
(2015) 01 BOM CK 0203
In the Bombay High Court
Case No : Writ Petition No. 704 of 2014

Sayaji and Others

APPELLANT

Vs

Bajaj Auto Limited

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 31(2)

Citation : (2015) 146 FLR 629

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : Nikhil S. Tekale, for the Appellant; S.V. Dankh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.W. Sambre, J.—Present petitioners were employees of the respondent.

2. The petitioners preferred Complaint (ULP) No. 140 of 1999 before the Industrial Court, Aurangabad praying therein the status of permanency with other ancillary reliefs.

3. There were other similar complaints before the said Court and all the complaints were grouped together and final verdict was delivered by the Member, Industrial Court on 21/08/2004.. So far as the complaint preferred by present petitioners is concerned i.e. Complaint (ULP) No. 140 of 1999, same was dismissed, as the petitioners have not adduced any evidence in support of their claim.

4. The dismissal order of the petitioners' complaint was passed on 21/08/2004 and present petitioners subsequent thereto, applied for certified copy of the said judgment and after receipt of the same, filed Misc. Complaint (ULP) No. 53 OF 2004 styling the same to be under the provisions of Section 31(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, 1971 (hereinafter shall referred to as "MRTU and PULP Act"). According to present petitioners, they have prayed that the delay caused in preferring the said application be condoned and complaint of the applicants registered as Complaint (ULP) No. 140 of 1999 to the extent of the petitioners may be restored.

5. The said application came to be rejected by learned Member, Industrial Court by judgment dated 19/01/2011. As such, present writ petition.

6. Mr. Tekale, learned Counsel for the petitioners, while questioning the impugned order dated 19/01/2011, has invited my attention to the first order passed by the Member, Industrial Court. According to him, the Industrial Court has granted relief of permanency and other ancillary reliefs to the employees, who are similarly placed to that of like petitioners. According to him, the complaint of the petitioners was dismissed for want of prosecution, as the petitioners have failed to adduce any evidence in support thereof. He further urged that Advocate who was representing the interest of the petitioners was selected in the State Judicial Service some time in 2001. According to the petitioners, subsequent thereto, as their services were terminated, they have not engaged Counsel and therefore, their matter remained unrepresented. According to them, the issue of delay in moving application for review was answered in favour of the petitioners, however, on merits, the application is rejected, which according to the petitioners, is not tenable.

7. While countering the above referred submissions, Mr. Dankh, learned Counsel for the respondent-management has invited my attention to the fact that, petitioners herein have filed application only to the extent of claiming status of permanency and other ancillary reliefs. He submits that the petitioners in their cross examination has admitted that they were terminated from the services some time in 1999 and have not challenged the said termination till date. According to him, law on the said issue is well settled that while granting relief of continuity of service, the Court has rightly taken into account the aspect of termination of services and no challenge raised to the same. According to him, the application was rightly rejected by the Industrial Court.

8. Having perused the order impugned, it is noticed that learned Industrial Court has taken note of the fact that during cross examination of the petitioners, they have admitted that they were not aware that their complaint was dismissed on 21/08/2004. It is also admitted by the petitioners that their services were terminated in January, 1999 and such termination are not challenged by filing complaint before the Labour Court. The petitioners attended the Court proceedings upto 2000 and subsequent thereto, claimed that they have not attended the proceedings in question.

9. Once the petitioners have not challenged the termination by initiating appropriate proceedings before the Labour Court thereof, in my opinion, the petitioners will not be entitled to get any relief in the Complaint (ULP) No. 140 of

1999. In the Complaint (ULP) No. 140 of 1999, so far as the conduct of the complainant is concerned, the petitioners were not diligent in pursuing their remedy more particularly having been aware about the fact that in 1999 their services were terminated. Unless the termination of the petitioners is questioned by them, there is no point even in allowing the present petition, as the petitioners have no more remained in service. Appropriate support was rightly drawn by learned Counsel for the respondent in the matter of Sudarshan Steel Manufacturing Co. Vs. Mumbai Labour Union and Another, (2004) 102 FLR 191 : (2004) 3 LLJ 704 Bom. Relevant observations made by this Court in paragraph-6 are worth referring to quote.

"6. After considering the aforesaid aspect of the matter, I find no merits in the contention of the learned counsel for the respondent. The dispute between the parties at the time of initiation raised certain issues and prayers sought therein. However, when the said issues and prayers become in fructuous by virtue of the subsequent event, which has happened, the Court was duty bound to take into consideration the same. Once there has been an order of dismissal in respect of various workers, without going into the validity and legality of the said dismissal order and consequently setting aside the same, it was not open for the Court to assume that there was no such dismissal order and proceed to give relief to the respondent union and its members on the basis that there was no valid enquiry. It is now well settled that Court while passing the final order or decree must take into consideration all the relevant facts and material which have arisen during the pendency of the proceedings if it vitally affects the matter or goes to the root of the matter. The Court cannot be oblivious to the circumstances which has transpired during the proceedings which are pending. It is the essential duty of the Court to look into the fact that whether on the events which has happened subsequently the original reliefs sought or the complaints made would still survive or not. I find that this aspect of the matter has not been taken into consideration by the Industrial Court. In the aforesaid circumstances, I find that unless and until the respondent union and/or its members adopt appropriate legal proceedings as permissible in law and challenge the said dismissal orders which are passed against the workers, the order passed by the Industrial Court cannot be sustained and accordingly I set aside the order passed by the learned Industrial Court dated December, 12, 2001 in Complaint (ULP) No. 1660 of 1991. Petition is made absolute accordingly. There shall be no order as to costs."

10. Learned Counsel for the petitioners though has placed reliance upon the judgment of the Supreme Court in the matter of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, AIR 1995 SC 2272 : (1995) 5 JT 296 : (1995) 4 SCALE 438 : (1995) 5 SCC 5 : (1995) 2 SCR 1 Supp so as to demonstrate that the power vests in the Court to condone delay is concerned, in my opinion, the said judgment has hardly any applicability to the facts of the present case, as here Unfair Labour Practice Act provides for limitation.

11. In that view of the matter, no case for interference is made out. The writ

petition stands dismissed.