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(1991) 06 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 4000 of 1984

Subhash Dhananjay Inamdar — APPELLANT

Vs

Rajshri Pictures Pvt. Ltd. and Others — RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:

Citation : (1995) 3 LLJ 52

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; P. Ramaswami, for R-1, for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J

1. The petitioner-workman was employed by the, first respondent-company as an Assistant Accountant under an appointment letter dated February 16, 1979. His services were terminated by a letter dated June 19, 1981 in the following terms:

"We regret that your attitude and behaviour is becoming more and more antagonistic, which cannot be tolerated further.

In all the three sections, you were working (1) Billing, (2) Realisations, (3) Exhibitors'' Ledger, we find that you are not taking any interest or responsibility in completing the work allotted to you satisfactorily.

Hence you are forcing us to terminate your service forthwith. You may settle your account accordingly".

On receipt of the letter of termination on June 22, 1981 the petitioner filed Complaint (ULP) No. 77 of 1981 in the Labour Court at Bombay under Item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as ''the MRTU & PULP Act'').

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2. The petitioner-workman adduced his own evidence and deposed that he was not well treated by his employer and was humiliated because he. refused to obey the order of one year in the matter of not recovering dues of various parties which according to him was not his job. His evidence further shows that without even issuing a notice and holding an enquiry against him his services were abruptly terminated in terms of the letter stated hereinabove. It is important to note that first respondent-company adduced no evidence on their behalf in the Labour Court. On appreciation of the evidence adduced before him, the learned Labour Judge came to the conclusion that the petitioner- workman failed to bring home the charge of unfair labour practice covered by Item 1 of Schedule IV of the MRTU & PULP Act against the first respondent-company and accordingly by his judgment and order dated August 31, 1983 he dismissed the petitioner''s unfair labour practice complaint.

3. Being aggrieved, the petitioner filed revision application (ULP) No. 32 of 1983 in the Industrial Court at Bombay. The learned member of the Industrial Court who heard the said revision application was not quite happy with the manner in which the learned Labour Judge disposed of the unfair labour practice complaint of the petitioner-workman. He pointed out the circumstances why he was unhappy the manner in which the learned Labour Judge disposed of the proceedings before him. What appears from the record is the fact that although the termination order was annexed to the complaint, the learned Labour Judge recorded that not even the letter of termination was annexed to the complaint which goes to show with what total non-application of mind the learned Labour Judge casually and in a cavalier fashion disposed of the unfair labour practice complaint filed by the petitioner-workman. And despite that fact, the learned Member of the Industrial Court was surprisingly of the view that the first respondent-company had not committed unfair labour practice covered by Item 1 of Schedule IV of the MRTU & PULP Act although the learned Member of the Industrial Court was of the view that the action of the first respondent-company in terminating the services of the petitioner- workman was punitive and his services were terminated without a charge-sheet and without a domestic enquiry being held against him. The learned Member of the Industrial Court accordingly by his judgment and order dated August 6, 1984 dismissed the revision application of the petitioner-workman.

4. Therefore, the petitioner-workman invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

5. Now, as pointed above, the first respondent-company terminated the services of the petitioner-workman by a punitive action as held by the learned Judge of the Industrial Court. Assuming for the sake of argument that the allegations made against the petitioner- workman in the letter of termination of his services, which is quoted above are correct, the first respondent-company was duty bound in law to have charge-sheeted the petitioner-workman and it was only after holding a domestic enquiry against him that his services could have been

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terminated. It was the case, of the petitioner-workman that he was victimised because he refused to carry out certain order of one of the officers of the first respondent-company which was not part of his duties. If the first respondent-company chose not to hold any domestic enquiry against the petitioner-workman, they could have at least adduced satisfactory evidence in the Labour Court to show that they had not victimised the petitioner-workman. Not having done that, the conclusion is irresistible and inevitable that the petitioner was discharged or dismissed from services as and by way of victimisation. It could also be said that the action of the first respondent-company in terminating the services of the petitioner was not in good faith but in the colourable exercise of the employer''s rights. The manner, in which the services of the petitioner have terminated in ugly haste leaves no manner of doubt that the first respondent-company terminated services of the petitioner in utter disregard of the principles of natural justice and with undue haste. Therefore, the act of the first respondent-company was an act of unfair labour practice covered by Item 1(a), (b) and (f) of Schedule IV of the MRTU & PULP Act. The learned Judge of the Labour Court and the one presiding over the Industrial Court were, therefore, in grave error in non-suiting the petitioner- workman in the matter of his complaint of unfair labour practice.

6. In this view of the matter, the writ petition succeeds and the same is allowed. The impugned judgments and orders passed by the learned Labour Judge and the learned Member of the Industrial Court are quashed and set aside. It is hereby declared that the first respondent-company indulged in an unfair labour practice covered by Item I of Schedule IV of the MRTU & PULP Act. They are, therefore, directed to cease and desist from the said unfair labour practice and reinstate the petitioner-workman forthwith in his original position with continuity of service and pay to him the entire back wages. It, however, appears from the evidence of the petitioner-workman that he was working with a clearing agent called ''Sea Forwarders'' from January, 1982 and was getting Rs. 200/- per month. He shall, therefore, render the entire account as to the receipt of wages by him on account of the said employment with Sea Forwarders and the first respondent company shall deduct the said amount from the back wages due and payable to the petitioner-workman.

7. Rule is made absolute in the terms aforesaid with cost of Rs. 1,000/- by the first respondent-company to the petitioner-workman.

8. The first respondent-company is directed to pay the arrears of back wages to the petitioner workman on or before 31st July, 1991 failing which they shall be liable to pay interest at the rate of 15 per cent on the amounts due and payable to the petitioner-workman effective from 1st August, 1991.

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