

(2002) 09 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition No. 1887 of 1998

Sanjiv Kumar Mahapatra

APPELLANT

Vs

A.L. Alaspurkar and Another

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 44

Citation : (2003) 1 ALLMR 534 : (2003) 3 BomCR 249 : (2003) 96 FLR 870

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Bhavesh Parmar, instructed by Colin Gonsalves, for the Appellant;
Kuldeep Singh, instructed by R.V. Paranjape, for the Respondent

Judgement

R.J. Kochar, J.—Originally the petition was filed by the petitioner who was alive at that time. He was aggrieved by the judgment and order dated 29-7-1997 passed by the Industrial Court in the Revision Application No. 5/96 and 24/96 filed by both the parties i.e. the petitioner driver and the respondent company, the employer, against the order of the Labour Court dated 22-12-1995 in the Complaint U.L.P. No. 133/89 filed by the petitioner against the respondent-company challenging the order of termination dated 7-4-1989. The petitioner had filed the said complaint u/s 28 read with section 30 and Items 1(a), (d), (f) and (g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Labour Court had granted reinstatement with 50% of backwages. Both the parties were not satisfied with the said judgment and, therefore, they preferred revision application as aforesaid u/s 44 of the M.R.T.U. & P.U.L.P. Act, 1971.

2. The facts in the present case are in a very narrow compass. The petitioner was employed by the respondent company as a driver by letter of appointment dated 21-2-1986. He was required to drive the official car of the company provided to its Director (Technical). It appears that he was also attached with the family of the said Director and was also required to do the domestic duties as

and when required by the family members. It appears that the relationship between the Director and his family vis a vis the petitioner driver were cordial barring the last incident which became the cause for his termination from employment. Though the petitioner has averred another small incident at the house of the Director with Director's wife there is no material or evidence on record to prove or disprove the said incident. The main cause of termination appears to be that while collecting his wages from Shri Gautam Dutta, the Accountant of the Company, the petitioner uttered the following words:

"AGAR SAB KO GAREB KO SATANAKA HAI TO MUGE TIME NAHE LAGEGA BADLA LENA KO DO MINUTE LAGTA HAI GADI KO SIDE MAR KE MIA BIVI KO UDANE KO AAP KO JO ACCHA LAGTA HAI KARO".

It appears that he was not in a normal mood but was in a temperament of taking some kind of revenge against the Director himself and his family members. It further appears that the Accountant Gautam Dutta informed Shri Guha what actually had transpired. It further appears that Shri Guha told Shri Gautam Dutta that he would think over the matter and take decision, it further appears that after giving serious thought to the incident the services of the petitioner were terminated by order dated 5-4-1989 in terms of the letter of appointment and also in terms of the standing orders governing the employment of the petitioner, who was offered one month's wages in lieu of notice and he was also advised to collect from the Accounts Department his legal dues. The tenor of the termination letter was discharge simplicitor and not punitive. Though however it was mentioned in the termination letter that he was terminated with immediate effect from the reasons recorded separately. It appears that by a letter dated 12-4-1989 the petitioner protested against the said order of termination. He also requested the company to furnish the reasons separately recorded by the company. In reply to the said letter the respondent company sent a letter dated 17-4-1989 giving the break-up of the dues as requested by the petitioner and also a copy of the reasons which was separately recorded by the company was forwarded. In the statement of reasons for termination of the petitioner the incident offer the demand of an increment was mentioned and it was also recorded that the language or the words which he had used to Shri Gautam Dutta in respect of Mr. and Mrs. Guha, the Director and his wife. On receipt of the said letter the petitioner again replied by letter dated 19-4-1989 denying the contents of the statement of the reasons and protested that the entire story was manipulated and concocted and that it was an afterthought and repeated and reiterated the statements made by him in his letter dated 4-4-1989. Since the respondent company did not withdraw the order of termination and did not accede to the request of the petitioner, the complaint of unfair labour practice was filed by him before the Labour Court challenging the order of termination as an unfair labour practice as aforesaid and demanding reinstatement with full backwages and continuity of service. According to him, it was an act of victimisation and mala fide exercise of employer's powers. He had also alleged undue haste in taking the decision of termination as the company had not issued

any charge-sheet and had not held a domestic enquiry before passing the aforesaid order of termination which according to the petitioner was a punitive order for the alleged act of misconduct. The petitioner alleged that it was an illegal order of dismissal for the alleged act of misconduct without holding a domestic enquiry and in violation of the principles of natural justice. He reiterated that it was not an order of simple discharge as alleged by the respondent company.

3. The respondent company contested the complaint by filing its reinstatement denying the charge of unfair labour practice and justifying its action of discharge simplicitor being legal and proper under the terms of the appointment order and also under the standing orders applicable to the establishment including the petitioner as its employee. It appears from the record that the respondent company stepped in the witness box first to lead the evidence in order to justify the action taken against the petitioner. The respondent company examined Shri Gautam Dutta, Accountant to whom the petitioner had uttered the threatening language against the Director and his wife of the respondent company. Shri Dutta repeated the language used by the petitioner. Shri Dutta sworn on oath that the petitioner had uttered that "if the Director was harassing the poor employee like petitioner in that case it will not take any time for him to take revenge and that it will take only two minutes to dash the car by a side and both husband and wife can be killed." He further added that let them do whatever they like to do. Shri Dutta stated that after uttering that language he had walked away. He has also sworn on oath what transpired between himself and the Director to whom he had conveyed what had happened in his cabin where the petitioner had used the said threatening language. Shri Dutta was thoroughly cross-examined. From the cross-examination running into more than 16 pages it appears that the said witness withstood the exhaustive and searching cross-examination and nothing more appears to have elucidated in favour of the petitioner. It appears that the respondent company examined the said witness to justify its action of simply discharge to prove the reasons which were separately recorded and which were communicated to the petitioner on his demand. Thereafter the petitioner adduced his evidence in rebuttal. He was also cross-examined at length. The learned Judge has noted the demeanor of the petitioner to the effect that he was not answering properly inspite of repeated instructions given to him. It appears that after termination from the employment of the respondent company the petitioner was driving a taxi and he got a batch for driving taxi. He however denied that he was earning a sum of Rs. 5000/- p.m. by driving the taxi. He ended his answer by saying that he used to get the work once or twice in a week and sometimes he got nothing.

4. The learned Labour Judge on the basis of the pleadings framed points for determination and answered the same on the basis of the evidence against the respondent company. The Labour Court held that the petitioner had proved that the respondent had engaged in an unfair labour practice under Item 1(f) and (g) of Schedule IV of the Act. The Labour Court also held that the respondent

company failed to prove that it had lost confidence in the petitioner. The Labour Court finally held that the order of termination amounted to an unfair labour practice and that the petitioner was entitled to get reinstatement with 50% backwages and other benefits.

5. The petitioner was aggrieved by the said order of the Labour Court which had denied him 50% of backwages and therefore, he filed a revision application before the Industrial Court against the said order to the extent of denial of 50% backwages. The respondent company was also aggrieved by the said order directing it to reinstate the petitioner with 50% backwages and therefore, it also filed a revision application before the Industrial Court.

6. The learned Member of the Industrial Court in a fairly detailed and reasoned order accepted the findings of the Labour Court that the alleged incident narrated by Shri Gautam Dutta, the companies witness, had taken place. The Industrial Court however did not agree with the findings of the Labour Court that there was no case of loss of confidence in the petitioner on the basis of the aforesaid incident. The Industrial Court has relied on the judgments of the Supreme Court and our High Court. The Industrial Court allowed the revision application filed by the respondent company and dismissed the revision application filed by the petitioner.

7. The petitioner had challenged the aforesaid order of the Industrial Court by filing the present petition. Meanwhile unfortunately the petitioner expired on 31-5-1999. It appears that the legal heirs of the petitioner have been brought on record in accordance with law. The present petition is being contested on behalf of the deceased petitioner by his legal heirs and representatives. Shri Parmar the learned Advocate appearing for the legal heirs of the petitioner submits that the order of the Labour Court was not just and proper when it had recorded the fact that the alleged incident had taken place. According to Shri Parmar the Labour Court had not properly appreciated and analysed the evidence. Shri Parmar further submits that there was no question of loss of confidence in the petitioner who was only a driver and who did not hold any post of confidence. According to the learned Advocate there was no sufficient evidence and material on behalf of the respondent company to justify the action of discharge simplicitor and to prove the alleged reasons allegedly recorded by the respondent company. Shri Parmar submitted that since the order of discharge was punitive and since it was not preceded by a lawful domestic enquiry the order of punishment by way of discharge simplicitor should be struck down as illegal, improper and as an unfair labour practice. Shri Parmar further submitted that the action of the respondent company in removing the petitioner forthwith amounted to an unfair labour practice as it was with undue haste without giving any opportunity of hearing to him. Shri Parmar further submitted that except the testimony of one witness Shri Dutta there was no corroboration to the said evidence by any other employees who were present in the company at that time. Shri Parmar further submitted that by denial of 50% backwages the petitioner was sufficiently punished by the

Labour Court. He therefore urged that the order of reinstatement with 50% backwages ought not to have been interfered with by the Industrial Court. This submission according to him is without prejudice to his contention that his client is entitled to get 100% backwages as no misconduct was proved against the petitioner and, therefore, there was no case of loss of confidence in the petitioner. According to Shri Parmar the Industrial Court has committed an error of law in interfering with the order of the Labour Court by holding that the post of the driver was a post of confidence and that the proved incident was enough for the respondent company to have lost confidence. Shri Parmar finally submitted that since the deceased petitioner is no more alive the respondent company may be directed to Award full wages till the date of his death so that his family would be helped. Shri Parmar pointed out that the deceased petitioner is survived by his old mother, his widow and two children, who were of minor age. Shri Parmar also pointed out that there was no source of income for the surviving family of the deceased petitioner.

8. Shri Kuldeep Singh the learned Advocate appearing for the respondent company at the outset showed his fairness and good gesture by disclosing his instructions that the respondent company had offered as advised him to make a statement that his clients would be prepared to pay 50% backwages in full and final settlement of the whole claim in view of the fact that the petitioner was no more alive and, therefore, it wanted to help the family of the deceased petitioner. Shri Singh further submitted that since the petitioner was not alive he will not like to make any submissions against the deceased person. On the point of this offer Shri Parmar expressed his inability to say anything as he had no instructions to make any commitment.

9. Shri Kuldeep Singh the learned Advocate for the petitioner has submitted that as far as the incident is concerned there is concurrent finding of facts by both the courts. Both the learned Judges have held on the basis of evidence that the incident of use of threatening language was held to be proved and, therefore, that finding cannot be interfered with or upset under the extraordinary jurisdiction of Article 226 of the Constitution of India. Shri Singh further submitted that there is no question of adequacy or sufficiency of the evidence to prove the facts which made the respondent company to lose its confidence in the petitioner. He further submitted that the incident of use of threatening language by a driver that it was very easy for him to dash the car while driving and to kill both the husband and wife was more of the terror and fright. This incident according to Shri Singh had shaken the hearts of the Director as well as his family. Shri Singh further submitted that no one could repose any confidence in such a driver who had threatened to finish the family of the Director if he was not given increment and if he was harassed by denying increment. Shri Singh has supported the judgment of the Industrial Court. According to him, the order of discharge simplicitor was fully justified and the same was in accordance with the appointment order and also in accordance with the standing orders. The company had recorded reasons separately and the same were communicated

forthwith to the petitioner on his demand. According to Shri Singh the order of discharge on the ground of loss of confidence was fully justified by the company before the Labour Court, though it had not held a domestic enquiry before terminating the petitioner from employment.

10. I entirely agree with the submissions of Shri Singh that both the courts have recorded the concurrent findings of facts in respect of the incident which had taken place and which had badly shaken the family of the Director Shri Guha. The aforesaid incident having been proved beyond any doubt I fail to understand how the employer can continue to repose confidence in such a driver. In my opinion the post of a driver is of equal importance which requires full confidence of the employer for whom the driver works. In the present case the Director and his family had full confidence and faith in the petitioner who was fully attached with the family for a period of about two years. The Director had wholly trusted the petitioner as a driver. He was however rightly shaken in his heart when he heard the language used by the driver that it would take two minute to kill both the husband and wife by merely dashing the car some where in the traffic. It might be his emotional outburst but such emotional outburst is also enough to shake or lose the confidence in the driver in whose hands the safety of the lives of the persons who sit in the car depends. It is possible that the petitioner might not have acted in accordance with the said emotional, momentary outburst but in such matters no risk can be taken. The Industrial Court has rightly placed reliance on the observations of the Division Bench of our High Court in the case of Siddhanath Krishnaji Kadam v. Dadaji Dhackji & Co. Ltd. and another, reported in 1977 L.I.C. 602. The following paragraph summarise the entire law:

"The employer may have right to discharge his employee under the contract or rules. But existence of good reason based on objective facts is indispensable for discharge. There can be myriad reasons for such discharge including the act or omission amounting to misconduct. The employer is not bound to hold enquiry and visit the employee with penal action, even if such reason happens to be misconduct of the employee. It was only the absence of such reason, and not mere failure to hold enquiry, that would render such discharge mala fides or an act in colourable exercise of power raising an inference of victimisation."

It has also held that in such a case the employer was not bound to hold any enquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The Division Bench has further observed that it is only the absence of such reason and not mere failure to hold enquiry that would render such discharge mala fide or an act in colourable exercise of power raising an inference of victimisation. In the present case the incident has been held to be proved. The reason of loss of confidence has been clearly proved. Merely because the discharge order did not precede an enquiry it cannot be held to be illegal. The respondent company has proved the incident and thereby has absolved itself from the charge of victimisation or unfair labour practice. The respondent company has clearly stated that it could not depose any trust and

confidence in such a driver who was carrying malicious thoughts in his mind and he could perhaps reduce such thoughts in reality if his evil mind prevails. I, therefore, do not find any fault with the respondents company for having passed an order of discharge simplicitor on the ground of loss of confidence in the petitioner as a driver of its Director. In such matters no risk of any nature can be taken and in my opinion the respondents have rightly not taken any risk. Poison can never be tasted and the respondent company rightly did not want to taste the poison in the mind of the driver. It is not that the post of cashier or some such post alone is the post of confidence. A cashier might commit a fraud and might misappropriate money from the coffers of the company but he will not take away the life of the people. I am therefore, of the opinion that the post of driver is a post of more confidence than the post of a cashier. The life of the passengers sitting in the vehicle is in the hands of the driver who is holding the wheel. The Division Bench has further observed in the judgment of Siddhanath Kadam (supra) as under:

"It is difficult to trace any basis or warrant for assumption that "loss of confidence" plea can be confined only to the employees holding confidential posts and not to others. Every contract of employment implies trust and confidence as its indispensable ingredients."

I am also in respectful agreement with the observations of the Kerala High Court in the judgment of Boota Pure Drug Co. (India) Ltd. Vs. K.C. Bastian and Another, , which reads as under:

"The post of a driver is different from the post of a worker in a factory or some other employee who it may be said is ordinarily remotely controlled by the employer. Such an employee in the factory does not come into daily contact with the employer and his every action would not have some repercussion on the employer, as in the case of manager sitting in a car driven by a driver. We must also say that an employee may bona fide lose confidence on a driver for reasons or grounds which another may not consider reasonable or just. In such cases the subjective satisfaction if honestly arrived at by the employer may be sufficient for an employer to say that he has lost confidence in his driver."

11. In the aforesaid circumstances I do not find any illegality, infirmity or impropriety in the impugned judgment and order of the Industrial Court in dismissing the revision application of the petitioner and in not granting him any relief and in allowing the revision application filed by the respondent company. The petitioner was not at all entitled to get any relief from the Labour Court which had wrongfully allowed the complaint after holding that the incident which was the foundation of the loss of confidence was proved. In my opinion nothing more was required or necessary for the respondent company to have proved how it had lost confidence in such a driver, who had given threat of killing the husband and wife by dashing the car in an accident. No one can repose confidence in such a driver who is employed to carry the members of the family including children. There is absolutely no substance and merits in the petition

and the same deserves to be dismissed. The petition is dismissed with no order as to costs. Rule is discharged.

12. Shri Kuldeep Singh has with stood his initial offer inspite of the fact that the respondent company has succeeded in the present petition. The respondent company has offered to pay 50% wages computed by the Labour Court. He has quantified the amount to the tune of Rs. 65000/-. Shri Singh has offered to pay the said amount to the widow of the deceased petitioner within four weeks from today. The widow would be at liberty to accept the same in full and final settlement of the dispute. I do feel that the offer of Rs. 65,000/- for a service of 2 years is far more than fair. The respondent company really wants to help the family of their deceased employee out of grace and human consideration.