
(2002) 03 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 487 of 2001

Sidhanath Bhanudas Ghodke

APPELLANT

Vs

Excel Industries Ltd.

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 44

Citation : (2002) 03 BOM CK 0088

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Shobhana Gopal, for the Appellant; Rajesh Gehani, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The Petitioner was employed with the Respondent-company as a driver from January 1, 1985. By an order dated February 2, 2000, his services came to be discontinued or terminated for the reasons recorded in the said order of termination. The Petitioner was aggrieved by the said order of termination and, therefore, he filed a complaint of unfair labour practice u/s 28 read with Section 30 of the MRTU and PULP Act, 1971, praying for setting aside the order of termination as an unfair labour practice within the meaning of item 1 of Schedule IV to the Act. Alongwith the said complaint the Petitioner filed an application for interim relief praying for a direction to the Respondent-company to pay him "subsisting wages". Along with the said application for interim relief the Petitioner had also filed an affidavit in support. The Labour Court by its order dated September 18, 2000, dismissed the said application after recording reasons in great details. The Petitioner was aggrieved by the said order of the Labour Court and, therefore, he filed a revision application before the Industrial Court u/s 44 of the MRTU and PULP Act, 1971. The learned President of the Industrial Court by his oral judgment dated January 19, 2001, dismissed the

revision application after recording reasons in great details. The learned President had agreed with the findings of the Labour Court in every respect and refused to grant the relief prayed for by the Petitioner. The Petitioner is aggrieved by the said order of the learned President of the Industrial Court and has approached this Court under Article 226 of the Constitution of India to challenge the legality and propriety of the said order of the Industrial Court.

2. Ms. Shobhana Gopal, learned advocate for the Petitioner, has submitted that before the order of termination was passed by the Respondent-company no charge-sheet was given, no explanation was called for, no enquiry was held and the Respondent-company had straightway terminated the services of the Petitioner. This act by itself amounts to an unfair labour practice under item 1 of Schedule IV to the Act, says the learned advocate. Ms. Gopal submits that the contents of the termination letter are the foundation of the termination and several acts of misconducts and allegations are made against the Petitioner in the said letter, which did not precede a domestic enquiry and, therefore, the Petitioner had no opportunity of hearing in the matter. The very fact that the Respondent-company had passed a punitive order without holding an enquiry, per se amount to an unfair labour practice within the meaning of item 1(a) and (b) of Schedule IV to the Act. According to the learned advocate, it was not an order of simple discharge but it was a punitive order amounting to an order of dismissal inflicting punishment without holding a domestic enquiry in accordance with the standing orders. Such termination order is not a bona fide exercise of the powers vested in the employer. According to the Petitioner, he was victimised as he had filed a complaint with the police station against a driver who was teasing him during the course of employment. According to the Petitioner, the officers of the Respondent-company were trying to pressurise him to withdraw the said complaint and since he did not agree with the said suggestion the Petitioner was punished by way of termination from employment. Ms. Gopal pointed out that there are a number of incidents which are mentioned in the order of termination which required an enquiry and since no such enquiry had preceded the order of termination, the Petitioner was entitled to get wages during the pendency of the complaint. Ms. Gopal has pointed out that the Petitioner did not pray for any "subsistence allowance" but he was seeking "subsisting wages" during the pendency of the complaint. The learned advocate has tried to submit that the learned Courts below understood or misunderstood his prayer to be that he was praying for "subsistence allowance" during the pendency of the complaint. According to her, he did not seek any "subsistence allowance" but he sought "subsisting wages" which, according to her, ought to have been granted by the Labour Court u/s 30(2) of the Act as an interim relief.

3. Shri Gehani, learned advocate for the Respondent has pointed out that at the time of termination the Respondent-company had paid an amount of Rs. 1,19,402.42, which the Petitioner had accepted. According to the learned advocate, the Petitioner was not in street or on starvation or in any miserable condition to be helped in such matters. He filed the complaint after accepting the

aforesaid huge amount from the Respondent-company. He has also pointed out that the Respondent-company was prepared to pay an amount of Rs. 33,000 which the Petitioner had claimed earlier on account of some employment injury but the Petitioner flatly refused to accept such a large amount. Shri Gehani therefore pointed out that the Petitioner did not deserve any sympathy so that interim relief can be granted to him. Shri Gehani further submitted that the order of termination was in fact not a punitive order to punish the Petitioner it was only a discharge simpliciter order terminating the employment of the Petitioner after recording the reason under the standing orders. The company has recorded reasons in detail why the Petitioner was being terminated from employment. It was pointed out by Shri Gehani that the Petitioner had developed an abnormal behaviour. He cited two instances as stated in the said letter that he had threatened the company by a letter dated December 20, 1999, that if sometime anything untoward happened to him the company and the officers would be responsible. According to the company, the said threat given by the Petitioner was put in practice, as on February 2, 2000, the Petitioner attempted to commit suicide by consuming poison while on the premises of the company. Shri Gehani pointed out that he was moved to a public hospital and was treated as indoor patient for a period of 15 days. Meanwhile the hospital sent his serum for test at the Hinduja Hospital and the report had shown that he had consumed "organophosphorus" content which was poisonous. According to Shri Gehani, the management of the company was shaken by the said abnormal and unusual incident which took place on the premises of the company and it had decided to discontinue the employment of the Petitioner by the aforesaid order when he was discharged from the hospital. Shri Gehani, therefore, has supported the judgments of the Labour Court as well as the Industrial Court. According to him, there was no error of law on the part of the learned President or even on the part of the learned Judge of the Labour Court in refusing to grant any interim orders in the shape of directing the company to pay to the Petitioner what Ms. Gopal called "subsisting wages".

4. Both the Courts have recorded concurrent findings of facts as prima facie found by them. Both the Courts have declined to grant any interim relief to the Petitioner. Both the Courts have recorded cogent reasons for their findings and conclusions. It is not possible for me to interfere with the impugned order passed by the learned President of the Industrial Court at this stage. The complaint is pending for final hearing. In the given circumstances that the Petitioner has received a handsome amount by way of his legal dues, it cannot be said that he is suffering any hardship and that balance of convenience would require to mitigate such hardship. The issue whether the Respondent-company had engaged any unfair labour practice as alleged by the Petitioner would be considered and decided by the Labour Court on the merits. It is always open to the employer to justify the order of discharge/dismissal by adducing evidence in respect of such order. Prima facie, it does appear that the Respondent-company has passed an order which appears to be a discharge simpliciter. Merely because

the reasons are recorded in the order of discharge simpliciter as required under the model standing order it cannot be said that such an order per se amounts to an unfair labour practice as contemplated under item 1 of Schedule IV to the Act. Even assuming that certain averments amounting to allegations against the Petitioner are recorded in the order of termination even then the Petitioner has to prove that the said allegations would amount to an unfair labour practice.

It would be open to the Respondent to rebut such allegations made by the Petitioner in his complaint. Besides, the Respondent-company would also be able to prove the averments or statements made in the order of discharge in support of their decision to terminate the Petitioner from employment. In nutshell, the Petitioner has to prove the charge of unfair labour practice by adducing cogent and sufficient evidence or material and the Respondent-company has to refute or rebut such allegations by adducing proper evidence in support of its order of discharge. If finally the Labour Court finds against the company that it was guilty of commission of an unfair labour practice, the Petitioner would succeed in getting the final relief from the Labour Court: At this stage, I am not at all inclined to grant any relief to the Petitioner in this petition. The petition, therefore, stands dismissed. Rule is discharged. No order as to costs.