
(2016) 08 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 4617 of 2015

Sheshrao Motiram Jadhav

APPELLANT

Vs

Division Controller, MSRTC

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

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

Citation : (2016) 3 CLR 958 : (2017) 152 FLR 960 : (2017) 1 LLJ 253

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Shri P. N. Verma, Advocate, for the Petitioner; Shri V. G. Wankhede, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.(Oral) - Heard.

2. The challenge in the present writ petition is to the order dated 11-2-2015 passed by the Industrial Court in the revision application preferred by the respondents challenging the order passed by the Labour Court granting interim relief in favour of the petitioner. By the impugned order, the revision application has been allowed and the order passed by the Labour Court has been set aside.

3. The facts in brief are that the petitioner was in the employment of the respondents on the post of Conductor. During the course of service, disciplinary proceedings were initiated against the petitioner by issuing charge sheet dated 3-12-2012. The petitioner submitted his reply to the charge sheet. Thereafter the enquiry was held in which the petitioner participated. As per the report of Enquiry Officer, the charges as framed were held to be proved. On 10-6-2014, a show cause notice came to be issued to the petitioner seeking his response as to why he should not be dismissed from service. The petitioner after receiving the show cause notice on 16-6-2014 submitted his reply on 17-6-2014. In the said reply, the petitioner demanded various documents on the basis of which the

enquiry proceedings were held. It was stated that unless these documents were supplied, it would not be possible to effectively submit an explanation to the show cause notice. However, without prejudice to the said stand, the petitioner also gave his response to the show cause notice. The respondents thereafter issued an order of termination on 19-6-2014 to the petitioner.

4. The petitioner being aggrieved by the order of termination filed a complaint under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. This complaint was filed under Item 1 to Schedule IV of the said Act. Along with the complaint, an application for grant of interim relief was also moved. In the application for interim relief, a prayer for staying the effect and operation of the order of termination was made. This application was contested by the respondents. The Labour Court by order dated 2-9-2014 found that the petitioner was not supplied necessary documents and his services came to be terminated without granting him proper opportunity in that regard. Hence, the Labour Court granted interim relief directing reinstatement of the petitioner during pendency of the complaint. The respondents being aggrieved by the aforesaid order preferred a revision application under Section 44 of the said Act. The Industrial Court found that granting interim relief to the petitioner would amount to grant of final relief. After noticing that a prima facie case had not been made out by the petitioner, the Industrial Court allowed the revision application and set aside the interim order passed by the Labour Court. Hence, this writ petition.

5. Shri P.N. Verma, the learned Counsel for the petitioner submitted that the Industrial Court was not justified in setting aside the order passed by the Labour Court. He submitted that under provisions of Section 30(2) of the said Act, the Labour Court was empowered to grant interim relief so as to prevent the employer from persisting with the unfair labour practise. He submitted that while replying to the show cause notice dated 10-6-2014, the petitioner in his communication dated 17-6-2014 had demanded various documents so as to reply to the said notice. A request was also made to first supply the said documents after which a reply to the show cause notice would be given within ten days from receiving the documents. However, without supplying these documents the respondents in an hasty manner issued the order of dismissal. Moreover, in the dismissal order the communication dated 17-6-2014 has been treated to be a reply to the show cause notice. It was then submitted that the Labour Court had rightly exercised discretion in favour of the petitioner by granting interim relief. However, the Industrial Court exceeded its jurisdiction when it set aside the said order. In support of his submissions, the learned Counsel placed reliance on the judgments of learned Single Judge in *Mahindra and mahindra Ltd. v. Dwarkanath Babaji Dalvi and another* 2006 (109) FLR 747, *Birla Cotsyn (India) Ltd., Buldhana v. Tarachand S/o Chiranjilal Sharma and Ors.*, (2010) III CLR 357 and *Spentex Industries Ltd., Nagpur v. Member, Industrial Court, Nagpur and others* 2012 (1) Mh.L.J. 161. It was, therefore, submitted that the impugned order was liable to be set aside.

6. Shri V.G. Wankhede, the learned Counsel for the respondents supported the impugned order. According to him, the Industrial Court was justified in holding that grant of interim relief in favour of the petitioner in the present case amounted to grant of final relief. He submitted that after following the entire procedure of holding an enquiry, giving show cause notice and thereafter considering the same, it was clear that the respondents had acted in accordance with law. In the enquiry held against the petitioner, the misconduct had been duly proved. He, therefore, submitted that the Industrial Court did not commit any error when it set aside the order of the Labour Court.

7. I have heard the respective Counsel for the parties at length and I have given due consideration to their respective submissions. It is not in dispute that after holding an enquiry against the petitioner, a show cause notice came to be issued to him on 10-6-2014 as to why he should not be dismissed from service. Along with this show cause notice, the report of the Enquiry Officer was supplied. In response to this show cause notice, the petitioner submitted his say on 17-6-2014. He sought certain documents that were part of the enquiry proceedings and stated that until these documents were not supplied, it would not be possible for him to submit his reply. However, without prejudice to this stand, the petitioner submitted his detailed explanation running into almost ten pages in which it was stated that no action was liable to be taken against him. After considering this response given by the petitioner, the order of dismissal came to be issued on 19-6-2014. The same is the subject matter of challenge in the complaint filed on behalf of the petitioner.

8. A perusal of the response given by the petitioner on 17-6-2014, prima facie, indicates that the petitioner has attempted to give his explanation to the show cause notice. Thus, by treating this communication dated 17-6-2014 as reply to the show cause notice, prima facie, it can be said that the respondents were justified in considering the same as reply to the show cause notice. The effect of the failure on the part of the respondents to supply the documents demanded by the petitioner vide communication dated 17-6-2014 and its effect on the order of dismissal is a matter to be considered on merits. Thus, at this interlocutory stage, the finding recorded by the Industrial Court that the petitioner had failed to prima facie make out a case of unfair labour practise at the behest of the respondents cannot be said to be perverse. The observations in the impugned order that grant of reinstatement by way of interim relief in the facts of the present case have to be considered in the backdrop of the finding that no prima facie case had been made out by the petitioner.

9. The ratio of the decisions relied upon by the learned Counsel for the petitioner cannot be disputed. Though the Labour Court under provisions of Section 30(2) of the said Act has the jurisdiction to grant interim relief so as to direct the employer to temporary withdraw the alleged unfair labour practise, at the same time, for grant of such interim relief, a strong prima facie is required to be made out. In the facts of the present case, when it is found that despite demanding

certain documents from the respondents, the petitioner had chosen to submit his reply to the show cause notice without prejudice to his rights, it cannot be said that the view as taken by the Industrial Court is not a possible view of the matter. Moreover, if it is found at the final adjudication of the complaint that the respondents had committed any unfair labour practise, the petitioner can be granted appropriate relief in such circumstances.

10. In view of aforesaid discussion, I do not find that the Industrial Court committed any jurisdictional error when it set aside the order passed by the Labour Court granting interim relief. By holding that the observations made in the impugned orders as well as in the present order would not come in the way of either of the parties when the complaint is decided on merits and by directing the Labour Court to decide the Complaint (ULP) No.60 of 2014 expeditiously and in accordance with law, the writ petition stands dismissed with no order as to costs.