

(2008) 04 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 2037 of 2008

Vidyut Metallica Pvt. Ltd.

APPELLANT

Vs

Dineshchandra Tiwari

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 30(2)

Citation : (2008) 117 FLR 987 : (2008) 3 LLJ 159

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : K.M. Naik and S.P. Salkar, for the Appellant; R.S. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, by consent of counsel returnable forthwith. Counsel appearing on behalf of the respondent waives service. By consent of counsel and at their request taken up for hearing and final disposal.

2. The respondent was engaged as an employee and was working as a Helper in the Excise Department. It is alleged by the employer that on August 11, 2005, based on a statement made by one of the employees of the Company involving a theft of the company's property, an investigation was carried out by the police and a search at the residence of the respondent revealed a substantial amount of material belonging to the company. On this allegation, the respondent was suspended and a charge sheet was issued on August 24, 2005. A disciplinary enquiry was initiated on an allegation of misconduct. The respondent was acquitted from a Criminal case which was registered against him by an order of the Judicial Magistrate. The Enquiry Officer held the respondent guilty of the charges that were enquired into. A copy of the findings of the Enquiry Officer together with a notice to show cause came to be served upon the respondent

under a communication dated December 31, 2007. The respondent submitted his reply on December 31, 2007 denying the allegations. On January 8, 2008, the respondent instituted a complaint of unfair labour practices before the Labour Court at Thane upon which a hearing was posted to January 11, 2008. On January 11, 2008, the petitioner appeared before the Labour Court and sought an adjournment on the ground that the notice had just been received. The hearing of the complaint was adjourned to January 16, 2008 on which date the petitioner filed an affidavit in reply to the application for interim relief. By an order dated January 16, 2008, the respondent came to be dismissed from the service of the company. The complaint of unfair labour practices came up for hearing before the Labour Court on January 21, 2008. By an order dated January 21, 2008, the Labour Court restrained the petitioner from acting upon the letter of termination dated January 18, 2008. The Labour Court observed that the petitioner herein was aware of the challenge by the respondent to the notice to show cause dated December 31, 2007 and on January 2008, an adjournment was sought to file a reply, which was eventually filed on January 16, 2008. The Labour Court was of the view that the management was predetermined to terminate the services of the respondent. A stay was sought of the operation of the direction of the Labour Court. The Labour Court declined to stay the interim order. The order of the Labour Court was carried in revision and was confirmed by the Industrial Court on February 1, 2008.

3. Counsel appearing on behalf of the petitioner has urged that the interference of the Labour Court in the exercise of the disciplinary jurisdiction was not warranted particularly since: (i) There was no finding as to the commission of an unfair labour practice even prima facie at the ad-interim stage; (ii) The issue of the fairness of the enquiry, the question as to whether there was any perversity in the finding and the issue as to whether the punishment was disproportionate was yet to be enquired into in the complaint of unfair labour practice; and (iii) An order staying the termination was passed even without the complaint being amended and though the original complaint was only instituted on an apprehension that the services of the workman were likely to be terminated following the notice to show cause.

4. On the other hand, it was urged on behalf of the respondent that the Labour Court was justified in taking the view that though the management was aware of the institution of a complaint of unfair labour practices, it had hastily proceeded to exercise the power of termination. It was urged that an ad-interim order staying termination has been passed and the main complaint is pending. Hence it was submitted that the interference of this Court is not warranted.

5. The facts which have been placed on the record of the present case would show that the employer had initiated disciplinary proceedings on an allegation of misconduct involving a theft on the part of the workman concerned. The workman participated in the disciplinary enquiry and an enquiry report came to be submitted. Upon the submission of the report, the employer issued a notice

calling upon the workman to show cause as to why the findings of the Enquiry Officer should not be accepted and the penalty as proposed should not be imposed. The workman submitted his reply to the notice but immediately thereafter moved a complaint of unfair labour practice on the basis of an apprehension that his services were likely to be terminated. During the pendency of the complaint, and there being no order restraining the employer from completing the disciplinary process, an order of termination was passed on January 16, 2008. The Labour Court, while staying the order of termination was of the view that the employer was not justified in proceeding to terminate the services of the workman since it had knowledge of the fact that the workman had challenged the notice to show cause.

6. The approach of the Labour Court is fallacious. Either there was an order restraining the employer from taking further steps in pursuance of the disciplinary proceedings or, there was no such order. If as is admitted here, there was no restraint upon the employer from taking the disciplinary process to its logical conclusion, the mere institution of the complaint and that a hearing was to take place cannot furnish a ground for staying the order of termination. The interference of the Labour Court in the disciplinary jurisdiction of the employer, it has been repeatedly emphasized, should be exercised with due care and caution. The jurisdiction u/s 28 of the M.R.T.U. and P.U.L.P. Act, 1971 is to enquire into an allegation of unfair labour practices. In the present case, ex-facie the order of the Labour Court dated January 21, 2008 does not even disclose a prima facie observation that the employer had committed an unfair labour practice. As a matter of fact, the fairness and propriety of the enquiry, the question as to whether the findings recorded in the enquiry are perverse or otherwise and the question as to whether the punishment is disproportionate to the act of misconduct are matters which would have to be determined in the course of the enquiry. Undoubtedly, Labour Courts have the ; power, in appropriate cases to stay the termination of the services of an employee even at the interim or ad-interim stage having regard to the provision of Section 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971, but such powers have to be exercised judiciously and the exercise of the jurisdiction must be preceded by a prima facie determination of the commission of a unfair labour practice. Neither the order of Labour Court nor the revisional order of the Industrial Court contains any elaboration on this aspect. As a result, both the orders are unsustainable and would have to be interfered with in the exercise of the jurisdiction under Articles 226 and 227 of the Constitution. This Court is conscious that the order of the Labour Court is an ad-interim order. However, it is equally to be emphasized that even as against an ad-interim order, the interference of this Court in the exercise of its constitutional jurisdiction under Articles 226 and 227 is warranted on certain occasions where there would be otherwise a miscarriage of justice. The interference of this Court is also necessary to emphasize to the Labour Courts and to the Industrial Courts of the necessity of being circumspect while interfering in disciplinary matters, particularly at the interim or ad-interim stage.

7. The orders passed by the Labour Court on January 21, 2008 and by the Industrial Court on February 1, 2008 are quashed and set aside. This Court has been informed that in the meantime, the respondent has moved an application for amendment of the complaint of unfair labour practices so as to challenge the order of termination. It is clarified that the Labour Court shall consider the application for amendment in accordance with law and any application thereafter for interim relief if made shall also be considered after furnishing the parties an opportunity of being heard.

8. The petition is accordingly allowed. In the circumstances of the case, there shall be no order as to costs.