

(2000) 06 BOM CK 0031
In the Bombay High Court
Case No : A.S.C.J.W.P. No. 783 of 1989

Suryabhan Baburao Sathe and Others	APPELLANT
Vs	
Belapur Sugar and Allied Industries Ltd.	RESPONDENT

Date of Decision : 17-06-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4), 78, 79, 84
Bombay Industrial Relations Rules, 1947 — Rule 53(1)

Citation : (2000) 4 ALLMR 109 : (2000) 3 LLJ 1071

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner is aggrieved by the concurrent findings recorded by the Labour Court and the Industrial Court against him under the provisions of the Bombay Industrial Relations Act, 1946 (B.I.R. Act for short). The facts are in a very narrow compass. The petitioners services were terminated simpliciter under the provisions of the Standing Orders by an order dated September 16, 1980. The respondent employer has stated in the said order that the petitioner was not a desirable person to be retained in the employment and the reasons for his termination were confidentially recorded separately but the same could not be communicated to him. The order further says mat 13 days" wages, in lieu of notice and retrenchment compensation u/s 25-F of the Industrial Disputes Act are kept-ready in the accounts office and that the petitioner was directed to collect the same from the office at the time of receipt of this order. The petitioner appears to have received the said order on September 19, 1980.

2. There is no dispute that the parties were and are governed by the provision of the B. I. R. Act. u/s 42(4) of the B.I.R. Act read with Rule 53(1) of the Rules framed thereunder the petitioner was required to send a letter of approach within a period of three months from the date of the termination order. It is now well established that sending of a letter of approach u/s 42(4) of the B.I.R. Act read

with Rule 53(1) of the Rules framed thereunder, is mandatory and this precondition must be complied with before any application is filed before the Labour Court u/s 79 read with Section 78 of the B.I.R. Act for claiming relief of reinstatement with back wages by challenging the propriety or legality of the order passed under the Standing Orders.

3. In the present case, it is an admitted position that the petitioner did not send such a letter of approach within a period of three months i.e., on or before December 19, 1980. He sent such a letter of approach on February 14, 1981, much after the expiry of the period of three months from the date of the termination order. The petitioner filed an application before the Labour Court u/s 79 read with Section 78 of the B.I.R. Act to challenge the propriety and legality of the order of termination dated September 16, 1980. The respondent raised a preliminary objection in respect of the maintainability of the said application for want of compliance by the petitioner of the mandatory provisions of Section 42(4) of the B.I.R. Act. It was averred by the respondent that the approach letter was barred by limitation as prescribed u/s 42(4) of the B.I.R. Act and Rule 53(1) of the Rules framed thereunder the application was not maintainable at all. The Labour Court by its order dated May 31, 1988 upheld the contention of the respondent and dismissed the application. The petitioner carried this matter before the Industrial Court by filing an appeal u/s 84 of the Act challenging the legality and validity of the order of the Labour Court. The Industrial Court has also dismissed the appeal holding that the mandatory precondition prescribed u/s 42(4) of the B.I.R. Act read with Rule 53(1) of the Rules framed thereunder were not complied with by the petitioner and, therefore, the Labour Court was right in dismissing his application. It is this order which is challenged by the petitioner under Article 227 of the Constitution of India.

4. The position in this respect is beyond any shred of doubt and is very well established that any order passed under the Standing Orders can be challenged by filing an application u/s 79 read with Section 78 of the Act only after compliance of the mandatory provisions of Section 42(4) of the B.I.R. Act and Rule 53(1) of the Rules framed thereunder. There is no provision of condonation of delay in sending a letter of approach and the prescribed limitation under the Rules is three months from the date of the order. As I have already given the dates it is crystal clear and beyond any manner of doubt that the approach letter sent by the petitioner was beyond the prescribed period of three months. In the circumstances his application was not maintainable and both the Courts below have taken correct view of the matter and have dismissed the application filed by the petitioner, I do not find any reason to interfere with the said order of the Industrial Court. The learned Member of the Industrial Court has dealt with the matter squarely and exhaustively and there is no infirmity or illegality of any nature. There is no substance in the petition. The said order is dismissed. Rule discharged. No order as to costs.