

(1988) 08 BOM CK 0004

In the Bombay High Court

Case No : O.S. Appeal No. 1378 in Writ Petition No. 1599 alongwith O.S. Appeal No. 1379 of 1987 in Writ Petition No. 2360 of 1985

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

R.D. Surve

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 16

Citation : (1989) 91 BOMLR 29

Hon'ble Judges : V.S. Kotwal, J;C.S. Dharmadhikari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—As both these appeals arise out of the order passed by the learned single Judge in Writ Petition No. 1599 of 1985 and Writ Petition No. 2360 of 1985, they were beard together and are being disposed of by this common order.

2. The main question, which is raised in these appeals relates to the interpretation of Item No. 1 in Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971. Item No. 1 of the said Schedule reads as under:

1 To discharge or dismiss employees--

(a) by way of victimization ;

(b) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(c) for patently false reasons;

(d) on untrue or trumped up allegations of absence without leave;

(e) in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste;

(f) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

3. The words and expression used in item No. 1 are "to discharge or to dismiss employees".

4. The petitioners in this case approached the Labour Court with a complaint that they are either discharged or dismissed by the respondents employers by obtaining resignations under duress or by force. The Labour Court as well as the Industrial Court took the view that even a forced resignation will not amount to discharge or dismissal of an employee within the contemplation of Item No. 1 of Schedule IV of the Act. The learned single Judge held that a forced resignation is covered by the said item and, therefore, the complaints made were maintainable. It is this order of the single Judge, which is challenged in these appeals.

5. Shri Damania, learned Counsel appearing for the appellants contended before us that a resignation, whether forced or otherwise, is not covered by Item No. 1, Schedule IV of the Act. It is not possible for us to accept this contention. In our view, the view taken by the learned single Judge is the correct view of the matter.

6. This Court had an occasion to consider as to what is the effect of a forced resignation in *Yeotmal District Central Co-operative Bank Ltd., Yeotmal v. Ramchandra Wamanrao Deshpande* [1978] Lab. I.C. 1321 . and *Shriram Swami Shikshan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur* [1984] Lab. I.C. 432 . In *Shriram Shikshan Sanstha's* case, the Division Bench held:

We feel that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It therefore amounts to termination of service by the employer.

7. In this decision a reference was also made to a decision in *Abraham Reuben v. Karachi Municipality* AIR [1929] Sind. 69 and also to a decision of the Karnataka High Court in *Southern Railways Ltd. v. Padmarwbhan* [1979] Lab. I.C. 254 .

8. A similar view was taken by this Court in *Yeotmal District Central Co-operative Bank Ltd. V. Ramchandra Wamanrao* (supra) to which one of us (Dharmadhikari, J.) was a party. In this context reference could usefully be made to the following observations of the Supreme Court in *the Manager, Bengal Nagpur Cotton Mills Ltd. v. J. Bastian* AIR [1960] S.C. 110.

That leaves only one question to be considered. It was urged before the

authorities below that the present dispute is not an industrial dispute for the reason that the respondent had not been dismissed, but he had voluntarily retired. If it was a case of voluntary retirement as pleaded by the appellant undoubtedly the respondent's application u/s 16 of the Act would be incompetent. But can the termination of the respondent's services be properly characterised as voluntary retirement? In our opinion there can be only one answer to the question and that is the one given by the authorities below. It is true that the respondent offered to retire but he made it perfectly clear from the start that he was willing to retire provided he was given his due pension under the rules as well as custom. In addition to the pension he made a claim for gratuity. In fact when his claim for pension was rejected, he offered to continue to work as before and said that it was only if pension was granted that he would be willing to retire. It is common ground that the appellant has no rules of superannuation and no case has been made out for terminating the respondent's services either under Standing Order 23 or 25. Therefore, it is not a discharge for any reasons, justified by the standing orders. It is discontinuance of service brought about by the peremptory order passed by the appellant asking the respondent to hand over charge to Mr. Satyabradal and naturally the respondent submitted to the order under protest. In our opinion, there can be no doubt that the appellant has illegally and improperly terminated the service of the respondent and so the dispute raised by him is an industrial dispute which was properly taken up by him before the Assistant Labour Commissioner.

9. The words "Discharge and dismissal" are not defined in the Act. Therefore they will have to be construed not in their technical sense but as understood in common parlance, or in industrial adjudication. So construed the expression "discharge or dismissal" will include in its import forced resignation. To construe it otherwise will defeat the very purpose and object of the legislation. Therefore, we agree with the view taken by the learned single Judge in that behalf.

10. It was then contended by the learned Counsel that from a bare reading of the complaint, no prima facie case is disclosed for entertaining a complaint that the resignation was brought about by duress, coercion or force. In our view it is too premature to decide the said question. Certain allegations are made by the employees in their complaints. Ultimately as to whether the resignation is forced or a voluntary one must depend upon the facts and circumstances of each case and no general rule can be laid down in that behalf. Therefore, obviously it is a matter of evidence and the said contention cannot be decided on the basis of mere arguments only. In a given case if it is held that the resignation being forced one amounts to discharge or dismissal, then also the employer can show that even if it is assumed that it is a dismissal or discharge, then also it was in accordance with the law or the provisions of the standing orders etc. Such an inquiry is not shut out and, therefore, we do not feel that the contentions raised in this behalf deserve to be considered at this stage. Ultimately the learned single Judge has remanded the matter back to the Labour Court for deciding it in accordance with law. Therefore, in our view no interference is called for with the

order passed by the learned single Judge in that behalf.

11. However, we feel that the observations made by the learned single Judge in para 7 of the impugned order criticizing the Courts below are wholly uncalled for and unwarranted. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control, the High Court is under a Constitutional obligation to guide and protect the Judicial Officer. Unless a Judicial Officer feels protected, it will be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is sine qua non for the rule of law. In the judicial hierarchy an honest difference of opinion is bound to be there, because you cannot have one and same head on all shoulders. This is the reason why it is clarified by the Supreme Court that judicial pronouncements should be judicial in nature and should not normally depart from sobriety, moderation and reserve.

12. In the present case the Courts below were called upon to interpret item No. 1 in Schedule IV of the Act. They took a view that the said item will not take in its import a resignation even if it is a forced one. The learned single Judge has taken a different view, but on that count the criticism of the lower Courts is wholly unwarranted. Therefore, the observations made by the learned single Judge in para 7 of the impugned judgment deserve to be set aside.

13. However, in the view, which we have taken, both these appeals fail and are dismissed with no order as to costs.

14. The Lower Court is directed to hear and decide the matter as expeditiously as possible.