

(2002) 03 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 294 of 1993

Umashankar D. Shukla

APPELLANT

Vs

New Shakti Dye Works Pvt. Ltd.

RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4), 78, 79

Citation : (2002) 3 ALLMR 772 : (2002) 5 BomCR 772 : (2002) 94 FLR 367

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

Bench : Single Bench

Advocate : K.K. Jadhav, for the Appellant; Atul S. Tungare, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner is aggrieved by the judgment and order of the Industrial Court, Maharashtra in appeal filed by the respondent company against the order of the Labour Court at Thane directing the respondent company to reinstate the petitioner with full backwages and continuity of service.

2. The petitioner was in permanent employment of the respondent company as which machine man for a period of more than 20 years. He was served with two charge-sheets alleging a number of misconducts against him. The petitioner submitted his written explanation denying the charges. The respondent company having not been satisfied with the explanation instituted a domestic enquiry against the petitioner. The petitioner was represented by Shri P.S. Sawant, a Union representative. It appears from the record that out of 10 sittings, the petitioner along with his union representative attended the enquiry proceedings on 7 sittings. Thereafter, however, they did not attend the enquiry on the ground that the respondent company had not paid the petitioner subsistence allowance during the suspension period, pending enquiry. It appears from the enquiry that the respondent company had examined witnesses and they were cross-examined by the union representative on behalf of the petitioner. The Enquiry Officer adjourned the enquiry three times as the petitioner and the union representative both were absent and, therefore, the defence of the petitioner was not recorded.

The Enquiry Officer finally concluded the enquiry and submitted his report to the respondent company finding the petitioner guilty of the charges levelled against him. The respondent company accepting the findings and report of the Enquiry Officer, dismissed the petitioner from employment by order dated 23-8-1980. The petitioner was aggrieved by the said dismissal order and, therefore, he sent a letter of approach u/s 42(4) read with Rule 53(1) of the B.I.R. Act, 1946 requesting the respondent company to withdraw the dismissal order and to reinstate him with full backwages and continuity of service.

3. The respondent company did not accede to his request and, therefore, the petitioner filed an application u/s 79 read with section 78 of the B.I.R. Act praying for setting aside of the order of dismissal and grant of relief of reinstatement with full backwages and continuity of service with effect from the date of dismissal. The respondent company contested the application by filing its written statement in reply to the application. Both the parties adduced their oral and documentary evidence in support of their respective contentions. On the basis of the pleadings and evidence, the learned Judge of the Labour Court held the order of dismissal to be illegal and improper and directed the respondent company to reinstate the petitioner with full backwages and continuity of service by his order dated 21-2-1990. The respondent company challenged the said order of the Labour Court by filing an appeal u/s 84 of the B.I.R. Act, before the Industrial Court. The learned Member of the Industrial Court by his order dated 30-4-1992 allowed the appeal and quashed and set aside the impugned judgment and order of the labour Court and dismissed the application filed by the petitioner. The aforesaid facts are sufficient to enable me to decide the crucial issue on which basis the Industrial Court reversed the judgment of the labour Court.

4. On behalf of the respondent company it was submitted before the Industrial Court that the points or grounds which were not averred in the letter of approach were averred and taken in the application before the Labour Court. Though these points or the grounds were not pleaded by the respondent company in its written statement before the Labour Court, the learned Member of the Industrial Court allowed the respondent company to canvass the said point on the ground that it was only a law point. According to the respondent company, the petitioner had not taken certain ground in the letter of approach. In addition to those grounds, the petitioner had added certain grounds in his application before the Labour Court to challenge the order of dismissal. According to the respondent company, it was not permissible for the petitioner to challenge the order of dismissal on the grounds other than those mentioned in the letter of approach. The respondent company had relied upon the following paragraphs from the judgment of the Labour Appellate Tribunal and accepted the said contention of the respondent company and inter alia, allowed the appeal on that ground and on other grounds also.

5. The Labour Appellate Tribunal, in its reported judgment in 1957 I L.L.J. 148

between Narsingh Veerji Manufacturing Company Ltd. v. Gokhale (M.P.), held that the employee cannot take any grounds to challenge the order of dismissal other than the grounds mentioned in the letter of approach u/s 42(4) of the Bombay Industrial Relations Act, 1946. According to the learned Member of the Industrial Court, the petitioner could not travel beyond the ground of challenge averred in his letter of approach.

6. It appears that the petitioner had sent a letter of approach to the respondent company challenging the order of dismissal and praying for reinstatement with full backwages and continuity of service on the following grounds which are reproduced by the Industrial Court in its order:---

- (a) False charge-sheets were issued;
- (b) Enquiry was conducted partly in his presence and thereafter ex-parte;
- (c) The action taken is an unfair labour practice in as much as that he is an important member of the union. As such the enquiry is capricious and arbitrary;
- (d) The action on the part of the management in abruptly dismissing the workman from service is illegal, improper and amounts to victimisation in as much as unfair labour practices;

It appears that in the application filed by the petitioner u/s 79 read with sections 78 and 42(2) of the Act, the petitioner had taken some other ground to challenge the order of dismissal. In the application, it appears that the petitioner had urged that:

- (i) Procedure of enquiry was not explained to him;
- (ii) In all the enquiry was not understandable by the workman;
- (iii) Subsistence allowance was not paid to him during his suspension pending the enquiry and, therefore, he could not attend the enquiry on some dates;

7. According to the learned Member of the Industrial Court, these grounds were not pleaded in the letter of approach and, therefore, it was not proper for the Labour Court to consider them and, therefore, the Industrial Court had upheld the contention of the respondent company. The Industrial Court had wholly relied upon the following passage from the judgment of the Labour Appellate Tribunal:---

"Section 42(4) of the Bombay Industrial Relations Act read with section 78(1) of the Act under which the application in question was made to the Labour Court, expressly provides that no such application shall lie unless the employee has in the prescribed manner approached the employer with a request for the change desired by him in respect of the Standing Orders. It is evident that the intention of the legislature in making this provision is to see that before an employee goes before the Labour Court with an application of this nature, he shall bring his grievance to the notice of the employer and give the employer an opportunity to

rectify any error or mistake that he may have made in passing the order challenged or arrive at a settlement of the particular dispute. This object would be completely defeated if the letter of approach in respect of a particular grievance is allowed to be followed by an application which includes a totally different grievance of the employee, as in the present case, where the letter of approach complained of the order of discharge merely on the ground that the charge against the respondent was baseless, while the application presented to the Labour Court included a totally different grievance as to the employer not having carried out the conditions necessary for a retrenchment of the services of the respondents under the circumstances we do not see how the Industrial Court could allow the respondent to succeed on such a ground which had not even been urged in the memorandum of appeal presented to that Court. When it held that his appeal and his original application must otherwise fail."

According to both the Advocates the aforesaid judgment is often cited before the Labour Court and the Industrial Court by the employers and, therefore, both of them have requested me to decide this issue in the interest of the parties and for the benefit of the adjudicatory machinery under the Act.

8. In my humble opinion, the view expressed by the learned Members of the Labour Appellate Tribunal is not legal, right and proper besides being a pedantic and hypertechnical approach totally unknown to the industrial jurisprudence. It appears that the Labour Appellate Tribunal had totally lost sight of the fact that it was dealing with a beneficial legislation to help the labour as a weaker section at the same time to help maintain the industrial peace in the industry and industrial relations between the employers and the employees. This decision of the L.A.T. has sounded a discordant note of unbearable shrieks in the area of social justice where millions illiterate have pinned their hopes in the Chapter 4 of the Constitution of India, have trusted the judicial wing of the State to realise their hope for bread. The logic of the L.A.T. can be stretched to say that in the letter of approach the employee had demand only bread and therefore he cannot pray in his application before the Labour Court "bread and butter" or "dal-roti" or "rice-curry"! The decision of the L.A.T. has left me stunned and shocked.

9. An employee is given right to challenge the order of dismissal or discharge passed by the employer by way of punishment u/s 79 read with 78 of the Act. Before filing such an application before the Labour Court, it is mandatory for the employee to send a letter of approach to the employer u/s 42(4) of the Act in the prescribed manner. The manner prescribed is under Rules framed under the Act. Rule 53(1) has prescribed the manner of sending a letter of approach. If, there is no response from the employer to such a letter of approach, the employee is entitled to file an application before the Labour Court under the aforesaid provisions within the prescribed limitation. The crucial question which has arisen in the context of the judgment of the L.A.T. is whether the employee has to plead in such a letter of approach, each and every ground on which he intends to challenge the order of dismissal and that he cannot add to these grounds any

new or additional ground in the application before the Labour Court. According to Shri Tungare, the learned Advocate for the respondent company, the employee is estopped and debarred from raising any new point or ground which he has not taken in the letter of approach. Shri Tungare has placed reliance on the aforesaid judgment of L.A.T. He, however, urged that these points require final decision by this Court. It would be relevant to reproduce the provisions of section 42(4) of the Act and also Rule 53(1) to appreciate the contention of the respondent company.

"42(1). Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceedings within the meaning of section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, he shall give fresh notice in the manner provided in sub-section (1) or (2) as the case may be.

(4) Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under Standing Orders, or (ii) any industrial matter arising out of the application or interpretation of Standing Orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court and as respect change desired in any industrial matter specified in Item (5) of Schedule III, to the Industrial Court.

Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

Section 78 confers powers on the Labour Court to decide the disputes and changes contemplated under the whole section. Section 79 of the Act prescribes the procedure to commence the proceedings. Proviso to section 42(4) makes it mandatory for an employee to approach the employer before filing an application in the Labour Court as aforesaid. Rule 53 prescribed the manner of such approach.

10. We must always remember that the enactment is meant for the protection of the employees and for maintenance of industrial peace in the industry. If the employer passes an order acting or purporting to act under the Standing Order, such as order of dismissal or discharge, the employee is given a right to challenge the legality and the propriety of the said order before the Labour Court and the Labour Court is empowered to decide the disputes regarding the propriety or legality of such an order passed by the employer. The condition precedent before filing of such an application is prescribed u/s 42(4) proviso, that is an approach by the employee to the employer with a request or a change. Rule 53 prescribes the manner of such an approach. The employee is to send an application in writing to the employer requesting the employer to withdraw the change brought about by him under the orders passed by him under the Standing Orders. The employee has to request the employer that the order of dismissal or discharge was illegal and improper and that the same should be withdrawn. Neither the section nor the Rules have stipulated any strict or stringent condition as to the contents of such a letter of approach. It is only an application addressed to the employer with a request to withdraw the order of dismissal or discharge or change and to reinstate him with full backwages and continuity of service. The employee may set out in his own language the reasons for or the grounds for his request to the employer for withdrawal of the change or the order of dismissal or discharge. The legislature has only contemplated a previous intimation to the employer that the employee was aggrieved by the order of dismissal or discharge and that he would be approaching the Labour Court for appropriate orders if his request was not acceded to. Neither the sections nor the Rules contemplate a detailed and exhaustive pleadings in the letter of approach. The legislature contemplates a request and the request cannot be founded on law point. The employee makes a formal or informal request and submits such an application to the employer that the order of dismissal or discharge should be withdrawn and that he should be reinstated. In addition to the items of dismissal or discharge, there are number of other items for which the employee is also entitled to approach the employer for a change. The legislature, therefore, never contemplated that the employee should set out all the legal grounds for such a change in the letter of approach. It is, therefore, impossible to construe the provisions in respect of letter of approach that such an application should contain all the grounds exhaustively as a challenge to the order of dismissal or discharge or for that matter any other change desired or challenged by the employee. According to me, in fact the letter of approach is not expected to be a plaint with full pleadings. It is only a letter of request. I am,

therefore, of the opinion that the view taken by the L.A.T. is contrary to the provisions of the law. The application before the Labour Court is to be decided by the Labour Court u/s 78 of the Act. In the application, the employee or the union are expected to set out their legal challenge to the order of dismissal or discharge or in respect of a change. There is nothing in any provisions of the B.I.R. Act to estop or debar the employee from adding additional grounds or additional challenges to the order of dismissal or discharge or a change. In a case where the employee simply writes an informal letter of request, can it be ever said that he cannot raise any legal pleadings in his application before the Labour Court? It cannot be. It is very significant to note that the tenor of section 42 is not to serve a "legal notice" drafted by a clever solicitor or a lawyer. The provisions expects the employee or the Union to express to the employer what change was "desired" and the employee or the Union have to make "request" to the employer for such "a desired change". Such a letter of approach cannot be expected or contemplated to be a full fledged plaint exhaustive with all the points. Such an occasion arises before the Labour Court under sections 79 and 78 of the Act where the employee or the Union have to justify the case for the desired change on all the possible grounds and for all the cogent reasons, originally or initially conceived and even subsequently thought of and discovered in the continuing live thought process. There is no dead end in the life of litigation. The labour litigation is not imprisoned by the pedantic chains. For that matter even the civil litigation was not tied by shackles of hyper technical pleadings which are always allowed to be amended at any stage within the permissible legal limits without causing serious and real prejudice to the other side. The only restriction placed is that the amendment should not change the original cause of action in the plaint. Grounds of challenge can always be added provided the other side has a reasonable opportunity to meet such additional grounds. The underlying philosophy is that of complete and final adjudication of a lis and to avoid multiplicity of proceedings.

11. It is, therefore, open to the employee to raise all such contentions in the application before the Labour Court, which he might not have taken or written in the letter of approach. Even the application filed before the Labour Court are subject to the law of amendment and the law permits by way of amendment addition of new or fresh ground in the pleadings at any stage of the proceedings. If that is so, how can it be construed that whatever was written in the letter of approach would seal the fate of the employee forever? The only condition which must be borne in mind is that there should be no material change in the cause of action. There is no prohibition or prevention to add the ground of challenge to the orders passed by the employer. Grounds of challenge can always be added till the matter goes for a trial. There should, however, be no change in the original or main cause of action. If the employee had sent a letter of approach challenging the order of dismissal as illegal and improper, he certainly cannot file an application to say that such an order was an order of retrenchment or vice versa. In such a situation the employer can certainly argue that the approach

letter pertained to dismissal order while the application pertains to an order of retrenchment. Similarly, if an employee has desired a change in respect of one or the other items in the permissible schedules, he has to continue the same cause of action in respect of the desired change. He cannot switch over to any other item which is not permissible and which has no relation of whatsoever nature with the desired change in the approach letter. The employer certainly cannot be taken by surprise before the Labour Court to meet a challenge for which there was no letter of approach. It, however, does not mean that if the employee has a grievance against the order of dismissal on three grounds, he cannot think of or he cannot add other three or more grounds to challenge the order of dismissal. In the present case, the employee had sent a letter of approach with three grounds of challenge while in the application, he added three other grounds. I fail to understand how the employee cannot challenge the order of dismissal on all the grounds which are legally permissible. I further fail to understand how by adding the ground in the application, he is changing the cause of action and how the employer gets prejudiced. The employer has to file his written statement and meet the case of the employee that the order of dismissal was illegal and improper on the ground which are enumerated in the application filed before the Labour Court. The view taken by L.A.T. is totally erroneous and the same deserves to be discarded. It militates the letter and the spirit of the B.I.R. Act as also the industrial jurisprudence. No such hyper-technical and pedantic approach is ever warranted in this field of human relations. I, therefore, hold and declare that the aforesaid judgment of the L.A.T. is no more a good law.

12. I am fully fortified in my view in respect of interpretation of pleading by the Division Bench of our High Court (B.N. Srikrishna and Radhakrishna, JJ.) that has aptly observed in Appeal No. 293 of 2000 in Writ Petition No. 106 of 1999 between M/s. Welcome Group Searock v. Searock Hotel Employees Union and 2 others, as under (unreported).

"The industrial adjudicators either under the B.I.R. Act or under the I.D. Act or under any labour law must remember that without allowing the parties to fly at tangents from the pleadings, a case must be considered broadly as put forward by the parties without being too finicky and pedantic or hyper-technical while reading the application or statement of claim filed by the employees or the union. Neither the employees are legally trained persons nor the union have expertise of solicitor's firm.

The Labour Court shall bear in mind and remember that the trial conducted before it is not a sessions trial, nor is it strictly governed by the Evidence Act. Wider latitude is required to be shown in industrial adjudication of all kind and pleadings cannot be read and construed as in a civil suit." (Emphasised supplied).

13. In the aforesaid circumstances, the impugned judgment of the Industrial Court deserves to be quashed and set aside to the extent of its following the decision of the L.A.T. (supra). I do not find any illegality or impropriety in the impugned judgment of the Industrial Court on other issues in respect of fairness

and propriety of the enquiry and proportionality of punishment. There is no warrant to interfere under Article 226 with the said findings of facts and the conclusions drawn by the Industrial Court.

14. After hearing both the learned Advocates fully at the intervention and suggestion of this Court, the petitioner workman has agreed to settle the whole dispute fully and finally if he was paid a total sum of Rs. 70,000/-. Shri Tungare, the learned Advocate for the respondent company has agreed to pay the amount of Rs. 70,000/- in full and final settlement of all the claims of the petitioner in this petition including the claim of the reinstatement with full backwages, gratuity etc. Both the learned Advocates have filed consent terms signed by both the Advocates and their parties who are present in the Court. Shri Tungare under instructions from his client states that the aforesaid amount of Rs. 70,000/- will be handed over by two cheques one is dated 31st March, 2002 and one is dated 1st April, 2002 to Shri Jadhav, the learned Advocate for the petitioner by Monday the 18th March, 2002. Shri Jadhav has taken full instructions from his client who is present in the Court to settle the dispute on the said terms. I have taken on record the consent terms and the same are marked as "X" for identification.

15. Rule is made partly absolute as above. The petition stands disposed of as settled in terms of the consent terms. No orders as to costs.

16. All concerned to act on a copy of this order duly authenticated by the Sheristedar.