29.01.1994.

(c) On 29.01.1994, which was the fourth day from the date of the demise of the workman's mother-in-law, the workman remained present in the enquiry. The Union representative was absent. The Enquiry Officer discharged MW-1 and adjourned the matter to 04.02.1994 for recording the testimony of MW-2.

(d) On 04.02.1994, MW-2 was examined. The workman and his representative prayed for an opportunity to cross-examine MW-1.

(e) On the adjourned date 10.02.1994, the workman and his representative were absent. The witness with reference to the charge sheet dated 19.07.1993 (wrongly typed as 14.07.1994) was examined. The matter was adjourned to 18.02.1994 for cross-examination of MW-3.

(f) On 18.02.1994, on the request of the workman, the matter was adjourned to 27.02.1994.

(g) On 27.02.1994, an application for seeking second adjournment moved by the workman was rejected and the said witness was discharged.

(h) Five witnesses were examined by the Management, out of which, the workman cross-examined two witnesses and partly cross-examined MW-5.

(i) The Industrial Court has focused on few observations of the Labour Court in its order on the preliminary point and the final judgment and concluded that the judgment of the Labour Court on the preliminary point dated 19.10.2000 is perverse. The enquiry was held to be fair and proper, the findings were held to be fair, the charges were held to be proved and the order of dismissal was upheld.

7. Mr. Barde, therefore, submits that the Industrial Court failed to scrutinize the entire enquiry record while deciding the revision applications and by merely focusing on a few observations, as is seen in paragraph 8 of the impugned judgment, set aside both the judgments of the Labour Court and dismissed the Complaint. The Industrial Court ought to have considered the enquiry proceedings thread bare and should have appreciated that two witnesses were discharged on the second available opportunity after their examination-in-chief and the Management appeared to be in undue haste in concluding the enquiry.

8. Mr. Barde, therefore, submits that this is a fit case for remanding the matter back to the Industrial Court to consider the entire enquiry proceedings and scrutinize the impugned judgments of the Labour Court assailed in the Revision Petition by the Employer, afresh.

9. Mr. Upadhye, learned Advocate appearing for the Respondent/ Management has strenuously contended as under:-

- (a) The workman was assisted by his representative who was an Union office bearer.
- (b) The representative had developed a habit of remaining absent.
- (c) On several occasions the workman remained absent and the representative was present and vice-versa.
- (d) The date of commencing the recording of oral evidence of the Management witness was scheduled on 01.10.1993. Several adjournments were sought by the workman and the Management, therefore, succeeded in examining MW-1 after three months on 23.01.1994.
- (e) On 23.01.1994, the workman commenced the cross-examination of MW-1 and sought an adjournment for further cross-examination.
- (f) With every Management witness, the workman and his representative resorted to the policy of adjournment only to prolong the matter.
- (g) It was in unavoidable circumstances that the Enquiry Officer had to discharge MW-1, MW-2 and MW-5.
- (h) When opportunities were made available to the workman, he should have availed of the same and should have cross-examined the Management Witnesses made available, in his own interest.
- (i) The workman is the architect of this peculiar situation and he cannot blame the Management or the Enquiry Officer for having discharged the Management Witnesses.
- (j) The Industrial Court noticed several perversities in the conclusions of the Labour Court and therefore, set aside it's judgment on the preliminary point as well as on the main complaint.
- (k) If the workman and his representative did not desire to fully participate in the enquiry, they need to suffer consequences of their own conduct.
- (l) No fault can be found in the observations of the Industrial Court and as such, this petition deserves to be rejected.

10. The issue before me is as regards, whether, the Industrial Court noticed perversities in the conclusions of the Labour Court arrived at on the preliminary point dated 19.10.2000 and it's judgment on the complaint dated 22.11.2007, by properly scrutinizing the enquiry proceedings available before it.

11. The fact situation as regards the examination of the Management Witnesses is reproduced herein above. It is ex-facie visible that the Management Witness No. 1 was examined on 23.01.1994 and the matter was adjourned for cross-examination. On the first date for cross-examination, which is 25.01.1994, the mother-in-law of the workman died. Needless to state, an adjournment was necessitated. The adjourned date was 29.01.1994, which, in the submission of

Mr. Barde falls within the 13 days mourning period for a Hindu family, compelled the workman to remain present. It was expected that he would cross-examine MW-1 on the fourth day of the demise of his mother-in-law. Having failed to do so, MW-1 was discharged.

12. MW-2 was examined on 04.02.1994 by the Management. The first adjourned date for cross-examination was 10.02.1994. Since the workman and his representative were absent, MW-2 was discharged.

13. Though Mr. Upadhye has rightly contended that an application for recalling MW-1 was filed by the workman, I find, from the impugned judgment of the Industrial Court, that no reference has been made to these facts as recorded herein above while concluding that the judgment of the Labour Court on the preliminary point is perverse.

14. I am of the view that the Industrial Court, exercising revisional jurisdiction, is expected to adduce strong reasons while concluding that the findings on facts by the Labour Court need to be branded as being perverse. The Industrial Court could be convinced that the judgment on the preliminary point was perverse, only after scrutinizing the enquiry papers. The manner in which the Management Witnesses were examined and the opportunities for cross-examination having been afforded to the workman, could be evident only from the enquiry proceedings. It is expected that a reasonable opportunity for cross-examination is to be afforded. The material available before the Industrial Court should have been considered by it while coming to the conclusion that the findings of the Labour Court on the preliminary point were perverse and unsustainable.

15. It is vehemently contended by Mr. Upadhye that every Management Witness was made available for cross-examination and the workman did not take advantage by cross-examining the said witnesses. These submissions of Mr. Upadhye pitted against the submissions of Mr. Barde, ought to have been considered by the Industrial Court. I find from the impugned judgment that the Industrial Court has culled out two observations of the Labour Court and based on the same, has concluded that sufficient opportunity was given to the workman. I find that the fact situation, as is recorded herein above, has not been considered at all by the Industrial Court.

16. From paragraph 10 of the impugned judgment, the Industrial Court has observed that it has perused the documents, findings of the Enquiry Officer and the evidence recorded in the enquiry. It has noted that the Enquiry Officer has held on page 17 of his report that the workman was guilty of the charges levelled upon him. In my view, when the domestic enquiry was set aside by the Labour Court, the Industrial Court was required to go into the findings of the Enquiry Officer before concluding that the judgment on the preliminary point was unsustainable and perverse. By concluding that the Enquiry Officer has held that the charges are proved and therefore, the misconduct is proved, indicates a casual approach of the Industrial Court while setting aside the judgment of the

Labour Court.

17. This Court in the matter of Maharashtra State Road Transport Corporation v/s Abdul Usman Meboob Shaikh, 2000(3) All MR 283, has considered a similar controversy and has held in paragraph No. 3 as follows:-

"3. The present Writ Petition has been filed by the petitioner Corporation. It is pertinent to mention that the respondent has accepted the order passed by the Court below. The main contention on behalf of the Petitioner is that the Industrial Court has mechanically decided the revision application without independently assessing each issue which was under challenge before it. According to the Ld. Advocate for the petitioner the Industrial Court has merely said that prima facie it does not find any infirmity in the finding recorded by the Labour Court and therefore it refused to interfere. It is true that the Industrial Court was exercising revisional jurisdiction, however, it has, in the present case, not examined the diverse contentions raised on behalf of the parties. It is seen from the impugned judgment that the Tribunal has not considered the various points raised on behalf of the petitioner, on the other hand it has merely recorded its approval to the finding reached by the Labour Court generally. This is surely not a satisfactory way of deciding the revision application by the Industrial Court. What is expected of the Industrial Court, even while exercising its Revisional Jurisdiction, is to record the rival contentions and adjudicate the same on merits by recording a clear finding with regard to each contention raised by the parties, in my view, the Industrial Court has not properly exercised its jurisdiction, for having failed to adjudicate the rival contentions on merits in detail. This Court, therefore, has no option but to remand the matter to the Industrial Court to examine the same in accordance with law. The other course open for this Court was to examine the correctness of the decision of the Labour Court in this writ petition as prayed for by the petitioner, but in the interest of justice it would be appropriate that the Industrial Court decides the rival contentions in the first instance. This course would also benefit the High Court with a reasoned order of the Industrial Court. In the circumstances, I am disposed to remand and restore both the Revision Application Nos. 14 and 16 of 1996 on the file of the Industrial Court, Solapur for deciding the same in accordance with law. Needless to mention that services of the respondent have been terminated in February, 1990 and since then he is out of service. It would, therefore, be appropriate that the Industrial Court decides both the revision applications within three months from the date of receipt of this order. Parties are directed to appear before the Industrial Court, Solapur on 26.06.2000. It would be open to the respondents to make an application seeking appropriate relief during the pendency of the proceedings before the Industrial Court, which, I hope and trust would be decided by the Industrial Court in accordance with law. Both the parties have assured this Court that they will not unnecessarily delay the proceedings but fully cooperate the Industrial Court in deciding the matter within the stipulated period as aforesaid. Parties to act on copy of minutes of order duly authenticated by the Sheristedar of this Court."

18. In the light of the above, I do not find that the impugned judgment and order reflects proper application of mind by the Industrial Court, Ahmednagar. It could not have branded the judgment of the Labour Court as being perverse and unsustainable, in a casual manner. It is in the light of the above that the impugned judgment and order of the Industrial Court dated 21.08.2013 is being quashed and set aside.

19. It needs mention that the judgment of the Industrial Court is being set aside for the second time. By order dated 07.05.2013 delivered in Writ Petition No. 10590/2012, this Court had set aside the judgment of the Industrial Court and remanded both the Revision Petitions for a fresh decision. I do not find that the purpose for which this Court had remanded the revision petitions to the Industrial Court for a fresh decision, has been served.

20. It is in this backdrop that I make it clear that the Industrial Court shall reconsider Revision ULP Nos. 87/2007 and 01/2008 afresh. In doing so, the learned Industrial Court shall consider the fact situation arising from the entire enquiry proceedings while dealing with the challenge of the Management that the findings of the Labour Court on the preliminary point dated 19.10.2000 and the final judgment dated 22.11.2007 are perverse and unsustainable.

21. Needless to state, in the event the said order dated 19.10.2000 is set aside thereby restoring the domestic enquiry conducted by the Management, the issue of proportionality would then be looked into by the Industrial Court.

22. In the event, the said judgment dated 19.10.2000 is sustained by the Industrial Court, then the judgment dated 22.11.2007 delivered by the Labour Court based on a de-novo enquiry can be scrutinized by the Industrial Court in the light of the revision petitions filed by both sides on its own merits.

23. As such, this Writ Petition is partly allowed. The judgment and order dated 21.08.2013 delivered by the Industrial Court is quashed and set aside. Revision ULP Nos. 87/2007 and 01/2008 are remitted back to the Industrial Court in the light of the above directions for a fresh decision.

24. Needless to state, the observations made by this Court in this judgment are restrictionary/ restrictive in relation to the challenge posed by the workman in this petition as against the impugned judgment of the Industrial Court. As such, the Industrial Court shall not be influenced by any of these observations while deciding both the revision petitions afresh.

25. At this juncture, both learned Advocates have fairly stated that they would prefer to appear before the Industrial Court, Ahmednagar on 13.07.2015 so as to enable the Industrial Court to proceed with the matter expeditiously and fresh notices need not be issued to the litigating sides.

26. In the light of the said request made by both sides, the Petitioner/ workman and the Respondent/ Management shall appear before the Industrial Court, Ahmednagar on 13.07.2015. It is assured that both the sides would cooperate

the Industrial Court for the expeditious disposal of both the revision petitions.

27. Rule is, accordingly, made partly absolute.