

(2008) 08 BOM CK 0126

In the Bombay High Court

Case No : Letters Patent Appeal No. 104 of 2008 in Writ Petition No. 972 of 1997

Shashikant M. Sable

APPELLANT

Vs

Advani Oerlikon and Shri V.P. Patil

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Citation : (2008) 6 ALLMR 839 : (2009) 4 BomCR 942 : (2008) 119 FLR 537 : (2008) 6 MhLj 833

Hon'ble Judges : Swatanter Kumar, C.J;A.P. Deshpande, J

Bench : Division Bench

Advocate : V.M. Pandse, for the Appellant; Neel Helekar, instructed by Haresh Mehta and Co., for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—The present Appeal is directed against the order passed by the learned Single Judge dated 30th November 2007 wherein while examining Standing Order 25(4) of the Model Standing Order, without deciding the legal controversy, the learned Single Judge took the view that no prejudice had been caused to the Appellant (hereinafter referred to as "the workman") by recording the statement and testimony of the witnesses in English inasmuch as the workman was represented by defence representative who was expected to take care of the interest of the workmen during the enquiry proceedings.

2. This view of the learned Single Judge has been challenged in the present Appeal primarily on the ground that Standing Order 25(4) is mandatory and its non-compliance in any form shall vitiate the departmental enquiry. The provision being mandatory in nature, the principle of substantial compliance and requirement of proof of prejudice as a condition precedent is not applicable to these provisions.

3. Respondent No. 1 Company is engaged in manufacture of electrical and electronic products. The Appellant workman was employed with the Company.

Because of his poor performance and acts of assault, riotous behaviour and misconduct, he was dismissed from service vide order dated 28th August 1990. Prior to the order of dismissal, various warning memos had been served upon the workman and even on 2nd March 1984, he had assaulted one of the fellow workman who had refused to participate in the demonstrations. Three different enquiries were conducted against the workman and he was held guilty of article of charges levelled in the charge sheets dated 13th May 1989 and 10th July 1989 but was held not guilty of charges levelled in the charge sheet dated 23rd August 1989. Vide order dated 28th August 1990, the workman was discharged from service. He filed a Complaint before the Labour Court alleging unfair labour practice by the Company. He also raised an industrial dispute in relation to discharge which was also referred to the Labour Court. Thus, Complaint (ULP) No. 11 of 1990 and Reference (IDA) No. 563 of 1991 proceedings were commenced by the workman. However, the Complaint was dismissed for non-prosecution.

4. During the proceedings, the workman was defended by a representative of his choice. The Labour Court held that the enquiries conducted against the workmen were not fair and proper and it was permitted to lead fresh evidence before the enquiry officer in support of the charges levelled against the workman. The main reason which weighed with the Labour Court was that the enquiries held against the workman were in breach of principles of natural justice; enquiry was not conducted in the language known to the workman i.e. Marathi. On these facts, the Labour Court formed the opinion that prejudice was caused to the workman. This was challenged by the Company by filing Writ Petition No. 972 of 1997 which was decided by the learned Single Judge in favour of the Company and the Court held as under:

10. ...He was given a copy of the enquiry proceedings. He has endorsed the same on each day on which he was present, although, the workman had indicated that he had no understood the contents. The defence representative had requested the enquiry officer to act on the option exercised by the workman and to conduct the enquiry in Marathi. However, it appears from the record that the enquiry officer recorded the statements and depositions of the witnesses in English although the questions were asked and answered in Marathi. One witness did not know Marathi and therefore he was examined and cross examined in English and the deposition was also recorded in English. In my view, when the workman is represented by a defence representative who is well versed in the English language it could not be said that a workman has been prejudiced by recording the enquiry proceedings in English. The defence representative is expected to take care of the interests of the workman he defends at the enquiry. If the enquiry officer does not perform his duty of explaining the contents of the enquiry proceedings which are recorded by him, it is expected of the defence representative to explain the contents of the same to the delinquent workman. In the present case, the workman was present at the domestic enquiry throughout and he was also represented by a defence representative who was

well versed in English who by his conduct had agreed that the proceedings of the enquiry could be conducted in English. There was no work of protest from the defence representative or the workman against the procedure adopted at the enquiry. Therefore, it cannot be said that the workman had been caused any prejudice by recording the statements and the testimony of the witnesses in English.

11. The submission of the learned advocate for the respondent that the very fact that the depositions were recorded in a language now known to the workman would cause prejudice is without merit as in this case, the workman had the assistance of his defence representative while participating in the domestic enquiry. The judgment in the case of K. I. Tripathi (*supra*) and in the case of P.D. Agarwal (*supra*) indicate that before a domestic enquiry is set aside, the workman must plead and prove prejudice. In the present case, there is no dispute that the recording of the enquiry proceedings was done in the English language. However, there is no material on record to indicate that this has caused any prejudice to the workman. Therefore, the submissions of the learned Advocate for the workman cannot be accepted.

As already noticed, the correctness of this finding of the learned Single Judge is challenged in the present Appeal.

4. The sole question that falls for consideration in the present Appeal is as to whether Standing Order 25(4) is absolutely mandatory in its terms or whether the principle of substantial compliance and element of prejudice are relevant considerations while dealing with default to the compliance of this Standing Order. This question is no more *res integra* and stands squarely answered by a Division Bench judgment of this Court in the case of National Organic Chemicals (RCD) Limited and Anr. v. Pandit Ladaku Patil, (Letters Patent Appeal No. 85 of 2008 in Writ Petition No. 1239 of 2008), where the Court held as under:

(a) Compliance to the provisions of standing order 25(4) is essential in as much as the concerned authority to provide an option of language to the workman. If such an option is not given, it may be violation exhibiting prejudice *per se*.

(b) Depending on the facts and circumstances of the given case, the principle of substantial compliance would be applicable to the standing order; and

(c) Again depending on the facts and circumstances of the given case, some element of prejudice may have to be exhibited by the delinquent employee.

5. The Court had examined various judgments of the Supreme Court as well as this Court and had stated the above position of law. The Single Judge bench view in the subject matter of the present Appeal and in the case of Nandini Mehta, Proprietor of Layovak Laboratories v. Amol Kate and Shubhangini Kanade (Smt.) 2003 III CLR 856, were harmoniously construed as there was no patent conflict between the judgments. Applying the same principle to the facts of the present case, it is apparently clear that the workman had opted to be defended by a

representative. He had been given representative of his own choice who defended him in all the proceedings. The defence representative was fully qualified and was aware of the language in which the proceedings were conducted. Furthermore, the cross examination of the witnesses was conducted in English the copy of the enquiry proceedings was given to him and he actually participated in the proceedings without any protest and understood the contents of the proceedings. The questions were asked and answered in Marathi, thereafter they were recorded in English. One witness did not know Marathi and, therefore, he was examined and cross-examined in English. No protest was raised in the proceedings and the representative participated in the proceedings without any protest or demurrer.

6. For these reasons, we see no reason to interfere with the judgment impugned in the present Appeal. Letters Patent Appeal is dismissed leaving the parties to bear their own costs.