

(2010) 10 BOM CK 0032

In the Bombay High Court

Case No : Letters Patent Appeal No. 496 of 2010 in Writ Petition No. 5600 of 2009 (D)

The Executive Engineer, Bhandara Irrigation Division and Sub-Divisional Engineer, Irrigation Sub-Division

APPELLANT

Vs

Duryodhan Nagalwade

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 28, 7
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44, 5, 7

Citation : (2011) 3 ALLMR 244 : (2011) 129 FLR 408 : (2011) 2 LLJ 245 : (2011) 1 MhLj 956

Hon'ble Judges : J.P. Devadhar, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.S. Wandile, AGP, for the Appellant; M.L. Bhure, for the Respondent

Judgement

A.B. Chaudhari, J.—Heard.

2. Admit.

3. Mr. M.L. Bhure, Adv. waives service on behalf of the Respondent.

4. Taken up for final disposal with the consent of the learned Counsel for the rival parties.

5. The sole respondent/employee had filed a complaint u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU and PULP Act) challenging in a Complaint (ULP) No. 2 of 1993 the alleged oral termination of his services from 27th October, 1990. By judgment and order dt. 10.1.2002, the said complaint was partly allowed and the respondent/employee was directed to be reinstated without backwages. That judgment came to be challenged in a revision before the Industrial Court by the appellant and the Industrial Court, after setting aside

the said judgment, remanded the proceedings to the Labour Court for fresh hearing and disposal of the complaint. After remand, the complainant amended his complaint and inserted a ground in the complaint that he was entitled to be regularised in service in accordance with the Kalelkar Settlement because he had completed five years of continuous service and the Kalelkar Settlement in his case was not implemented and for that purpose, he prayed for reinstatement as well before the Labour Court. The Labour Court, after hearing the complaint afresh after remand, returned a finding against the respondent/employee holding that he did not complete 240 days in one year of continuous service and he did not produce the said Kalelkar Settlement before the Court and had also failed to show that the said Award applied in his case. Since the Court held that the respondent/employee did not complete 240 days of continuous service, it did not find any violation of Section 25F of the Industrial Disputes Act. As to maintenance and publication of seniority list, it found that, except vague say of the complainant that the persons junior to him were retained in service, there was no material to assume violation of provisions of Section 25G of the Industrial Disputes Act. Resultantly, the Labour Court dismissed the complaint in entirety.

6. The respondent/employee filed a revision before the Industrial Court against the said Judgment and Order dt. 10.1.2002 passed by the Labour Court dismissing his complaint vide Revision (ULP) No. 79 of 2007. In revision, the Industrial Court did not vary the finding recorded by the Labour Court that he did not complete 240 days in one year of continuous service, but found that the Kalelkar Settlement was applicable in the case of respondent. It further found that the copies of Wage-cum-Attendance extract filed on record by the appellants right from 1979 till 1990, itself showed that the respondent/employee worked during those years. It is on the basis of said chart, the Industrial Court got impressed about the number of years in which the respondent/employee had performed the work and therefore, held that the Kalelkar Settlement was required to be implemented in the case of respondent, he having worked for more than five years and thus, found that the appellant committed unfair labour practice by not implementing the Kalelkar Settlement in the case of respondent. The Industrial Court, therefore, partly allowed the revision directing the appellant to implement the Kalelkar Settlement in the case of respondent after holding that the appellant indulged in unfair labour practice under Item 9, Schedule IV of the MRTU and PULP Act and further directed the appellant to reinstate him in service and calculate monetary benefits for making payment to him. The learned Single Judge upheld the order of the Industrial Court, but made a slight modification regarding calculation of arrears. Hence, this appeal by the appellants.

Consideration:

7. We have heard the learned Counsel for the rival parties and we have gone through the entire record, so also the impugned judgments. Since, in our view, jurisdictional error has been committed by the Industrial Court in the present matter, it is necessary to have a look at the various provisions of the MRTU and

PULP Act.

8. Section 5 of the MRTU and PULP Act and in particular, Clause (5)(d) reads thus:

5. Duties of Industrial Court:

It shall be the duty of the Industrial Court,

(a)

(b)

(c)

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item I of Schedule IV;

9. Section 7 reads thus:

7. Duties of Labour Court:

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.

10. Entries 1 and 9 in Schedule - IV read thus:

Schedule - IV.

General Unfair Labour Practices on the part of Employers:

1. To discharge or dismiss employees -

(a) by way of victimisation;

(b) not in good faith, but in colourable exercise of employer's rights;

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

(d) for patently false reasons;

(e) on untrue or trumped up allegation of absence without leave;

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

(g) 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 employees, so as to amount to a shockingly disproportionate punishment.

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9 Failure to implement award, settlement or agreement.

11. From perusal of the above provisions, it is clear that the Labour Court has been invested with power to try the complaint which fall within Item No. 1 (a to g) relating to discharge or dismissal of employees and nothing more under Schedule IV of the MRTU and PULP Act. It is further clear from the reading of Section 5(d) that it is the Industrial Court which alone has been conferred with jurisdiction to try the complaint in relation to Item No. 9, Schedule IV of the MRTU and PULP Act. In other words, in relation to complaint where there is a grievance about failure to implement award, settlement or agreement under Item 9, the Industrial Court exercises its original jurisdiction of entertaining and trying a complaint u/s 28 of the Industrial Disputes Act. Similarly, the Labour Court exercises its original jurisdiction in respect of the complaints brought before it in the matter of discharge or dismissal from services of employees under Item 1(a to g). Now we quote Section 44 of the MRTU and PULP Act, which reads thus:

44. Industrial Court to exercise superintendence over Labour Court:

The Industrial Court shall have superintendence over all Labour Courts and may,

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts;

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

12. Section 44, thus, provides for power of superintendence to the industrial Court over the Labour Court. It, thus, acts as a superior Court over the labour Court for exercising the said power of superintendence, which, in common parlance, is called as "revisional jurisdiction". Thus, the orders made by the Labour Court deciding the complaints finally in relation to Item Nos. 1(a to g) could be put to challenge before the Industrial Court by way of revision u/s 44 of the Industrial Disputes Act.

13. When there is a grievance about non-implementation of award, settlement or agreement and in the instant case, about non-implementation of Kalelkar Award,

complaint u/s 28 would obviously lie before the Industrial Court in its original jurisdiction and by no stretch of imagination, such a grievance could be entertained by a Labour Court u/s 28 of the Act or by the Industrial Court in its revisional jurisdiction u/s 44 of the MRTU and PULP Act. In the instant case, that is what has exactly happened.

14. The respondent/employee set up his case within the meaning of Item No. 9, Schedule IV by amending the complaint before the labour Court and made a grievance that, in his case, Kalelkar Settlement was not being implemented and he was, thus not being brought on regular establishment as per the said Kalelkar Settlement. It is clear that the jurisdiction to implement Kalelkar Settlement, which obviously falls under Item No. 9, Schedule IV of the MRTU and PULP Act, does not lie with the Labour Court, but that jurisdiction lies with the Industrial Court in its original jurisdiction u/s 28 in a complaint. The Industrial Court, however, In exercise of its revisional jurisdiction in the instant case, recorded a finding that the Kalelkar Settlement was not being implemented and therefore, the appellants committed unfair labour practice within the meaning of Item No. 9 and also issued directions accordingly; which, in our opinion, are completely without jurisdiction. The Industrial Court, thus, clearly acted without jurisdiction in doing so. We, therefore, reverse the finding of the Industrial Court on that issue.

15. We further find from the record that the law laid down by the Hon''ble Supreme Court in the recent point of time in the matter of burden of proof to establish completion of 240 days has not at all been taken into consideration. Further, the Industrial Court, after quoting the extract from wage-cum-attendance register, merely stated that the respondent/employee worked from 1979 to 1990. But the Industrial Court clearly ignored the fact that the chart itself showed the number of working days and the working days were from 4 days to 28 days only in each year. We quote the said extract in the chart thus;

16. Thus, the Industrial Court failed to apply its mind to this material aspect regarding number of working days and abruptly, came to a conclusion that even if the employee worked for about four or five or 28 days in a year and continued to work for few years, it will be presumed that he has worked continuously. On facts, that is absolutely a wrong approach. Insofar as violation of Section 25G is concerned, the Industrial Court has not recorded any finding. The question Whether or not the pleadings and evidence tendered by the respondent/employee was sufficient to arrive at a finding about violation of Section 25G has not at all been scanned by the learned Industrial Court. To our mind, the evidence about it is most unsatisfactory and with the said evidence, it is not possible to come to a conclusion about violation of Section 25G merely because the seniority list was not maintained and published. It is not possible to make a straight-jacket formula that if the seniority list is not maintained or published, same must automatically result into violation of Section 25G of the Industrial Disputes Act. Something more is required to come to such conclusion. We, thus,

find that the impugned orders made by the Industrial Court as well as the learned Single Judge will have to be set aside as the same are faulty in the light of the above discussion and in the interest of justice, the proceedings will have to be remitted to the Labour Court.

17. We again make it clear that the Labour Court shall not enter into the question of implementation or otherwise of Kalelkar Award in exercise of its jurisdiction u/s 7 of the MRTU and PULP Act. We, therefore, reserve liberty in favour of the respondent/employee, if he so desires and if it is permissible in law, to approach the appropriate Industrial Court in case he has a grievance about non-implementation of Kalelkar Award. In the result, we make the following order.

// ORDER //

The Letters Patent Appeal is allowed.

The impugned Judgments of the Industrial Court (in Revision (ULPA) No. 79 of 2007, dt. 26.6.2008) and the learned Single Judge [in Writ Petition No. 5600 of 2009, dt. 1.4.2010) are quashed and set aside.

The proceedings of Complaint (ULP) No. 2/93 are remitted to the Labour Court, Bhandara for fresh disposal in accordance with law in the light of observations made in the present judgment. The Labour Court shall take up the matter being old and decide the same as expeditiously as possible and in any case, within six months from the date of receipt of writ of this Court.

No order as to costs.