
(2014) 11 BOM CK 0170

In the Bombay High Court

Case No : Writ Petition Nos. 3908 and 5134 of 2005

The Principal, Shree Ayurved Mahavidyalaya

APPELLANT

Vs

Premchand and Others

RESPONDENT

Date of Decision : 15-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227 — Industrial Disputes Act, 1947 -
Section 33C(2) — Maharashtra Employees of Private Schools (Conditions of Service)
Regulation Act, 1977 - Section 9(1) — Maharashtra Recognition of Trade Unions and
Prevention of Unfair Labour Practices Act, 1971 - Section 28, 30(3), 44 — Maharashtra
Universities Act, 1994 - Section 59

Citation : (2015) 2 ALLMR 794

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : H.V. Thakur, Advocate, for the Appellant; J.R. Kidilay, Advocate, D.B. Patel and H.D. Dubey, AGPs, for the Respondent

Judgement

A.S. Chandurkar, J.?Both these Writ Petitions can be conveniently decided by this common judgment in view of similarity of issues involved therein between the same parties. The respondent No. 1 in Writ Petition No. 3908 of 2005 claimed to be working in the hospital run by Shree Ayurved Mahavidyalaya-petitioner, since 01-05-1979. According to the respondent No. 1, though he was working as Museum Keeper, he was also entrusted the work of Clerk in Gynec Section. According to the respondent No. 1, he had been working continuously from 20-05-1986 to 26-06-1986, but his signature on the muster roll was not permitted to be made and he was also not paid salary for the said period. He, therefore, made a complaint on 27-06-1986 after which he was permitted to resume his duties. It is his case that though he worked continuously, his services were orally terminated w.e.f. 01-01-1987. On said cause of action, the respondent No. 1 preferred complaint under Section 28 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [for short, "the said Act"]. Aforesaid complaint was filed under provisions of Item 1 Schedule IV of the said Act before the Labour Court. The petitioner opposed

aforesaid complaint and also raised an issue as regards the jurisdiction of the Labour Court to try the said complaint. According to the petitioner, the respondent No. 1 was absent from duty from 22-08-1986 without any intimation. It was stated that his services had not been terminated and that, the respondent No. 1 himself had refused to join his duties.

2. The Labour Court by order dated 15-05-1992 decided the issue of jurisdiction as a preliminary issue and held that the complaint as filed was tenable before the Labour Court. Thereafter, the respondent No. 1 led his evidence. The case, however, proceeded ex-parte against the petitioner and hence no evidence was led from its side. Thereafter, by judgment dated 09-02-1994, the learned Judge of the Labour Court allowed the complaint and after setting aside the order of termination, directed reinstatement of the respondent No. 1 on his former post with continuity of service. Similarly, backwages were also awarded from 01-01-1987 till the date of reinstatement. The petitioner being aggrieved by aforesaid order preferred revision application under Section 44 of the said Act before the Industrial Court. The Industrial Court by order dated 12-10-2004, dismissed the said revision application and confirmed the order passed by the Labour Court. The petitioner, thereafter, filed Writ Petition No. 6111/2004 and by judgment dated 19-04-2005, this Court set aside the order passed by the Industrial Court dated 12-10-2004 and remanded the proceedings to the Industrial Court for deciding the issue of jurisdiction. The petitioner was directed to pay costs of Rs. 17,000/- to the respondent No. 1.

3. Pursuant to aforesaid order of remand, the Industrial Court thereafter again heard the respective parties and by judgment dated 20-06-2005 dismissed the revision application holding that the Labour Court had jurisdiction to entertain aforesaid complaint on merits. Being aggrieved thereby, the petitioner has challenged aforesaid judgment dated 20-06-2005 passed by the Industrial Court in Writ Petition No. 3908/2005. Similarly, the order dated 09-02-1994 passed by the Labour Court is also under challenge.

4. Shri H.V. Thakur, the learned Counsel appearing for the petitioner submitted that both the impugned orders were liable to be set aside on the ground that the Labour Court had no jurisdiction to entertain proceedings by way of complaint under Section 28 of the said Act. According to the learned Counsel, the respondent No. 1 was a non-teaching employee in the petitioner college and therefore at the relevant point of time, the jurisdiction in that regard vested with the Tribunal constituted under the Nagpur University Act, 1974 [for short, "the Act of 1974"]. He submitted that the objection to jurisdiction was taken in the reply that had been filed before the Labour Court opposing aforesaid complaint. He further submitted that an application for dismissal of the complaint on said ground had also been filed before the Labour Court on said count. The Labour Court, however, relying upon the judgment of learned Single Judge in the case of Janata Janardan Shikshan Sanstha and Another Vs. Vasant P. Satpute (Dr.), , held that the Labour Court had jurisdiction in the matter. However, he submitted

that aforesaid decision has been overruled by the Full Bench in the case of St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, . He, therefore submitted that the Labour Court had entertained the complaint on merits though it had no jurisdiction in the matter. To buttress aforesaid submission, the learned Counsel for the petitioner also relied upon the judgments of the learned Single Judge in the cases of Registrar, University of Mumbai Vs. Lata Bhore and Another, , Madhukar Baburao Achari Vs. Shikshak Smarak Sanstha and another, , The Director, Shri. Guru Govind Singhji College of Engineering and Technology, Vishnupuri, Nanded Vs. Kishan Deshmukh, , Dr. Meena Vs. The Vice Chancellor, Rashtra Sant Tukdoji Maharaj Nagpur University, Maharaj Bagh Road, Nagpur. and Others, and Shri Owesh Alam Mohd Yakub Vs. The Principal of Maharashtra College of Arts, Science and Commerce and Another, .

It was then urged that the question as to whether the education was an "industry" or not was pending in a reference before the Supreme Court of India and said factor was also relevant insofar as the jurisdiction of the labour Court was concerned. In this regard, he relied upon the decisions of the Supreme Court in the case of State of U.P. Vs. Jai Bir Singh, and Umesh Korga Bhandari Vs. Mahanagar Telephone Nigam Ltd. and Another, .

5. It was then urged that even on merits, the order passed by the Labour Court and confirmed by the Industrial Court was not sustainable in law. He submitted that the Labour Court had not recorded any finding whatsoever that the petitioner was guilty of having committed any unfair labour practice. He, thus, urged that none of the ingredients as contemplated by Item 1(a)(b)(d) and (f) of Schedule IV had been satisfied and no specific finding in that regard had been given by the Labour Court. In this regard, he placed reliance on the judgment of learned Single Judge in the case of Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and others, and the judgment of the Division Bench in the case of BSES Limited Vs. Bombay Electric Workers Union and Others, .

As regards grant of full backwages, it was submitted that said direction was also not sustainable. He submitted that in absence of any pleading or proof that the respondent No. 1 remained unemployed, grant of full backwages was not at all justified. He relied upon the decisions of the Supreme Court in the cases of State of U.P. Vs. Jai Bir Singh, , State of Uttar Pradesh and Another Vs. Atal Behari Shastri and Another, , P.V.K. Distillery Ltd. Vs. Mahendra Ram, and Bharat Coking Coal Ltd. through Management Vs. National Coal Workers Congress through Vice President, . He also submitted that there was delay on the part of the respondent No. 1 in approaching the Court and the same dis-entitled the respondent No. 1 for grant of any relief whatsoever. He, therefore, prayed that the impugned order passed by the Labour Court and confirmed by the Industrial Court deserves to be set aside.

6. Shri J.R. Kidilay, the learned Counsel appearing for the respondent No. 1 opposed the Writ Petition and submitted that the impugned orders did not suffer

from any jurisdictional error. He submitted that as the respondent No. 1 was working as a Museum Keeper which was a non-teaching post in the petitioner college, the respondent No. 1 was a workman and the activity of education was an "industry", the Labour Court had jurisdiction to entertain the complaint. He submitted that merely because a reference was pending before the larger Bench of the Supreme Court on aforesaid issue, the same would be no ground to stall the hearing of the present Writ Petitions. In this regard, he relied upon the decision of the Supreme Court in the case of R.M. Yellatti Vs. The Assistant Executive Engineer, .

7. He then submitted that the petitioner had vaguely raised the issue of lack of jurisdiction. No details were given by it in the application filed for dismissal of the complaint. The specific provisions under which jurisdiction was barred had not been stated. He, therefore, submitted that the Labour Court could not be faulted for having held that it had jurisdiction to entertain the complaint. Countering the reliance placed by the petitioner on provisions of Section 42-B of the Act of 1974, it was submitted that under proviso to said Section, in absence of there being any Presiding Officer duly appointed, the jurisdiction of the Labour Court would not be ousted to entertain the complaint. In this regard. the learned Counsel placed reliance on the judgment of learned Single Judge in the case of Sindhu Education Society and Others Vs. Kacharu Jairam Khobragade and Others, .

8. The learned Counsel for the respondent No. 1 further submitted that the objection as regards the absence of the name of the person committing the alleged unfair labour practice was not taken into account by the Courts below. He submitted that in view of provisions of Section 30(3) of the said Act, it was sufficient if evidence by filing an affidavit was tendered in Court. He submitted that as the petitioner had failed to cross examine the respondent No. 1, his testimony remained unchallenged and hence the respondent No. 1 could not be blamed in that regard. He then submitted that there was no delay whatsoever in filing the complaint inasmuch the complaint had been filed in the month of January, 1987 itself when it was the case of the respondent No. 1 that his services were orally terminated on 01-01-1987. As regards grant of full backwages, said part of the order was sought to be defended by relying upon the decision of the Supreme Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, . He, therefore, submitted that when the act of oral termination was found to be illegal, the respondent No. 1 was entitled to full backwages. He. therefore, submitted that there was no merit in the challenge raised by the petitioner and hence the Writ Petition was liable to be dismissed.

9. Shri H.V. Thakur, the learned Counsel for the petitioner in reply to aforesaid submissions urged that the stand taken by the respondent No. 1 that the Presiding Officer under the Act of 1974 was not available had not been specifically pleaded in the complaint. He submitted that the Presiding Officer under the Act of 1974 was very much available and in that regard he referred to

the Notifications dated 28-03-1979, 06-09-1985 and 16-03-1989 issued by the Education and Employment Department of the State of Maharashtra in which it is stated that the Presiding Officer for the College Tribunal at Nagpur had been appointed. He, therefore, submitted that the judgment in the case of Sindhu Education Society (supra) was not applicable to the facts of the present case. He also submitted that the plea as regards lack of jurisdiction could be raised at any stage of the proceedings and in support of said submission, he placed reliance on the judgment of the Division Bench in the case of Gopikishan Agarwal Vs. District Judge, Bhandara and others--> . As regards grant of full backwages, he submitted that no positive statement had been made by the respondent No. 1 that he had not been gainfully employed after his services had been orally terminated.

Insofar as Writ Petition No. 5134 of 2005 is concerned, the respondent No. 2 then therein - employee had filed an application under provisions of Section 33C(2) of the Industrial Disputes Act, 1947 [for short, "the Act of 1947"], seeking recovery of wages for the period from 01-01-1987 to 09-02-1994 and from 10-02-1994 to 31-03-1998. The respondent No. 2 led his evidence but there was no evidence led by the petitioner. Relying upon the earlier adjudication of the Labour Court in Complaint (ULP) No. 131 of 1998, the Labour Court passed an award on 02-03-2005 and granted a sum of Rs. 2,74, 867/-. Said order has been challenged in aforesaid Writ Petition. It was submitted by the learned Counsel for the petitioner that if the issue as regards lack of jurisdiction was answered in favour of the petitioner, the aforesaid order would also have to be set aside as the same had been passed by the Labour Court under provisions of the Act of 1947. In that regard, he reiterated his submissions on the aspect of jurisdiction as urged in Writ Petition No. 3908 of 2005. Similarly, the learned Counsel for the respondent No. 2 also submitted that the finding on the issue of jurisdiction would have a material bearing on the adjudication of the present Writ Petition. He also reiterated his submissions in support of jurisdiction being vested with the Labour Court as urged in Writ Petition No. 3908 of 2005.

10. it is to be noted that during pendency of Writ Petition No. 3908 of 2005, by order dated 27-02-2014 after recording the submissions of the learned Counsel for the petitioner, the respondent No. 1 was permitted to join his duties if he had not attained the age of superannuation. It is, accordingly, informed by both the learned Counsel that the respondent No. 1 had been permitted to join his duties on the former post from 10-03-2014. Accordingly, as of today, the respondent No. 1 is serving with the petitioner.

11. It would first be necessary to consider the respective stands of the contesting parties. The case of the respondent No. 1 was that he was working continuously since 01-05-1979 as Museum Keeper but was actually entrusted with the work of Clerk. He has thereafter stated that he had fallen sick from 27-08-1986 to 31-12-1986. He was not permitted to join his duties on 01-01-1987. In the complaint filed by him he prayed for setting aside the oral termination dated

01-01-1987.

In the written statement filed by the petitioner Management, in reply to para 1 of the complaint it was stated that the complainant had been working as a Junior clerk and Museum Keeper on the basic pay of Rs. 300/-. In reply to paras 3 and 4 of the complaint it was denied that the services of the complainant had been orally terminated with effect from 01-01-1987.

12. The Labour Court while adjudicating the aforesaid complaint recorded that the present petitioner did not contest the complaint after filing the written statement and hence were proceeded ex-parte. Accepting the unchallenged testimony of the complainant, it was held that the petitioner had committed an unfair labour practice and hence directed reinstatement of the complainant with back-wages. The revision application filed by the petitioner before the Industrial Court was decided in its absence as the petitioner's Counsel did not appear before the Industrial Court. The order of the Industrial Court dismissing the revision on 12-10-2004 was challenged by the petitioner by filing Writ Petition No. 6111 of 2004 that was allowed on 19-04-2005 and the proceedings were remanded to the Industrial Court for deciding the same afresh.

13. From the aforesaid, therefore, it can be seen that while it was the specific case of respondent No. 1 that his services came to be orally terminated on 01-01-1987, said case was specifically denied in the written statement filed by the petitioner. The stand taken was that the services of respondent No. 1 had not been terminated at all. Accepting the stand of the respondent No. 1 in view of absence of contest by the petitioner, the Labour Court granted relief to the respondent No. 1. The same has been maintained by the Industrial Court in its judgment dated 20-06-2005 after remand by this Court. It can, therefore, be stated that insofar as the aspect of oral termination of the services of respondent No. 1 is concerned, the same had been put to issue by the petitioner taking the stand that the services of respondent No. 1 were never terminated.

14. On the aspect of jurisdiction of the Labour Court to entertain the complaint filed by the respondent No. 1 who was an employee of the college, it is clear that such objection to the jurisdiction of the Labour Court had been raised by the petitioner in its written statement. The Labour Court while deciding the preliminary issue of jurisdiction vide order dated 15-05-1992 had relied upon the decision of the learned Single Judge in Janta Janardhan (supra) and had held that the Labour Court had jurisdiction to try the complaint. It is not in dispute that subsequently the Full Bench in St. Ulai High School (supra), decided on 18-12-2006, overruled aforesaid decision of learned Single Judge in Janta Janardhan (supra) and held that jurisdiction of the Civil Court with regard to the matters covered under clauses (a) and (b) of Section 9(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 was impliedly barred. It must however be noted that in para 13(vii) of aforesaid decision of the Full Bench it was clarified that the question as to whether remedy under industrial legislation would be available to a member of the non-teaching staff

had not been dealt within said reference.

15. The decisions of this Court in Registrar, University of Mumbai (supra), Madhukar Achare (supra), The Director, Shri. Guru Govind Singhji College of Engineering and Technology, Vishnupuri, Nanded Vs. Kishan Deshmukh, (supra). Meena Kapasikar (supra) and Shri Owesh Alam Mohd Yakub Vs. The Principal of Maharashtra College of Arts, Science and Commerce and Another, (supra) in clear terms hold that insofar as the challenge to the order of termination of a non-teaching employee of a college is concerned, the same would be governed by provisions of Section 59 of the Maharashtra Universities Act, 1994 [for short, "the Act of 1994"]. Thus, the objection raised by the petitioner to the jurisdiction of the Labour Court is justified specifically in view of the fact that the basis on which the Labour Court had assumed jurisdiction by relying upon the decision of the learned Single Judge in Janta Janardhan (supra) stands subsequently overruled.

16. Thus, proceeding further by holding that the Labour Court did not have jurisdiction to entertain the complaint filed by the respondent No. 1 who was a non-teaching employee of the petitioner college that was governed initially by the Act of 1974 and subsequently after its repeal by the Act of 1994, the course to be now followed would have to be considered. The question therefore is whether the respondent No. 1 should now be relegated at this point of time after almost 27 years to avail the remedy under Section 59 of the Act of 1994. While it is the stand of the respondent No. 1 that his services were orally terminated on 01-01-1987, said stand has been specifically denied by the petitioner in its written statement. Both the parties have litigated since 1987 by pursuing aforesaid stand coupled with objection to the jurisdiction of the Labour Court.

It is to be noted that the question as regards jurisdiction of the Labour Court to entertain proceedings of such nature had not been finally answered when the present complaint was filed in the year 1987. The judgment in the case of Janta Janardan (supra) was holding the field at that point of time. In Writ Petition No. 907/1989 (Venubai Umap v. the Principal, New English School and another (unreported) decided by the Division Bench at Aurangabad on 29-8-1989, there was challenge to an order passed by the Labour Court, refusing to entertain the complaint of the petitioner therein who was a non-teaching employee seeking reinstatement in service. He had approached the Labour Court by filing complaint under the Act of 1947. The Labour Court refused to exercise jurisdiction. The Division Bench while deciding said writ petition held that as there was more than one forum available to the petitioner, it was open for him to select his forum. The order passed by the Labour Court holding that it had no jurisdiction was set aside and the complaint was directed to be decided on merits.

17. It can, therefore, be said that the view that was then prevailing when the respondent No. 1 filed the complaint in 1987 was that even the Labour Court could entertain a complaint filed by a non-teaching employee of a private school/ College. It can, therefore, be said that the initial step taken by the respondent

No. 1 to approach the Labour Court was not one that was barred by law. That the issue as regarding jurisdiction of the Labour Court in such matters was partially settled by the decision of the Full Bench in St. Ulai High School (supra) cannot lead to the conclusion that the initial jurisdiction of the Labour Court as invoked by the respondent No. 1 in 1987 was totally unwarranted.

18. It is also to be kept in mind that the powers under Article 226 of the Constitution of India are discretionary in nature and the jurisdiction as exercised is equitable. As observed in State of U.P. Vs. District Judge, Unnao and Others, , power conferred on the High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. In Roshan Deen Vs. Preeti Lal, , it was observed in para 12 as under:

"12.....

The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law....."

With this position in mind, the relief as sought would be required to be moulded keeping in view the rival stands of the parties. It is clear that it was the stand of the petitioner that the services of the respondent No. 1 were not orally terminated on 1-1-1987. The respondent No. 1 was, however, kept out of employment since said date. In the meanwhile, the respondent No. 1 had initiated proceedings under provisions of Section 33C(2) of the Act of 1947. The Labour Court by its order dated 2-3-2005 allowed said application and granted back wages to the respondent No. 1 for the period from 1-1-1987 to 31-3-1998. The relief was restricted till 31-3-1998 as the respondent No. 1 had sought relief in said proceedings only till that date. The total amount thus, awarded was Rs. 2,74,867/-. The aforesaid order date 2-3-2005 is the subject matter of challenge in Writ Petition No. 5134/2005. It is to be noted that the order passed by the Labour Court was stayed by this Court on 5-10-2005 passed in aforesaid writ petition. Further, in view of the stand taken by the petitioner without prejudice to its rights, the respondent No. 1 has joined his former post from 10-3-2014.

Thus, since 1987, the respondent No. 1 has not got any monetary relief atleast till 10-3-2014 when he was permitted to rejoin his duties. Hence, considering the fact that the Labour Court had granted monetary relief to the respondent No. 1 for the period from 1-1-1987 to 31-3-1998 to the extent of Rs. 2,71,867/-, in my view, the interests of justice would be served by directing the petitioner to pay a sum of Rs. 6 lakhs which would include aforesaid amount as awarded by the Labour Court on 2-3-2005 under Section 33C(2) of the Act of 1947. This figure has been arrived at considering the fact that the respondent No. 1 has not got any monetary relief whatsoever atleast till 10-3-2014. The amount as adjudicated for a period of 11 years (from 1-1-1987 to 31-3-1998) is Rs.

2,74,867/- and hence, for the period from 1-4-1998 till 9-3-2014 which is a period of almost 16 years, he is held entitled to a further sum of Rs. 3,25,000/- approximately and hence the total amount comes to Rs. 6 lakhs. It is to be noted that in view of the interim stay granted by this Court on 5-10-2005 in Writ Petition No. 5134/2005. the amount as awarded by the Labour Court to the respondent No. 1 remained with the petitioner.

19. In view of the fact that the reliefs are required to be moulded in the facts and circumstances of the present case, it is not necessary to consider the other judgments relied upon by the learned Counsel for the petitioner on the aspect of grant of back wages, the finding as regards commission of unfair labour practice and the issue as to whether education was "an industry" or not. Hence, the following order is passed:

"[a] The order dated 20-6-2005 passed in Revision (ULP) No. 131/1998 and the order dated 9-2-1994 passed by the Labour Court in Complaint (ULPA) No. 92/1987 as well as the order dated 2-3-2005 passed by the Labour Court in IDA Case No. 73/1998 are quashed and set aside on the ground that the Labour Court had no jurisdiction to entertain aforesaid proceedings initiated by a non-teaching employee of the petitioner College.

[b] The petitioner-Management shall pay within a period of two months from today a sum of Rs. 6,00,000/- to the respondent No. 1 towards monetary compensation and in full settlement of any claim whatsoever of the respondent No. 1 towards back wages for the period from 1-1-1987 to 9-3-2014.

[c] The respondent No. 1 shall continue in employment of the petitioner till the age of superannuation, he having been permitted to join duties on 10-3-2014.

[d] Rule is made partly absolute in aforesaid terms in both the writ petitions. However, in the facts of the case, there would be no order as to costs."