
(2015) 06 BOM CK 0130
In the Bombay High Court
Case No : Writ Petition No. 6419 of 2014

The Zilla Parishad

APPELLANT

Vs

Maya Tukaram Sonawane

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 33-A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1), 30(2)

Citation : (2015) 6 BomCR 28 : (2016) 2 MhLj 66

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Sharma Vijay, for the Appellant; Warma B.R., Advocates for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. I have heard the learned Advocates for the respective parties for quite some time. Both have taken me through the petition paper book and the impugned orders. The judgment delivered by this Court in the case of Maharashtra State Road Transport Corporation Vs. Syed Saheblal Syed Nijam, (2014) 4 ABR 294 : (2014) 5 ALLMR 104 : (2014) 4 LLJ 267 : (2014) 4 MhLj 687 , is relied upon by the parties.

5. It is not in dispute that the complainant has been dismissed from the employment for a proved misconduct, by order dated 31.7.2013. She was working as an Arogya Sevika. She questioned her dismissal through Complaint (ULP) No. 21 of 2013 filed before the Labour Court at Jalgaon, under Section

28(1) along with an application for interim relief under Section 30(2) of the MRTU and PULP Act, 1971.

6. By the order dated 2.1.2014, passed by the learned Labour Court, Jalgaon, below the application for interim relief Exhibit U/2, the order of termination dated 31.7.2013 was stayed and by way of an interim measure, the petitioner - employer was directed to reinstate the respondent -employee in service, temporarily, till the final disposal of the main complaint.

7. The crystallized position of law needs to be adverted to in the above factual matrix. Granting interim relief in the nature of reinstating the complainant in service amounts to granting final relief at an interim stage. It is trite law that reinstatement by way of interim relief is not permissible as held in catena of decisions by the Apex Court.

8. The Apex Court in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another, AIR 2003 SC 1115 : (2003) 96 FLR 1048 : (2003) 1 JT 534 : (2003) 1 SCALE 564 : (2003) 4 SCC 104 : (2003) 1 SCR 666 : (2003) 2 SLJ 14 : (2003) AIRSCW 653 : (2003) 4 Supreme 316 , has held as under:-

"34. In Delhi Cloth and General Mills Co. Ltd. Case (supra) this Court examined the point as to whether a workman could be ordered to be reinstated as an interim measure pending final adjudication by the Tribunal under the Industrial Disputes Act. In the said case the employer dismissed the workman for disobeying the orders of the managing authority. The workman filed an application before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 contesting his dismissal on various grounds, whereupon the Tribunal passed an order to the effect that as an interim measure the workman be permitted to work and if the management failed to take him back his full wages be paid from the date he reported for duty. The employer challenged the order of the Tribunal by filing a writ petition before the High Court which was dismissed. On appeal by a certificate of the High Court it was held that the order of reinstatement could not be given as an interim relief because that would be giving the employee the very relief which he would get if order of dismissal is not found to be justified. Order passed by the Tribunal was held to be manifestly erroneous and set aside. It was observed:

"...We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under Section 33-A. As was pointed out in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, AIR 1959 SC 1342 : (1959) 2 LLJ 544 : (1960) 1 SCR 476 , ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside..."

35. In U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. case (supra) it was held

by this Court that it was desirable that an order of suspension passed by a competent authority should not be ordinarily interfered by an interlocutory order pending the proceeding. It was observed:

"...Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question..."

36. In Suman Dutta's case (supra) this court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed:

"...We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same..."

37....

38. From the above quoted decisions, it is evident that this Court has consistently been of the view that by way of interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court."

9. The Apex Court, further, in the case of State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others, (2009) 123 FLR 1046 : (2010) 1 LLJ 10 : (2009) 17 SCC 555 , has held as under:-

"3. This appeal by Special Leave is directed against an interim order dated 23rd of October, 2008, passed by a Division Bench of the High Court of Allahabad at Lucknow Bench at Lucknow in a special appeal being SLP (C) 75 of 2009, affirming an interim order passed by a learned Single Judge of the High Court in a writ petition being W.P. No. 6516 (S/S) of 2008.

4. A writ application has been filed by the respondents challenging the orders of termination of their service before the High Court of Judicature at Allahabad at Lucknow Bench at Lucknow. By an interim order, a learned Single Judge of the High Court had stayed the order of termination of the respondents. An appeal was carried by the State of UP against that interim order before a Division Bench of the High Court, which, however, affirmed the interim order passed by the learned Single Judge in the pending writ application but directed the learned Single Judge to dispose of the pending writ application at an early date.

5. Feeling aggrieved, the State of UP has filed this Special Leave Petition, which on grant of leave, was heard in presence of the learned Counsel for the parties.

6...

7. That being the position and in view of the fact that the final relief could not be granted at the interim stage, we set aside the impugned order and vacate the interim order passed by the High Court.

8....

9. For the reasons aforesaid, the impugned order is set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.

10. We make it clear that we have not gone into the merits of the appeal, which shall be gone into by the High Court at the time of disposal of the writ petition."

10. The Apex Court, further, in the case of Bhankra Byas Managing Board Vs. Suresh and Another, (2009) 123 FLR 198 : (2009) 11 JT 278 : (2010) 1 LLJ 13 : (2009) 7 SCALE 26 : (2009) 7 SCC 515 : (2009) 2 SCC(L&S) 572 : (2009) 8 SCR 109 , has held as under:-

"2. This appeal is preferred against an interim order dated 3rd of April, 2008 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 2865 of 2007 whereby the High Court, while admitting the appeal preferred by the appellant, has granted final relief to the respondent No. 1 by directing the appellant to give compassionate appointment to him. In our view, the High Court was not justified in granting such interim order at the admission stage. It is an admitted position that the second appeal was admitted for final disposal. A suit was filed by the respondent No. 1 for declaration that he was a legal heir of the deceased employee of the appellant being his adopted son. The said suit, however, was decreed and affirmed by the first appellate court against which the appellant has filed the second appeal in the High Court which is pending. Although a decree has been passed against the appellant, but in the interim stage of the second appeal, the appellant could not be directed to appoint the respondent No. 1, if on the statement of the respondent No. 1 he was ready to forego the past benefit if he was taken in service. Accordingly, the interim order granted by the High Court is set aside. The High Court is directed to decide the pending second appeal within six months from the date of supply of a copy of this order to it."

11. In the light of the view consistently taken by the Apex Court, evident from the above referred reports, it is virtually prohibited to grant interim relief in the form of a final relief. This is more intense in the matters in which a domestic enquiry has been conducted and fairness of the enquiry and the fairness of the findings of the Enquiry Officer are in question.

12. Similarly, an order granting interim relief, more so in the nature of reinstatement cannot be passed in a matter in which an employee has been dismissed by way of punishment, for proved mis-conduct pursuant to conducting a domestic / departmental enquiry and in the light of a challenge to the fairness of the enquiry and the fairness of the Enquiry Officer's findings, posed before the Court.

13. In fact, even if the domestic enquiry is quashed and set aside by the Court of record for any reason whatsoever, the concerned employee is not entitled even to subsistence allowance, pending de novo enquiry, in the light of the view taken by this Court in the case of Mumbai Cricket Association Vs. Pramod G. Shinde, (2011) 7 ALLMR 678 : (2011) 3 BomCR 52 : (2011) 113 BOMLR 331 : (2011) 129 FLR 179 : (2012) 1 LLJ 398 : (2011) LLR 386 : (2011) 5 MhLj 36 , which view is based on catena of judgments of the Apex Court, considered in the said judgment.

14. This Court has held in paragraph Nos. 23, 24 and 25 of the Mumbai Cricket Association's case (supra) as under:-"

23. I am unable to appreciate as to how this provision can be of any assistance to the respondent-employee in the present case. A departmental/domestic enquiry was already held against him by the petitioner employer at which it was concluded that the charges are proved. The Enquiry Officer, after such a conclusion was recorded by him in his report, forwarded it to the employer and the employer acting on the same has dismissed the respondent from service with effect from 25th November 2002. The employee sought a reference from the Appropriate Government and that is how the matter of his dismissal is referred to the Labour Court and that is how the Court is seized of the matter. The Court cannot be equated with an employer as it is only performing a judicial function of giving an opportunity to the petitioner to adduce evidence to prove charges of misconduct before it, and that is because the law postulates such an opportunity. The law does not equate this situation with suspension by the employer pending domestic enquiry or investigation into any complaints. The Supreme Court decision cannot be extended by analogy to such a situation as that would produce startling consequences. In all such matters merely because the Court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, it will be obliged to direct the employer to pay subsistence allowance to the employee. That would mean that the order of dismissal already passed against the employee is set aside and substituted by his suspension. That would be creating a situation wherein the order of the Court permitting de novo enquiry means an order of suspension of the employee enabling him to claim subsistence allowance. If the charges of misconduct are grave and serious and the employee is already dismissed, then, paying him any subsistence allowance or sustenance allowance which may in a given case be 75% or more of his last drawn wages, would mean that he is allowed to resume work although the employer has already dismissed him. Ultimately, if the dismissal is justified by the employer, then, an order will have to be made directing the employee to bring back the monies already paid. Apart therefrom, allowing him to resume work or in lieu thereof pay him 75% of wages would be putting a premium on his misconduct and in a given case, fraud. That will be in contravention of the object and purpose sought to be achieved by industrial adjudication.

24. In J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others,

AIR 1964 SC 737 : (1964) 3 SCR 724 , as far as industrial adjudication is concerned, the Supreme Court holds thus:

"19. Then Mr. Pathak was driven to contend that the ground of social justice given by the Labour Appellate Tribunal in support of its award is really not sound in law, and he referred us to the observations made by this Court on some occasions that the considerations of social justice were not only irrelevant but untenable vide J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, AIR 1956 SC 231 : (1956) 1 LLJ 227 : (1955) 2 SCR 1315 and Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur, AIR 1955 SC 170 : (1955) 1 LLJ 1 : (1955) 1 SCR 991 . In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of social justice : vide Crown Aluminium Works Vs. Their Workmen, AIR 1958 SC 30 : (1958) 1 LLJ 1 : (1958) 1 SCR 651 and The State of Mysore Vs. The Workers of Gold Mines, AIR 1958 SC 923 : (1958) 2 LLJ 479 : (1959) 1 SCR 895 . Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable provision for leave in respect of the workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act. We are, therefore, satisfied that there is no substance in the grievance made by Mr. Pathak that the labour Appellate Tribunal should not have granted the demand of the respondents for leave on grounds of fair play and social justice."

25. Therefore, on spacious grounds of equity and justice, the Labour Court cannot be empowered to grant any subsistence allowance or financial assistance of the nature claimed by the respondent in this case. The request made by the respondent could not have been granted and the order of the Labour Court in

that behalf is totally unsustainable in law."

(Emphasis supplied).

15. From the above, I do not find that the Labour Court has followed the procedure laid down in law while dealing with the challenge to domestic enquiry and findings of the Enquiry Officer. This Court has delivered a judgment in the matter of Maharashtra State Road Transport Corporation Vs. Syed Saheblal Syed Nijam, (2014) 4 ABR 294 : (2014) 5 ALLMR 104 : (2014) 4 LLJ 267 : (2014) 4 MhLj 687 , placing reliance on the judgments of the Apex Court and of this court, which are as follows:-

(1) Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Registered Office, Cotton Complex and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Zonal Office, Workshop Corner Vs. Vasant Ambadas Deshpande, (2014) 4 ABR 71 : (2014) 2 ALLMR 682 : (2014) 141 FLR 669 : (2014) 1 LLJ 604 : (2014) 3 MhLj 339 .

(2) Permanent Magnets Ltd., Mumbai Vs. Vinod Vishnu Wani, (2002) 1 ALLMR 797 : (2002) 1 BomCR 310 : (2002) 4 BOMLR 6 : (2002) 93 FLR 32 : (2002) 3 MhLj 413 ,

(3) Vinod Vishnu Wani and Others Vs. Permanent Magnets Ltd., (2002) 4 ALLMR 137 : (2002) 3 BomCR 334 : (2002) 94 FLR 66 : (2002) 2 LLJ 1123 ,

(4) Shambhu Nath Goyal Vs. Bank of Baroda and Others, AIR 1984 SC 289 : (1983) 2 LLJ 415 : (1983) 2 SCALE 931 : (1983) 4 SCC 491 : (1984) 1 SCR 85 : (1983) 2 SLJ 607 ,

(5) Bharat Forge Company Ltd. Vs. A.B. Zodge and another, (1996) 3 AD 58 : AIR 1996 SC 1556 : (1996) 73 FLR 1754 : (1996) 5 JT 628 : (1996) 2 LLJ 643 : (1996) 2 SCALE 731 : (1996) 4 SCC 374 : (1996) 2 SCR 912 and

(6) Karnataka State Road Transport Corporation Vs. Laxmidevamma and another 2001 (II) CLR 640.

16. In the light of the above, this petition deserves to be allowed. The impugned orders dated 2.1.2014 passed by the Labour court in Complaint (ULP) No. 21 of 2013 and the judgment of the Industrial Court dated 20.6.2014 in Revision (ULP) No. 3 of 2014 are quashed and set aside. The Labour Court, Jalgaon is directed to frame all issues in the light of the contentions of the rival sides and deal with the issues pertaining to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer as preliminary issues so as to constitute its Part I order. In this backdrop, the Revision (ULP) No. 3 of 2014 does not survive and is therefore, disposed off.

17. It is made clear that the Labour Court shall follow the procedure laid down in law, which has been considered in the MSRTC Beed case (supra). So also, in the event, the domestic enquiry is set aside for any reason whatsoever, the issue of conducting a de novo enquiry shall be considered by the Labour Court strictly in

accordance with the judgment of the Apex Court in the case of KSRTC Vs. Laxmidevamma (supra).

18. It be noted that the quashing of the impugned orders shall not indicate that this Court has formed an opinion about the fairness of the enquiry and findings of the Enquiry Officer.

19. Since the two issues in this regard are to be framed by the Labour Court and which are to be decided in the ambit of the ratio laid down by this Court in the case of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Registered Office, Cotton Complex and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Zonal Office, Workshop Corner Vs. Vasant Ambadas Deshpande, (2014) 4 ABR 71 : (2014) 2 ALLMR 682 : (2014) 141 FLR 669 : (2014) 1 LLJ 604 : (2014) 3 MhLj 339 , the Labour Court shall deal with the said issues on their own merits and in accordance with law. The domestic enquiry papers are germane for decision on these two issues and as such the petitioner / employer shall produce the entire enquiry Officer's file (R and P of the enquiry) before the Labour Court, within the period of six weeks from today and supply copy thereof to the complainant -employee.

20. It is expected that the litigating sides will cooperate with the Labour Court and the adjournments sought on frivolous unreasonable grounds will be refused.

21. The petition is, therefore, allowed. Rule is made absolute in the above terms.