
(2015) 06 BOM CK 0189

In the Bombay High Court

Case No : Writ Petition Nos. 817 of 2014 and 1880 of 2015

Satish

APPELLANT

Vs

Raymond Limited and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0189

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

Bench : Single Bench

Advocate : Talhar Ajay G., for the Appellant; Patil Sandesh R., Advocates for the Respondent

Final Decision : Disposed off

Judgement

R.V. Ghuge, J—The learned Advocates have no objection if this Court hears these matters.

2. Rule.

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

4. The first petition is filed by the workman against the Respondent/Management challenging the judgment of the Industrial Court dated 18.12.2013 delivered in Revision (ULP) Nos. 43 and 49 of 2013.

5. The second petition is filed by the Management against the workman challenging the same judgment delivered by the Industrial Court along with the judgment of the Labour Court dated 29.06.2013 in Complaint (ULP) No. 11/2008.

6. For the sake of brevity, the parties will be referred to as the workman and the management in this judgment.

7. I have considered the various factors canvassed by the workman and the Management. However, the manner in which the Labour Court has delivered the judgment dated 29.06.2013 is the core issue since it is in opposition to the

crystallized position in law, which has been considered and followed by this Court in the matter of MSRTC, Beed v/s. Syed Saheblal Syed Nijam reported at 2014(3) CLR 332 (2014 (7) Bom. C.R. 135).

8. The Labour Court was considering Complaint (ULP) No. 11/2008 filed by the workman challenging the order dated 24.03.2008 by which the workman was ordered to be discharged from service for proved misconduct after conducting the domestic enquiry in accordance with the Model Standing Orders. It is set out in the order of discharge dated 24.03.2008 that though the disciplinary authority was convinced that the punishment of dismissal from service deserved to be awarded to the workman, the punishment was converted into an order of discharge so as to entitle the workman to retiral benefits.

9. The Labour Court framed the issues in the said complaint which are as follows:-

10. It is not in dispute that issue No. 2 was decided by the order below Exhibit O/5 dated 11.02.2011. However, Issue No. 3, which was answered in the affirmative and which, therefore, led to the setting aside of enquiry, was decided while delivering the final judgment dated 29.06.2013. Relevant portion set out in paragraph 14 of the judgment is reproduced herein below:-

"Accordingly, I found substance in the contentions of the complainant that though he has brought on record material evidence in cross-examination of the witnesses of the Management, however, said fact is not taken into consideration by the Enquiry Officer and Enquiry Officer acted upon the chief examination of the management witnesses. In this way, though there is proof and cross-examination about the defect with the said machine, however the enquiry officer proceeded to hold that there is no proof or cross-examination about the actual defect with the machine. Hence, it can safely be inferred that this finding of enquiry officer is based on no evidence and hence perverse one."

11. The learned Advocates for the respective sides agree that the findings of the Enquiry Officer were branded as perverse in the above reproduced portion of paragraph 14 of the final judgment, by which the complaint was partly allowed and the enquiry stood watered down.

12. The workman as well as the Management had preferred Revision (ULP) Nos. 43/2013 and 49/2013, respectively. By the impugned judgment dated 18.12.2013, both the revision petitions were dismissed by the Industrial Court.

13. Learned Advocate for the Management points out that the right to conduct a denovo enquiry, if the enquiry conducted by the Management was set aside by the Labour Court for any reason whatsoever, has been reserved in the Written Statement in the light of the judgment of the Apex Court (five judges) in the matter of KSRTC v/s. Lakshmiddevamma reported at 2001 (2) CLR 640 : AIR 2001 SCW 1981.

14. I find that the procedure followed by the Labour Court in answering Issue No.

3 reproduced above, in the same judgment by which the complaint was partly allowed, without considering the ratio laid down in a catena of judgments delivered by the Apex Court as well as this Court, renders the said judgment unsustainable.

15. This Court has considered the judgments delivered by the Apex Court and this Court, in the judgment delivered in MSRTC, Beed (supra). It is no longer res-integra that once the findings of the Enquiry Officer are branded as perverse, the same are required to be disregarded and in effect the enquiry is rendered unsustainable and set aside. When the enquiry stands set aside, the Employer is required to be given an opportunity to conduct a denovo enquiry to prove the charges before the Labour Court, provided such a right is reserved in the Written Statement in the light of the KSRTC judgment (supra).

16. The error committed by the Labour Court in paragraph 14 goes to the root of the matter since it's judgment is rendered unsustainable. This error committed should have been noticed by the Industrial Court as the Management has specifically raised the said ground in it's grounds of objection. Failure on the part of the Industrial Court to consider the said error has led to the passing of the impugned judgment.

17. In the light of the above, I am convinced that the impugned judgments of the Labour Court and the Industrial Court are rendered unsustainable. Nevertheless, the procedure, as laid down in law, needs to be followed by permitting the Management to conduct a denovo enquiry in the light of the right reserved in the Written Statement.

18. Mr. Talhar, learned Advocate for the workman, has strenuously contended that once the enquiry conducted by the Management is set aside for any reason whatsoever, inclusive of the reason of branding the Enquiry Officer's findings as perverse, it has to be construed that the workman has been terminated from employment without the charges being proved. He, therefore, submits that the workman deserves to be granted subsistence allowance or last drawn wages till the complaint is decided by the Labour Court.

19. Mr. Patil, learned Advocate for the Management, has opposed the said request contending that there is no law which mandates payment of subsistence allowance in such a situation.

20. This Court, in the case of Mumbai Cricket Association Vs. Pramod G. Shinde, (2011) 7 ALLMR 678 : (2011) 3 BomCR 52 : (2011) 113 BOMLR 331 : (2011) 129 FLR 179 : (2012) 1 LLJ 398 : (2011) LLR 386 : (2011) 5 MhLj 36 , has concluded the said controversy. This Court has considered the pronouncements of the Apex Court while dealing with the said case and has concluded that the workman in such circumstances would not be entitled for subsistence allowance or last drawn wages. The Employer needs to conduct a denovo enquiry and if the charges are not proved, the workman would be entitled to the benefit of reinstatement and consequential reliefs. It is in the light of the observations of

this Court in Mumbai Cricket Association judgment (supra), that I cannot accept the contention put forth by the Workman.

21. Paragraph Nos. 23, 24 and 25 of the judgment of this Court in the Mumbai Cricket Association case (supra), read as under:-

"23. I am unable to appreciate as to how this provision can be of any assistance to the respondent-employee in the present case. A departmental/domestic enquiry was already held against him by the petitioner employer at which it was concluded that the charges are proved. The Enquiry Officer, after such a conclusion was recorded by him in his report, forwarded it to the employer and the employer acting on the same has dismissed the respondent from service with effect from 25th November 2002. The employee sought a reference from the Appropriate Government and that is how the matter of his dismissal is referred to the Labour Court and that is how the Court is seized of the matter. The Court cannot be equated with an employer as it is only performing a judicial function of giving an opportunity to the petitioner to adduce evidence to prove charges of misconduct before it, and that is because the law postulates such an opportunity. The law does not equate this situation with suspension by the employer pending domestic enquiry or investigation into any complaints. The Supreme Court decision cannot be extended by analogy to such a situation as that would produce startling consequences. In all such matters merely because the Court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, it will be obliged to direct the employer to pay subsistence allowance to the employee. That would mean that the order of dismissal already passed against the employee is set aside and substituted by his suspension. That would be creating a situation wherein the order of the Court permitting de novo enquiry means an order of suspension of the employee enabling him to claim subsistence allowance. If the charges of misconduct are grave and serious and the employee is already dismissed, then, paying him any subsistence allowance or sustenance allowance which may in a given case be 75% or more of his last drawn wages, would mean that he is allowed to resume work although the employer has already dismissed him. Ultimately, if the dismissal is justified by the employer, then, an order will have to be made directing the employee to bring back the monies already paid. Apart therefrom, allowing him to resume work or in lieu thereof pay him 75% of wages would be putting a premium on his misconduct and in a given case, fraud. That will be in contravention of the object and purpose sought to be achieved by industrial adjudication.

24. In AIR 1964 Supreme Court 737 (M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd. V. The Labour Appellate Tribunal of India & Anr) as far as industrial adjudication is concerned, the Supreme Court holds thus:

"19. Then Mr. Pathak was driven to contend that the ground of social justice given by the Labour Appellate Tribunal in support of its award is really not sound in law, and he referred us to the observations made by this Court on some occasions that the considerations of social justice were "not only irrelevant but

untenable" vide J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, AIR 1956 SC 231 : (1956) 1 LLJ 227 : (1955) 2 SCR 1315 and Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur, AIR 1955 SC 170 : (1955) 1 LLJ 1 : (1955) 1 SCR 991 In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of social justice : vide Crown Aluminium Works Vs. Their Workmen, AIR 1958 SC 30 : (1958) 1 LLJ 1 : (1958) 1 SCR 651 and The State of Mysore Vs. The Workers of Gold Mines, AIR 1958 SC 923 : (1958) 2 LLJ 479 : (1959) 1 SCR 895 . Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fairplay and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable provision for leave in respect of the workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act. We are, therefore, satisfied that there is no substance in the grievance made by Mr. Pathak that the labour Appellate Tribunal should not have granted the demand of the respondents for leave on grounds of fair play and social justice."

25. Therefore, on spacious grounds of equity and justice, the Labour Court cannot be empowered to grant any subsistence allowance or financial assistance of the nature claimed by the respondent in this case. The request made by the respondent could not have been granted and the order of the Labour Court in that behalf is totally unsustainable in law."

22. In the light of the above, both these petitions are disposed of. The impugned judgment of the Labour Court dated 29.06.2013 delivered in Complaint (ULP) No. 11/2008 and the judgment of the Industrial Court dated 18.12.2013 delivered in Revision (ULP) Nos. 43 and 49 of 2013, are quashed and set aside.

23. Since I am remanding Complaint (ULP) No. 11/2008 to the Labour Court, Jalgaon to enable the Management to conduct a denovo enquiry in the light of the law as is laid down and considered by this Court in MSRTC, Beed judgment (supra), both the Revision Petition Nos. 43 and 49 of 2013 do not survive.

24. It is made clear that the Labour Court shall decide the complaint on it's own merits and in accordance with law as expeditiously as possible. Both the litigating sides have assured this Court that they would cooperate with the Labour Court in deciding the said complaint expeditiously and would refrain from seeking adjournments on unreasonable or frivolous grounds.

25. Rule is, therefore, made partly absolute in the above terms.

26. At this juncture, it is jointly submitted by the learned Advocates that the possibility of settling the dispute between the parties is being explored. As such, in the event the parties decide to settle the matter amongst themselves, this judgment shall not preclude them from doing so.