

(2004) 04 BOM CK 0105
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 1651 of 2002

Sudarshan Steel Manufacturing Co.

APPELLANT

Vs

Mumbai Labour Union and Another

RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Citation : (2004) 102 FLR 191 : (2004) 3 LLJ 704

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Advocate : R.S. Pal, instructed by Sanjay Udeshi and Co, for the Appellant; P.G. Lad, for the Respondent

Judgement

S.U. Kamdar, J.—By the present petition, the petitioners are challenging the order passed by the learned Industrial Court in Complaint (ULP) No. 1660 of 1991 by which the learned Industrial Court has allowed the complaint in part and directed that the workmen should be allowed and permitted to resume their usual duty with effect from January 1, 2002 with continuity of service. It was further directed that the petitioner Company shall make payment of back wages at the rate of 25% "o the workmen for a period from September 5, 1991 till end of December, 2001. The few facts of the present case are as under:

2. It is the case of the petitioner that on April 15, 1987 the petitioner Union gave a notice of strike with effect from May 2, 1987. The said strike continued for almost a period of four years. Though the said strike was not declared illegal but on August 12, 1991 the said strike is supposed to have been withdrawn. It is the further case of the petitioner that inspite of the fact that the strike was withdrawn, no worker resumed the duty and reported on job though the jobs were offered to them. On the other hand it is the case of the Union that though the strike was withdrawn, the respondent Union's member workers were not permitted to resume their job and their duties. Consequently, the petitioner management had illegally declared lock-out in the said factory premises. On the aforesaid allegations of the parties, the aforesaid complaint was filed, inter alia,

alleging that the petitioner company has declared illegal lock- out and has not allowed the members of the respondent union to resume duty. Before the learned trial Court the parties were examined in detail.

3. The learned counsel for the petitioner pointed out that in fact by virtue of the conduct on the part of the members of the respondent Union not to report on duty after sending several reminders ultimately a charge sheet was issued to various workers on June 9, 1992 and the workers were charge- sheeted. It is the further case of the petitioner that pursuant to the said charge-sheet, domestic enquiry was conducted by the petitioner-management and ultimately by various orders issued to various workers the petitioner management terminated the services of the said workers. It is the case of the respondent Union members on the other hand that no such charge-sheet was served on them, no such enquiry was conducted and there was no legal or valid order of dismissal. The learned Industrial Court in the judgment impugned before me has while considering this aspect of the matter has held that he is not inclined to go into the said issue at all. In paragraph 24 of the said judgment, the learned Member of the Industrial Court has held as under:

"24. Learned advocate Sri S.S. Kane argued that departmental enquiries have been conducted against all the workers and they remained absent for the enquiry and the enquiry was conducted ex parte. All the workmen have failed to report for work even after the strike was withdrawn. It is pertinent to note that during the pendency of the complaint, the respondents have initiated and completed the enquiry. Witness Shri Dholkiya, who is enquiry officer has been examined on the point of enquiry. From the evidence of this witness it is crystal clear that the place of enquiry had not been mentioned in the charge-sheet. Notice of enquiry and charge-sheet were not served on the concerned workmen. The point whether the enquiry is just and proper is not the issue before this Court. Hence I am not going into details of that evidence. But the pertinent point is, whether the company was entitled to hold such enquiry when the matter was pending in this Court. In fact the company could have offered the workmen to report for work. The workmen have prayed in this complaint that the company should allow them to report for work. The company, instead of making such efforts, has made a farce of departmental enquiry. I find that the said departmental enquiry would have bearing, if at all the company had succeeded in proving that the workmen continued to be on strike. However, evidence on record shows that the workmen had withdrawn the strike. They had reported for work but the work was refused to them. Hence I find that whatever departmental enquiry had been initiated and held is not at all effective, because, the cause of departmental enquiry was that the workers were on strike and they have failed to prove that cause. Hence the departmental enquiry has become infructuous and ineffective and the said departmental enquiry is not having bearing on this complaint as the respondent company had refused to provide work to the workers and obviously the said act of the Respondent company amounts to breach of service condition. It is the duty of the employer to provide work to the workmen when they report for work."

4. On the basis of the aforesaid finding, the learned Industrial Court has proceeded on the assumption that there is no enquiry, no charge-sheet and that ultimately came to the conclusion that the workmen were not permitted to resume duty and consequently has passed the impugned order herein.

5. The learned counsel appearing for the petitioner has contended before me that it was not open for the Industrial Court to ignore the subsequent events which had taken place during the pendency of the complaint which was filed by the workers and the learned Industrial Court was duty bound to take into consideration the charge-sheet, the enquiry conducted and the order of the dismissal passed. If the aforesaid fact is taken into account, then the complaint being Complaint (ULP) No. 1660 of 1991 filed by the respondent union would be in fructuous and not maintainable in as much as on their dismissal from service it is for them to first establish that the said dismissal is illegal, unlawful or wrongful and they were entitled to reinstatement in service with back wages. It was further contended before me that the learned Member of the Industrial Court rather going into this aspect of the matter, has plainly and simply refused to go into the said controversy and pass appropriate order in the matter. Thus, the learned Industrial Court has failed to exercise its appropriate jurisdiction while considering the matter. On the other hand, the learned counsel for the respondent Union, has contended that the rights of the parties in the Complaint (ULP) No. 1660 of 1991 ought to be and should be decided as on the date of the complaint. It is further contended that thus the subsequent event of the dismissal of the employees from the service ought to have been ignored and disregarded and the matter has been rightly considered by the Industrial Court on the basis that the workmen have not been given job though they are in service.

6. After considering the aforesaid aspect of the matter, I find no merits in the contention of the learned counsel for the respondent. The- dispute between the parties at the time of initiation raised certain issues and prayers sought therein. However, when the said issues and prayers become in fructuous by virtue of the subsequent event, which has happened, the Court was duty bound to take into consideration the same. Once there has been an order of dismissal in respect of various workers, without going into the validity and legality of the said dismissal order and consequently setting aside the same, it was not open for the Court to assume that there was no such dismissal order and proceed to give relief to the respondent union and its members on the basis that there was no valid enquiry. It is now well settled that Court while passing the final order or decree must take into consideration all the relevant facts and material which have arisen during the pendency of the proceedings if it vitally affects the matter or goes to the root of the matter. The Court cannot be oblivious to the circumstances which has transpired during the proceedings which are pending. It is the essential duty of the Court to look into the fact that whether on the events which has happened subsequently the original reliefs sought or the complaints made would still survive or not. I find that this aspect of the matter has not been taken into

consideration by the Industrial Court. In the aforesaid circumstances, I find that unless and until the respondent union and/or its members adopt appropriate legal proceedings as permissible in law and challenge the said dismissal orders which are passed against the workers, the order passed by the Industrial Court cannot be sustained and accordingly I set aside the order passed by the learned Industrial Court dated December 12, 2001 in Complaint (ULP) No. 1660 of 1991. Petition is made absolute accordingly. There shall be no order as to costs.

7. Parties to act on ordinary copy of this order duly authenticated by the Private Secretary of this Court.