

(2014) 06 BOM CK 0168

In the Bombay High Court

Case No : Writ Petition No. 4513 of 1999

Shree Ram Mills Limited

APPELLANT

Vs

Rashtriya Mill Mazdoor Sangh

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Citation : (2014) 6 BomCR 615 : (2014) 143 FLR 1062

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : S.K. Talsania, Senior Advocate and S.R. Surve i/by Little and Co, Advocate for the Appellant; Y.M. Pendse, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—The Petitioner challenges the order passed by the Industrial Court, Mumbai allowing the complaint filed by the Respondent directing the Petitioner to enter the names of the concerned workmen on the muster roll and provide them benefit of permanency.

2. The Petition concerns 27 members of the Respondent-Union, who were working as clerks in the mill run by the Petitioner. These clerks were on the permanent establishment of the Petitioner. On 31 December 1993, these clerks took voluntary retirement and received compensation, gratuity and other legal dues in full. On 1 January 1994, the 27 clerks were re-employed and continued in service. Barring these 27 clerks, most of the other workmen took voluntary retirement and they were paid their wages. A Complaint (ULP) No. 693 of 1996 was filed in the Industrial Court, Mumbai on behalf of these 27 clerks. They alleged that they were regularly working from 1 January 1994. From 6 June 1995, their salaries were revised and the Petitioner started paying them by vouchers. They apprehended that this was a move towards discontinuance of their services. It was their case that though they were continuously working and had completed 240 days in service, their names were not shown on the muster roll and they were paid by vouchers. They prayed that they should be made

permanent and their names should be entered on the muster roll.

3. The Petitioner opposed the complaint. It contended that the concerned clerks had taken voluntary retirement. The Petitioner-mill was declared as sick by Board for Industrial and Financial Reconstruction (B.I.F.R.) and Appellate Authority for Industrial & Financial Reconstruction (A.A.I.F.R.) and it was not in a position to continue its operation and, therefore most of the workmen had taken voluntary retirement. It was contended that these clerks were retained on the retainer ship basis and did not have fixed period or number of days of working. Accordingly, it was contended that no permanency could be sought by the concerned workmen. An application for interim relief was filed which was allowed on 28 January 1997 directing the Petitioner not to terminate the services of these clerks without following due process of law.

4. The Industrial Court then heard the complaint. The Industrial Court found that the Petitioner committed unfair labour practices under Item 6 of Schedule IV and Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court held that as per the Model Standing Orders applicable to the Textile Industries, the concerned clerks were entitled to relief of permanency after putting in 240 days uninterrupted services. The Industrial Court held that since the concerned clerks were not made permanent, it was a failure on the part of the Petitioner to implement the provisions of the Standing Orders. It was also held that Petitioner's intention was to continue the concerned clerks as temporary and hence there was a breach of Item 6 of Schedule IV of the Act. Accordingly, the Industrial Court allowed the complaint by the impugned order dated 2 July 1999 and directed the Petitioner to give work to the concerned clerks by entering their names on the Muster Roll. This order is challenged by the present petition.

5. The petition was admitted on 15 September 1999 and interim relief staying the operation of the impugned order was granted. This interim order was challenged by the Respondent by way of Letters Patent Appeal No. 325 of 1999. In the Letters Patent Appeal, the Division Bench held that the order of the Industrial Court needs to be stayed, however since the Writ Petition was not likely to be disposed of within a reasonable time, the Division Bench directed the Petitioner to pay an amount of Rs. 2,500/- per month to each of the concerned clerks. The Division Bench took note of the fact that average salary on 1 September 1994 was in the range of Rs. 5,000/- per month. It was contended by the Petitioner before the Division Bench that the termination of services of the concerned clerks was not the subject matter before the Industrial Court. The Division Bench *prima facie* opined that it would not make any difference.

6. Mr. Talsania, learned Senior Advocate for the Petitioner submitted that the complaint filed is for only seeking permanency in service and the services of the concerned clerks have been terminated, and there is no prayer for setting aside the termination and, therefore there is no question of any reinstatement with back wages. He submitted that the basis of the Division Bench to direct the

Petitioner to pay the amount of Rs. 2,500/- per month is erroneous as there was no order of reinstatement in the service. According to Mr. Talsania, the concerned clerks have themselves admitted that they have been terminated from service. He submitted that the order of the Industrial Court is unworkable and unenforceable. I do not find any merit in this submission. The Respondent had pleaded in the complaint that the concerned clerks having completed 240 days of service, are deemed to be permanent. A specific prayer was sought that these concerned clerks should be made permanent. It was also prayed that they should not be terminated from service. An interim order was passed by the Industrial Court on 28 January 1997 directing the services of the concerned clerks should not be terminated without following due process of law. In view of this case, it is for the Petitioner to specifically plead when and in what circumstances, and by which order the services of the concerned clerks were terminated. An attempt has been made to rely upon certain admissions made by the concerned clerks in their affidavit-in-reply to contend that since the services of the concerned clerks have been terminated. An employer replying to claim of permanency cannot take such an evasive stand. If a complaint praying for permanency is to be defeated on the ground that the workmen have been terminated, then the employer must state so emphatically and with particulars. In the petition there is no ground taken that the impugned order is unworkable as the concerned clerks are already terminated by a particular order. This factual aspect is not pleaded. It is being orally argued. There is no ground taken that the claim does not survive since the concerned clerks stood terminated, when the impugned order was passed. In absence of specific stand taken, even in the petition, it is not open for the Petitioner-employer to take evasive stands and try to build its case in the oral arguments upon the so called admissions of the Respondent-clerks. Furthermore there is no evidence that the services were terminated by following legal procedure, as interim order in the complaint was holding the field. If the order of the Industrial Court had lost its meaning since the Petitioner had already terminated the services as contended, there was no reason for the Petitioner to seek stay of the direction. Since the Petitioner was paying the clerks by vouchers, the Industrial Court directed them to be placed on the Muster Roll.

7. The next question whether the order passed by the Industrial Court directing that the concerned clerks should be made permanent in service is correct. It is no doubt true that the concerned clerks who were in permanent service of the Petitioner had taken voluntary retirement on 31 December 1993 and they were given their legal dues. The relationship between the Petitioner and the concerned clerks as an employer and employees came to an end upon taking voluntary retirement. But thereafter on the next date i.e. 1 January 1994, the concerned clerks were re-employed.

8. Mr. Talsania strenuously urged that the Petitioner was in process of shutting down and the concerned clerks were re-employed only to oversee the winding up of the business. He submitted that these clerks have received their entire dues and are again seeking further monetary dues which are not payable to them. Mr.

Pendse, learned counsel for the Respondent has countered the submission by pointing out that in the year 1994, the Petitioner had shown the intention of continuing the Spinning and Processing sections and there is nothing on record to show that the Petitioner was contemplating shutting down its business at the relevant time.

9. After the concerned clerks took voluntary retirement on 31 December 1993, the Petitioner could have employed strangers to do work. If the strangers were employed, then as per clause 4-B of the Standing Orders which are applicable to the Textile Industries, such workers would have been deemed to be permanent after completion of 240 days. This legal position cannot be disputed. Clause 4-B of the Standing Orders reads as under:-

4-B. A temporary clerk, who has put in 240 days uninterrupted service in the aggregate in any other establishment during a period of proceeding twelve calendar months, shall be made permanent in that undertaking by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of either or not his name is on the muster roll of the undertaking throughout the period of the said twelve calendar months.

Explanation:-For purpose of this clause, any period of interrupted service, caused by cessation of work which is not due to any fault of the clerk concerned, shall not be counted for the purpose of computing 240 days or, as the case may be, for making a badli or temporary clerk permanent.

10. It is an admitted position that all the concerned clerks had completed stipulated 240 days. Question is that will they lose their right merely because they worked with the Petitioner in the past. Their re-employment was a fresh employment. Merely because they were working with the Petitioner in the past, legal rights of permanency that will accrue to them upon completion of 240 days cannot be taken away. It could be that they were re-employed because the Petitioner wanted to engage experienced hands instead of complete strangers.

11. A Memorandum of Agreement between the Union and the Petitioner executed on 30 May 1995 shows that the Petitioner was to run Spinning and Processing sections, employing around 1400 workmen. This memorandum does not indicate that the Petitioner-mill was in process of winding up. Oral evidence was led before the Industrial Court. One of the clerks examined himself and specifically deposed that the mill run by the Petitioner was functioning and he denied the suggestion that all other departments were closed. The Industrial Court considered the evidence on record and came to the conclusion that no evidence was produced on record by the Petitioner to show that the concerned clerks were appointed on the retainer basis only for the purpose of winding up the affairs of the Petitioner. The argument that the concerned clerks were employed only on retainer basis with an intention of winding up of the affairs is not substantiated by evidence. Therefore no error can be found with the finding of the Industrial Court as this aspect was not proved by the Petitioner. If this aspect

was not proved, then the contention of Mr. Talsania that the Petitioner had no intention to keep the concerned clerks temporary and the Petitioner has not committed unfair labour practice, cannot be accepted.

12. The concerned clerks were re-employed on 1 January 1994 and they completed 240 days in a year and that they were covered under clause 4B of the Standing Orders. As observed earlier, once the concerned clerks had completed their 240 days of service, as per clause 4B of the Standing Orders, they were entitled to relief of permanency. The fact that they were employed earlier does not take away the legal rights accrued to them after re-employment. Once basic facts for granting permanency were established, no fault can be found with the order of the Industrial Court directing permanency in service.

13. Mr. Talsania then relied upon the decision of the Apex Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, to contend that the award of back wages does not follow automatically pursuant to the order of setting aside the retrenchment. He submitted that pursuant to the interim order, the concerned clerks have been paid Rs. 2,500/- per month and substantial amounts have already been paid to them even though they are not entitled to. He submitted that since the concerned clerks were not entitled to any relief, these amounts should be refunded. In the alternative, he submitted that even if it is accepted that they are entitled to reinstatement, in view of the Respondent's own contention that mill is now shut down in the year 2004, the amount already paid to the Respondent is an adequate compensation.

14. There is no question of refund because the direction of the Industrial Court is to make the concerned clerks permanent in service. Mr. Pendse admitted that in April 2004, the mill of the Petitioner was closed down after taking requisite permission. If that be so, the claim of the Petitioner for monetary benefits would continue only till April 2004. The amount which is paid to these clerks under interim order passed by the Division Bench on 23 December 1999 will have be adjusted with the amount payable to them.

15. To sum up, the concerned clerks who were re-employed on 1 April 1994 had completed 240 days of service in a year and, therefore they were entitled to the benefits of permanency under clause 4B of the Standing Orders as applicable to the Textile Industries. The Petitioner had failed to prove that the appointments of the concerned clerks were on retainer basis and that the Petitioner had no intention to keep these clerks as temporary. The finding of fact arrived at by the Industrial Court that the Petitioner failed to prove that the appointments of the concerned clerks were only for the purpose of winding up of its business, cannot be faulted with.

16. In the circumstances, the Petition must fail and is accordingly dismissed. Rule is discharged. With the dismissal of the petition, interim order granted by the Division Bench will come to an end.