

(2004) 07 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No. 2688 of 1996

Shri Waman Narayan Trimbakkar, Mahila Griha Vastu Bhandar
Vs
APPELLANT

Crompton Greaves Ltd., Machine Division IV and Shri G.S.
Baj, Member, Industrial Court
RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2004) 6 BomCR 172

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

**Advocate : S.N. Deshpande, for the Appellant; K.M. Naik, instructed by
Salgaonkar and Co., for the Respondent**

Judgement

Nishita Mhatre, J.—By this writ petition, the petitioner seeks to challenge the order of the Industrial Court dismissing his complaint filed under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act. According to the Petitioner, he had been deliberately deprived of the benefits of the permanency by giving him artificial breaks in service and thereby the Respondents had committed unfair labour practices. The Petitioner was initially appointed on 2.1.1975 on a temporary basis with Respondent No. 1 He worked there as such till 16.5.1975. After a gap of 10 years, the Petitioner was provided work by the Respondents on 4.9.1985. He continued in service intermittently as and when work was available with the respondent for a period of almost 5 years, that is, from 4.9.1985 to 6.5.1990. It appears that on 24.6.1988, a settlement was entered into between the Union representing the workmen and the respondent No. 1 herein. Clause 13 of the settlement dealt with permanency of temporary workers. Under this Clause, it was agreed that the respondent would make 600 temporary workmen permanent during the pendency of the settlement in a phased manner. However,

there was a stipulation incorporated that those temporary workmen who had not reported for work or who had not been called for work since 1.7.1982 would not be considered for permanency. Accordingly, several workers were made permanent after displaying the seniority list.

2. The Petitioner filed a complaint u/s 28 r/w Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act alleging that the respondent had committed an unfair labour practice by not making him permanent although persons junior to him had been made permanent. The claim of the Petitioner was that though he had completed 240 days during the year 1988-89, the respondent had not made him permanent in service. It was claimed in the complaint that besides there being a breach of the settlement, the respondent had violated the provisions of the standing orders applicable to the workman under which on completion of 240 days, the petitioner was entitled to be made permanent. The respondent by their written statement filed before the Industrial Court denied the allegations in the complaint and submitted that under clause 13 of the settlement, the Petitioner was not entitled to be considered for permanency as he was not called for work prior to 1982 as stipulated in that clause. It was contended that the Petitioner could not claim permanency when there was a break of 10 years between his initial appointment in 1975 and his appointment in 1985. Evidence was led on behalf of both the parties before the Industrial Court.

3. The Industrial Court on an assessment of the oral and documentary evidence on record came to the conclusion that the settlement of 24.6.1988 had not been breached qua the petitioner. The respondent did not accept the documents produced by the complainant at "Annexure A" to the complaint showing the number of days worked by him. According to the Industrial Court, this document had not been proved and, therefore, it could not be accepted as evidence. Furthermore, the Industrial Court held in my view rightly that the initial appointment of 1975 could not be considered for implementation of clause 13 of the settlement as there was a continuous gap of 10 years. The Industrial Court took into consideration that the recognised union of which the Petitioner was a member had not agitated his case before the respondent, thereby obtaining the permanency for the Petitioner. It appears that the issue whether the Petitioner is entitled to permanency de hors the settlement as he had completed 240 days in service was not argued before the Industrial Court, although pleaded in the complaint. Nor has the issue as to whether by giving artificial breaks in service over the period from 1985 to 1990 amounted to unfair labour practice under Item 6 of Schedule IV been considered by the Industrial Court. The order of the Industrial Court is silent on these issues and only decides whether there was a breach of the settlement of 1988.

4. Mr. Deshpande, learned Advocate for the Petitioner, submits that the respondent had committed an unfair labour practice since there was a breach of Section 25F of the Industrial Disputes Act when admittedly, the Petitioner had completed 240 days in service, at least for the period from 23.9.1989 to

19.6.1990 and from 22.7.7.1988 to 7.4.1989. He submits that the workman was granted privilege leave which can be granted only after 240 days in service. Therefore, by necessary implication, the workman had completed the requisite number of days in service for being made permanent. He submits that no records were produced by the respondent and, therefore, the case made out by the Petitioner should have been considered. He placed reliance on the judgment in the case of *Voltas Limited Vs. M.M. Kendrekar, Presiding Officer and Another, and Shri H.D. Singh v. Reserve Bank of India and Ors.*, 1985 II CLR 246.

5. On the other hand, Mr. Naik, learned Counsel for the Respondent, submits that the Industrial Court has committed no error of law much less an error of law apparent on the face of record and, therefore, no interference is called for by this Court under Article 226 of the Constitution of India. he submits that the service of Petitioner in 1975 cannot be considered as he was out of service continuously for almost 10 years. Therefore, while implementing the settlement, the Petitioner could not claim to be made permanent under the settlement when it stipulated very clearly that only those employees who were in service prior to 1982 would be made permanent. Mr. Naik further submits that the Petitioner was not entitled to permanency either under the settlement or under the standing orders applicable. He further urges that there is no breach or unfair labour practice under Item 6 when the Petitioner has not completed 240 days nor is there any evidence to suggest that he was kept out of employment for a long period only to deprive him of the benefits of permanency. He further submits that the Industrial Court has recorded that the Petitioner did not want to urge any point other than those which were dealt with in the judgment. Therefore, the grievance made on behalf of the Petitioner that the issue as to whether he was entitled to permanency under the standing orders cannot be considered at this late state. He submits that the Industrial Court has correctly appreciated the evidence on record and has come to the conclusion that the Petitioner is not entitled to permanency under the settlement of 1988.

6. It would be improper to consider the Petitioner's initial appointment in 1975 when he was out of service for over 10 years continuously. Admittedly, he was not given any employment during the period of 10 years from 1975 to 1985. Therefore, his service rendered in 1975 cannot be considered for the purposes of implementation of clause 13 of the settlement. In my view, therefore, the order of the Industrial Court that there is no breach of clause 13 of the settlement must be upheld.

7. However, although there is a pleading in the complaint to the effect that the Petitioner was entitled to permanency even under the model standing orders on having completed 240 days, the Industrial Court has not considered the same. Nor is there any consideration as to whether there is a breach under Item 6 of Schedule IV of the MRTU & PULP Act. The Industrial Court has proceeded only on the footing that there is no breach of Item 9 of Schedule IV of the Act. While considering Item 6, the Industrial Court has taken into account the period of

temporary employment of 4.1/2 months in 1975. The period subsequent to 1985 during which the petitioner was appointed has not been considered at all. Although the Industrial Court has recorded that the advocates made a statement at the time when the order was dictated that no other point had been left for consideration, it was the duty of the Industrial Court to record that the Petitioner did not insist upon a finding in respect of the breach of the standing orders and in respect of Item 6 of Schedule IV for the period subsequent to 1985. Since it has been held by the Industrial Court that the period from 1985 onwards has to be considered as fresh appointment, the Industrial Court was dutybound to consider these aspects and in the event the advocate for the Petitioner had not insisted upon a finding on these issues, the Industrial Court ought to have recorded this fact. Not having done so, it cannot be presumed that the Petitioner had given up the contention raised in respect of Item 6 of Schedule IV and in respect of Item 6 of Schedule IV and in respect of permanency on account of completion of 240 days subsequent to 1985.

8. Therefore, the matter is remanded back to the Industrial Court to consider (i) whether the Petitioner is entitled to permanency on the basis of the model standing orders which are applicable to the establishment and (ii) whether there has been a breach of Item 6 of Schedule IV. Both these issues are to be decided in respect of the period from 1985 onwards.

9. Rule made absolute partly. No costs.

10. Certified copy expedited.