

(2002) 04 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 962 of 1995

Superintending Engineering Public Works Division and Another	APPELLANT
Vs	
Gajanan Shrinivas Kshirasagar and Others	RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2002) 3 ALLMR 746 : (2002) 5 BomCR 612 : (2002) 95 FLR 731

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

Bench : Single Bench

Advocate : K.K. Jadhav, A.G.P, for the Appellant; Uday Warunjikar, for the Respondent

Judgement

R.J. Kochar, J.—The Superintending Engineer and the Executive Engineer, Public Works Division, Kolhapur, both are aggrieved by the judgment and order passed by the Industrial Court in revision application on 17th June, 1994 u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971. The present petitioners were the revision applicants before the Industrial Court challenging the judgment and order of the Labour Court granting reinstatement without backwages and continuity of service to the concerned respondent employee who had filed a complaint of unfair labour practice u/s 28 of the M.R.T.U. and P.U.L.P. Act read with Item 1 of Schedule IV in which the Labour Court had passed the order as aforesaid.

2. It appears from the facts narrated in the record that the concerned employee, the respondent No. 1, was appointed on and from 10th December, 1981 as a typist-cum-clerk. It is an admitted position that he continued in employment with several breaks till 23rd April, 1984 when he was finally terminated from employment. It appears that first he approached the Industrial Court by his complaint on 28th July, 1984. It further appears that by its judgment and order dated 30th July, 1986, the Industrial Court dismissed the said complaint as not maintainable on the ground that he ought to have approached the Labour Court

for reinstatement and not Industrial Court as he was challenging the order of his termination from employment. The said employee thereafter, filed the present complaint in question of unfair labour practice before the Labour Court on 28th August, 1986. He complained before the Labour Court that his services were terminated in violation of section 25-F of the Industrial Disputes Act, 1947. Further he also complained that the order of termination was illegal, improper and mala fide. On the basis of the pleadings and evidence, the labour Court answered the complaint partly in favour of the employee directing the petitioners to reinstate the employee with continuity of service but without backwages by its decision given on 7th May, 1999.

3. Both the parties were aggrieved by the aforesaid decision of the labour Court and, therefore, both the parties approached the Industrial Court u/s 44 of the Act by filing the revision applications. The petitioners challenged the order of reinstatement while the employee challenged the order denying him the relief of backwages. By its order dated 17th June, 1994, the Industrial Court dismissed the revision application filed by the petitioners and confirmed the order of reinstatement. The Industrial Court, however, allowed the revision application filed by the employee and granted him full backwages for the intervening period which were denied by the Labour Court.

4. The petitioners are aggrieved by the said order and, therefore, they have approached this Court under Article 227 of the Constitution of India, challenging the legality and validity of the impugned judgments and orders of the Industrial Court, confirming the order of reinstatement and granting full backwages to the respondent employee. At the time of hearing of the petition, this Court (D.R. Dhanuka, J.) had directed the petitioners to obey the order of reinstatement. It appears that the petitioners have thereafter in the month of March 1995 reinstated the respondent employee. The order of the Industrial Court was stayed to the extent of backwages on 9th June, 1995.

5. The employee had approached the Labour Court challenging the order of termination, inter alia on the ground of violation of section 25-F of the Industrial Disputes Act, 1947. He had taken a specific plea to that effect in his complaint. The petitioners in the written statement, however, pleaded that no notice of termination of service was required and that he was not entitled to the wages in lieu of the notice and that since the employee was not recruited in accordance with the recruitment rules, he could not be continued and that the employee was not retrenched and, therefore, there was no question of following the proper procedure and that the said provision of the I.D. Act did not apply to the services of the employee. The Labour Court however, accepted the contention of the employee that there was violation of section 25-F of the I.D. Act. The petitioners had not offered or tendered the retrenchment compensation u/s 25-F of the I.D. Act assuming that the said Act was not applicable to them. According to the petitioners, they were not governed by the Industrial Disputes Act, 1947. His appointment was on work charge establishment and that he was appointed on

temporary establishment subject to the approval of the State Selection Board. The employee was employed as a Mazdoor on daily wages. It is no where pleaded by the petitioners that their public works division was not an industry within the meaning of section 2-J of the I.D. Act and that they were not governed by the said Act. The Labour Court has rightly concluded in the given circumstances that the petitioners had violated section 25-F of the Act, which they ought to have complied with being a mandatory provision of law. The Labour Court has in my opinion, rightly granted reinstatement with continuity of service. The Labour Court has denied the relief of full backwages mainly on the ground that the employee had approached the Labour Court after a lapse of more than 2 years and, therefore, the Labour Court denied full backwages to the employee. The Industrial Court under revision confirmed the order of reinstatement and in my opinion rightly so. The Industrial Court, however, was of the opinion that the employee should be given the relief of full backwages as he was given a wrong advice by the union to approach the Industrial Court to challenge the order of termination. He was bona fide agitating the complaint before the Industrial Court and for approaching a wrong forum under wrong advice was held to be not a sound ground by the Industrial Court to deny the relief of full backwages.

6. In my opinion, the employee is not entitled to get full backwages in the peculiar facts and circumstances of the case. The employee has succeeded to get reinstatement on the basis of violation of section 25-F of the Industrial Disputes Act, 1947. According to the petitioners, who also bona fide believed that they being the State Government department were not governed by the Industrial Disputes Act and, therefore, they were not required to comply with the provisions of the said enactment. At the same time, the petitioners cannot be burdened with the cost of full backwages merely because, the employee had approached a wrong forum under a wrong advice. For a wrong decision of the employee, the employer cannot be made to suffer. The petitioners are a public works division and they are concerned with the public money. True it is that it was the wrong decision of the petitioners to have formed an opinion that they were not governed by the I.D. Act. In fact they ought to have sought legal advice before deciding to pass the order of termination. It is possible that the said officers were under genuine and bona fide belief that the employee was employed as a daily rated employee without following the recruitment rules to meet the exigency of work. The present is a peculiar case where both had committed a wrong. On the one hand, the petitioners had taken a wrong decision in terminating the employee without complying with the provisions of section 25-F of the Act and on the other hand the employee had approached a wrong forum and waited for a decision from such wrong forum which was approached by him. For such wrong approach, the petitioners also cannot be blamed and they cannot be foisted with the burden of full backwages for that period.

7. The petitioners have reinstated the employee with continuity of service from March 1995 and he is in employment. We also cannot forget another important

and crucial fact that the employee was not recruited through the regular channel in accordance with the recruitment rules. He, however, got the benefit of the industrial law and the ignorance of the petitioners. Since the employee is in employment as a result of the order passed by the Labour Court and confirmed by this Court in March 1995, it will not be in the interest of justice to disturb his position. I am, therefore, inclined to modify the order of the Industrial Court. It would be in the interest of justice to apportion the blame of the wrongs committed by both the parties coupled with the fact that the petitioner is a public works division. The petitioners have committed a genuine and bona fide mistake of considering that they were not governed by the I.D. Act and that they were not required to comply with the mandatory provisions of section 25-F of the said Act in the case of the respondent-employee who was a daily rated mazdoor employed de hors the recruitment rules. It would, therefore, not be in the interest of justice to burden the public works department with the huge amount of backwages to be paid to the employee, at the same time, the employee cannot be blamed for the wrong and illegal decision taken by the petitioners to have violated the mandatory provision of section 25-F of the I.D. Act. While following the principle of apportionment of judgment, it would be in the interest of justice to reduce the amount of full backwages to the half payable by the petitioners to the respondent employee. I, therefore, modify the order of the Industrial Court and hold that the employee is entitled to get reinstatement with 50% backwages during the intervening period from the date of termination till the date of reinstatement.

The petition is partly allowed in the aforesaid terms.

All concerned to act on a copy of this order duly authenticated by the Associate.