
(1992) 06 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 1085 of 1986

Shahbhefram Arbeshir Khonyar	Vs	APPELLANT
Asiatic Travel Service and Others		RESPONDENT

Date of Decision : 19-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1992) 65 FLR 1006 : (1992) 3 LLJ 394

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

Bench : Single Bench

Advocate : A.V. Bhukhari, for the Appellant; Pankaj Patel, for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J.—This petition under Article 227 arises from the order passed by the learned Labour Judge, Seventh Labour Court, Bombay on October 30, 1985 in Application (IDA) No. 42 of 1985 filed u/s 33C(2) of the Industrial Disputes Act, 1947.

2. The relevant facts giving rise to the petition are as under:

The petitioner was employed in the office of the respondents No. 1 and 2 (hereinafter referred to as "the respondents") as a Clerk in the year 1976. He was confirmed in that post on 27th December, 1978 on a monthly salary of Rs.325/-. He was granted increase in salary every year and on 1st January, 1984 he was drawing monthly salary of Rs. 900/-. It is his case that the second respondent who is a partner of the first respondent asked him to work on part-time basis at a Beer Bar and Restaurant known as "Nushkil Qusha Beer Bar and Restaurant" from 6.30 p.m. to 12.00 mid-night including Sundays and holidays which offer he accepted but thereafter he realised that to work so was too strenuous for him and, therefore, showed his inability to continue with the part-time work upon which the second respondent got annoyed and terminated his

services with effect from 2nd January, 1984. However, he was not offered his legal dues such as notice pay, retrenchment compensation, gratuity, leave salary, bonus, etc. He, therefore, raised a demand by his Advocate's notice dated 15th December, 1984 demanding Rs. 9,980/- as the amount due and payable to him. On behalf of respondents No. 1 and 2 a reply was issued on December 22, 1984 stating that the services of the petitioner were terminated by way of discharge simpliciter and that he was not entitled to dues as claimed but whatever was due to him was deposited with their legal advisor from whom the petitioner can receive the amount. According to the petitioner, he approached the legal advisor of respondents No. 1 and 2 who declined to pay him anything. The petitioner, therefore, filed an application before the Seventh Labour Court, Bombay u/s 33-C(2) of the Industrial Disputes Act and claimed in all Rs. 6,830/-, being notice pay Rs. 900/-, retrenchment compensation for 3 months Rs. 3, 150/-, leave salary for 60 days Rs. 1,800/-and bonus Rs. 980/-.

3. The claim of the petitioner was resisted by respondents No. 1 and 2 contending that the application u/s 33-C(2) of the Industrial Disputes Act was not maintainable as the petitioner had no existing right for the benefits claimed by him. They also contended that there was considerable delay in filing the application. According to them, the petitioner had worked with them from 1.12.1979 till 31.1.1984 and denied that he was given part-time work at a Beer Bar and Restaurant. Further contention of respondents No. 1 and 2 was that the petitioner was indulging in the acts of indiscipline and therefore, his services were terminated as per Model Standing Orders by way of disciplinary measure. They also raised a contention that the monthly salary of the petitioner was Rs. 760/- and not Rs. 900/-. The claim for leave salary and bonus was also denied by them.

4. Before the learned Labour Judge the petitioner examined himself but on behalf of respondents No. 1 and 2 no oral evidence was adduced. On application of the evidence adduced before him, the learned Labour Judge came to the conclusion by his impugned order that the petitioner was not entitled to claims made by him in an application u/s 33-C(2) of the Industrial Disputes Act and accordingly dismissed the same.

5. Being aggrieved, the petitioner invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

6. Now, the evidence of the petitioner shows that he was in the employment of respondents No. 1 and 2 from February, 1976 as a Clerk in which post he was confirmed in December, 1978. He worked upto 31st January, 1984 and his services were terminated, effective from 2.1.1984. He stated that before termination of his services he was not given notice nor was an enquiry made against him and he was not paid notice pay, salary in lieu of the notice and retrenchment compensation as also bonus amount. He was subjected to cross-examination on behalf of the respondents No. 1 and 2 but no material has been brought out in the cross-examination to discredit the testimony of the petitioner.

On the contrary, in the cross-examination he stated that there was 60 days leave to his credit for which he was not paid any salary and that his monthly salary was Rs. 900/-. Therefore, the evidence adduced by the petitioner leaves no manner of doubt that he proved his case as to the claims made against respondents No. 1 and 2. It is important to note that according to respondents No. 1 and 2 the services of the petitioner were terminated as discharge simpliciter. u/s 2(oo) of the Industrial Disputes Act "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever. That being so, the petitioner was retrenched and admittedly in violation of the provisions of Section 25F of the Industrial Disputes Act. The petitioner, therefore, was entitled to notice pay and retrenchment compensation as claimed by him. He has stated in clear terms in his evidence that there was 60 days-leave to his credit which was not controverted by respondents No. 1 and 2 by adducing any satisfactory evidence and that being so, there is no reason why he should be denied leave salary for 60 days. The petitioner is, therefore, entitled to notice pay of Rs. 900/-, retrenchment compensation of Rs. 3,150/- for 3 1/2 months and Rs. 1,800/- as leave salary for 60 days. He was, however, not entitled to bonus amount of Rs. 980/- which could be paid only under the Payment of Bonus Act. The petitioner was thus entitled to a sum of Rs. 5,850/-. The learned Labour Judge was, therefore, wrong in not granting this claim of the petitioner. His judgment and order suffers from error apparent on the face of the record which will have to be corrected.

7. In this view of the matter, the writ petition succeeds partly. The claim of the petitioner to the extent of Rs. 5,850/- is allowed. The respondents No. 1 and 2 are hereby directed to pay an amount of Rs. 5,850/- to the petitioner on or before 31st July, 1992 failing which they shall be liable to pay interest at the rate of 18 per cent per annum on sum of Rs. 5,850/- from 1st August, 1992.

8. Rule is accordingly made absolute with no order as to costs.