

(2000) 01 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 746 of 1998

Shri Khanderao A. Mohite

APPELLANT

Vs

New Standard Engg. Co. Ltd. and another

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25

Citation : (2000) 2 ALLMR 13 : (2000) 3 BomCR 376 : (2000) 2 BOMLR 14 :
(2000) 86 FLR 18

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; Kuldeep Singh and R.V. Paranjpe,
for the Respondent

Judgement

R.M. Lodha, J.—This writ petition is at the instance of the workman filed under Article 226 of the Constitution of India challenging the legality and correctness of the award passed by the 4th Labour Court, Bombay on 23-10-97 whereby the said Labour Court has refused to award back wages from the date of termination till 15-7-1994. The petitioner workman has thus prayed that the award passed by the Labour Court be modified by awarding full back wages to him from the date of termination till the petitioner attained the age of 60 years on 19-7-96.

2. The petitioner has set out the following facts in the writ petition:-The petitioner joined the service of respondent No. 1, namely, New Standard Engg. Co. Ltd., in or about the year 1957. He was continued in service of respondent No. 1 and was promoted from time to time and lastly worked with the 1st respondent as electrician Grade-I. He proceeded on sanctioned privilege leave from 16-4-79 to 8-5-79. He did not report for duty on the expiry of privilege leave. He could not do so since according to him he met with an accident at his native place in Solapur district which resulted in injury to his right leg which remained under plaster for three months. The respondent No. 1 was informed by the petitioner about the fact of accident and that he was unable to attend his

duties till the last week of May 1979 but the 1st respondent did not allow him to resume his duties. Thereafter periodically he made efforts to resume his duties by attending the factory but the respondent No. 1 did not allow him to do so. In or about 1980, the 1st respondent filed a suit in the Court of Small Causes at Bombay for vacation of the premises in his occupation since he ceased to be in employment. The petitioner has averred that one of the documents exhibited by respondent No. 1 to the plaint in the said suit was a letter dated 30-5-79 purporting to remove the name of the petitioner from muster roll on the ground that the petitioner overstayed without leave and consequently lost his lien. According to the petitioner, the said letter dated 30-5-79 was never received by him. The petitioner continued correspondence with the 1st respondent and tried to resume duties but he failed to do so. He could not seek any legal remedy against the order of termination earlier due to paucity of funds and want of proper legal advice. In the year 1994 he raised industrial dispute upon which the appropriate Government in exercised of its powers conferred u/s 10(1) read with section 12(5) of Industrial Disputes Act, 1947 referred the dispute for adjudication to the Labour Court. The statement of claim filed by the petitioner before the concerned Labour Court upon industrial dispute having been referred. According to the petitioner, termination of his services with effect from 24-5-79 by letter dated 30-5-79 suffers from serious illegality, impropriety and was actuated with mala fide. The petitioner has alleged that his termination was bad on diverse grounds, inter alia, that no reasons were assigned by the company for terminating his services. It is the case of the petitioner that his termination order was passed without following due process of law; no notice nor any charge sheet was served upon him nor any enquiry was held before terminating his services; the termination by the employer is retrenchment without complying with the mandatory provisions, particularly sections 25-F, 25-G and 25-N and also that the termination by the letter dated 30-5-79 could not have been with retrospective effect from 24-5-79.

3. In reply to the statement of claim filed by the workman, the employer filed reply before the concerned Labour Court and inter alia averred that the workman was working as wireman in the company. In the month of May 1979, the workman got a job abroad and he applied for privilege leave without disclosing that he had found the alternative employment. His leave was sanctioned but on expiry of leave he did not resume duty. The employer vide its letter dated 15-5-79 advised the workman to resume duty but he did not do so and accordingly the employer invoked the provisions of Certified Standing Orders and intimated him by their letter dated 30-5-79 that he had lost his lien. The said letter dated 30-5-79 was sent to the workmen at his residential address recorded in company's record. The employer stated that according to the information received by them, the workman remained employed abroad till the year 1983. During the tenure of his employment, the workman was allotted company's quarter which under the allotment rules he was required to vacate on leaving the employment. However, he did not vacated the company's quarter and

accordingly a suit was filed in the year 1990 against the workman for getting vacant possession of the company quarter which is still pending. The industrial dispute has been raised by the workman after his employment abroad was over in the year 1993 and thus the industrial dispute raised almost after 15 years of his termination is actuated with ulterior motive based on false and frivolous pleas. The employer also disclosed the past record of the workman to demonstrate that on number of occasions the workman was warned for negligence in work, suspended for absenteeism, charge sheeted for instigating the other workman to go slow, for disobeying lawful orders of superiors and abusing and assaulting his superiors. The employers thus defended their action and submitted that termination order is legal, proper and justified.

4. The Labour Court held the enquiry and after recording evidence of the parties and hearing the parties, on 23-10-97 passed the award by holding that the prayer of reinstatement is redundant as the workman has crossed 58-60 years of age. The Labour Court ordered the employer to pay wages to the workman of three days from 16-7-94 to 18-7-94 and retiral benefits as if the workman had retired on superannuation on completion of 58 years of age i.e. treating him to have retired on 18-7-94 after office hours.

5. While deciding the reference the Labour Court framed four issues, namely, (i) Whether the reference is bad in law as contended in the written statement as the workman has reached the age of superannuation on 19-7-1994 and which is filed after 15 years ?, (ii) Does the workman prove that his services were illegally terminated by the employer with effect from 24-5-79; (iii) To what reliefs the workman is entitled to and (iv) What award. The Labour Court held in respect of Issue No. 1 that the reference was not bad in law merely because the workman had attained the age of superannuation before the industrial dispute was referred and that the workman gave demand notice only prior to 3-4 days before his retirement on superannuation. On issue No. 2, the Labour Court held that the termination of the workman was bad in law since no enquiry was held against him before terminating his services nor any charge sheet was issued or any show cause notice was given. The said findings which had been recorded by the Labour Court in favour of the workman are not under challenge before me. What is challenged by the workman in the writ petition is the findings recorded by the Labour Court on issues Nos. (iii) and (iv) i.e. refusal to the workman the back wages from the date of his termination till 16-7-94 when the demand of illegal termination was raised by him and that the workman was entitled to remain in service upto 60 years and not 58 years.

6. Mr. Ganguli, the learned Counsel appearing for the workman strenuously urged that once the Labour Court recorded its finding that the termination of the workman was illegal, the workman was entitled to all benefits flowing therefrom as if the workman's services were not terminated and he was entitled to full back wages till he reached superannuation at the date of 60 years.

7. On the other hand, Mr. Kuldeep Singh, the learned Counsel for the employer

urged that in the facts and circumstances of the case, the Labour Court has rightly exercised its discretion in awarding wages to the workman from the date he raised the demand i.e. 16-7-94 till he attained the age of 58 years i.e. 19-7-94.

8. I shall first deal with the question relating to the age of retirement of the workman. There appears to be no doubt that Certified Standing Orders are applicable governing the employment of the workman and according to Clause 22-A of the Certified Standing Orders the age of retirement on superannuation of the workman is 58 years. However, there is a provision that the same may be extended for a further period of two years if the workman is medically fit. The learned Counsel for the petitioner could not show that the workman produced any medical fitness certificate to the employer. The Labour Court has also relied on Clause 22-A of the Certified Standing Orders and observed that the workman has not produced his medical fitness certificate. I further find that the learned Advocate appearing for workman admitted before the Labour Court that the age of superannuation of the workman is 58 years. In my view, therefore, the Labour Court was fully justified in holding that the workman superannuated on his attaining 58 years and the said finding cannot be said to suffer from any infirmity.

9. The next question that arises for consideration is whether the Labour Court committed any error in refusing to award back wages to the workman from the date of his termination i.e. 24-9-79 till he raised the demand on 16-7-94.

10. On facts there seems to be not much dispute that the workman's services were terminated with effect from 24-5-79 vide letter dated 30-5-79. Though the workman denies having received the said letter dated 30-5-79 but the fact remains that he came to know of the said letter at least in the year 1980 when he received the copy of the plaint which was filed by the employer against him for his eviction from the company quarter. The petitioner has admitted in the petition that in the year 1980 the employer filed a suit for eviction against him for getting possession of company quarter and one of the documents exhibited by the employer along with the plaint was letter of termination dated 30-5-79. Despite the fact that he came to know of the said letter dated 30-5-79 in the year 1980, the demand was for the first time raised by the workman about his illegal termination on 16-7-94 to the appropriate government. The petitioner has stated that due to paucity of funds and for want of proper legal advice he could not seek legal remedy earlier against the illegal and arbitrary termination earlier. The said explanation hardly deserves to be accepted. Mr. Ganguli, the learned Counsel for the workman urged that in the year 1980 and thereafter the workman wrote to the employer about his illegal termination and, therefore, no negligence can be attributed to the workman and the factor of delay was wrongly considered by the Labour Court in refusing to award wages from the date of termination till the first demand was raised to the appropriate Government on 16-7-94. I am afraid the submission of Mr. Ganguli is far from convincing. Under the scheme of the Industrial Disputes Act, ultimately it is the discretion of the

industrial adjudicator i.e. the Labour Court or the Industrial Tribunal to pass an appropriate order once it reaches the conclusion that the termination of workman is illegal and or unjustified. Of course the discretion to be exercised by such Labour Court or Industrial Tribunal like any other judicial discretion, has to be in accordance with the settled legal principles and judicial precedents and cannot be arbitrary or capricious, but if such discretion has been exercised by the industrial adjudicator in accordance with law after lacing into consideration the relevant and material facts and circumstances of the case, such discretion is not amenable to judicial review under Article 226 of the Constitution of India. The discretion exercised by the Labour Court or the Industrial Tribunal founded on facts and circumstances of the case and in accordance with the settled legal principles shall not call for interference at the hands of the High Court in extraordinary jurisdiction. No doubt, once the termination of an employee particularly a workman is held to be illegal and unjustified, the normal rule is that such workman is to be reinstated and has to be awarded back wages from the date of termination till reinstatement. However, exception may be carved out on valid and justifiable grounds for denying the workman the reinstatement or back wages by the Labour Court or Industrial Tribunal even if his termination by the employer is held illegal and unjustified. For denying the workman the benefit of reinstatement and back wages prior to the date of demand, the Labour Court has given reasons, which in my opinion, are valid enough for such order. As already indicated, the workman's services were terminated in the month of May 1979 to be precise with effect from 24-5-79. According to the employer, the workman was sent the letter dated 30-5-79 recording the workman's termination from service. Though the workman has denied the receipt of such letter, it is not disputed that the workman came to know of the said letter in the year 1980 itself. Despite the fact that the workman came to know of the said letter dated 30-5-79 at least in the year 1980, admittedly he raised the industrial dispute with the appropriate Government for the first time on 16-7-94 while he was to be superannuated with effect from 19-7-94. The explanation given by the workman that he was corresponding with the employer during this period and that due to paucity of funds and proper legal advice he could not seek legal remedy earlier is far from satisfactory and has rightly been rejected by the Labour Court while considering this aspect. The Labour Court held that the workman kept silent for 15 years after his termination and he is continuing in occupation of the company quarter for last 15 years though he has superannuated, he is not entitled to any back wages from the date of termination to 16-7-94. It would be appropriate at this stage to reproduce the reasons assigned by the Labour Court in refusing to grant back wages from the date of termination to 15-7-94 which reads thus :-

"15. In view of above all the discussion it is clear that the workman had kept silent for 15 years after the said termination. He is in possession of the company's quarters and the company had filed eviction suit in 1980 for possession of it and it is pending upto now in the Small Causes Court. And

admittedly the workman had sent demand letter for the first time 3 days before his attaining age of 58 years which is the age of retirement according to the standing orders. In view of the above all the discussion and in the facts and circumstances I am holding that in the submissions made by the Ld. Advocate for the company there is much substance and they deserve to be considered. Admittedly the workman had not claimed his legal dues from the company also and the contention of the company is that they have offered him. The workman had only deposed that after his termination he was never employed and he had never tried for employment. This is the only evidence of the workman on the point of gainful employment. Hence the conduct of the said workman does not appear to be as a man of ordinary prudence as according to him he had not tried for other employment and he had filed this reference after 15 years of his termination and it is not his case that his wife, sons or daughters are earning or he is having any other income etc. And admittedly his family is residing in the premises of the company in Bombay. Hence, I am of the opinion that this testimony of the workman is having very little importance. If this Court grants the back wages though the workman had challenged his termination after 15 years, that means Court is granting premium for his lapses which are not expected from a man of ordinary prudence. And for the intentional act in not taking action of the workman the company should not be compelled to pay back wages of such a long period of 15 years and when the workman had already attained the age of superannuation i.e. 58 years before coming of the Reference in Court and he had completed 60 years of his age during the pendency of the reference. Hence I am of the opinion that the workman is not entitled to any back wages from 1979 till 15-7-94 i.e. till the date of his demand notice. In view of above discussion I am holding that the prayer of reinstatement is also redundant. The last drawn wages of the workman were Rs. 800/- p.m. as per deposition of the workman and he was working as Electrician Grade-1 and he had worked from 1957 July, with Party No. 1. It is not the case of the workman also that he had informed to company that after 19-7-94 or thereabout that he is physically fit to perform the duties. Hence considering this I am holding that the workman is not entitled to any wages from 19-7-94 i.e. after completion of 58 years of his age."

11. For the reason given by the Labour Court, I am satisfied that the Labour Court has rightly exercised discretion in refusing to grant back wages to the workman for the period from the date of his termination till 15-7-94. As a matter of fact any grant of back wages to the workman from the date of termination till 15-7-94 in the facts and circumstances of the case will be grossly inequitable, inexpedient and highly unjustified which has rightly been negated by the Labour Court calling for no interference by this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India.

12. The writ petition is accordingly dismissed. Rule is discharged. No costs.

13. At this stage, Mr. Ganguli, the learned Counsel for the workman raised the

grievance that even pursuant to the award, all retiral benefits as awarded to the workman have not been paid. Mr. Kuldeep Singh, the learned Counsel for the employer submits that the workman never approached the employer in that regard. Be that as it may, the employer is now directed to pay all retiral benefits to the workman as if he had retired on superannuation on completion of 58 years of age as observed in the award of the 4th Labour Court, Mumbai dated 23-10-97 within three weeks from today.

14. Certified copy expedited.

15. Writ petition dismissed.