

(2001) 09 BOM CK 0004

In the Bombay High Court

Case No : L.P.A. No"s. 70, 72, 73 and 74 of 2001

Vinod Vishnu Wani and Others

APPELLANT

Vs

Permanent Magnets Ltd.

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Citation : (2002) 4 ALLMR 137 : (2002) 3 BomCR 334 : (2002) 94 FLR 66 :
(2002) 2 LLJ 1123

Hon'ble Judges : V.K. Barde, J;D.B. Bhosle, J

Bench : Division Bench

Advocate : Pradip Shahane, for the Appellant; R.V. Ghuge, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Barde, J.—In all these Letters Patent Appeals, a common point has arisen and therefore, they are being disposed of by this common order.

2. The respondents (hereinafter referred to as the Management) filed five writ petitions in this Court, being Writ Petition Nos. 2866 of 2001, 2869 of 2001, and 2867 of 2001, 2870 of 2001 and 2868 of 2001. These writ petitions were heard by a learned single Judge of this Court together and are disposed of by a common judgment and order passed on July 23, 2001.

3. The brief facts leading to these litigations are that the five respondents in the writ petitions (hereinafter referred to as the employees") were in service of the appellants-management and their services were terminated. The employees thereafter filed proceedings before the Labour Court, Jalgaon, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the "MRTU & PULP Act), contending that unfair labour practice was committed by the management while terminating the services of the employees. The learned Labour Judge framed the necessary issues and he tried the issues:

Does the complainant prove that the enquiry conducted against him is not fair,

proper and in accordance with the principles of natural justice?

As a preliminary issue and after hearing both the sides came to a conclusion that the complainant failed to prove that issue. It means that it was held that the enquiry was conducted against him in fair and proper manner and by adhering to the principles of natural justice.

4. Thereafter, the matter proceeded before the Labour Judge for consideration of further issues. The learned Labour Judge, after hearing the parties, came to the conclusion that the findings of the enquiry officer were not based on legal and acceptable evidence and hence were perverse. On coming to this conclusion, the learned Labour Judge passed the order that the management should pay 75 per cent back wages to the employees from November 27, 1995 to March 19, 1999 along with all legal dues upto March 19, 1999 within a month from the date of receipt of the order. This order was passed on holding that the employees proved that the management had committed unfair labour practice under Item No I(g) of Schedule IV of the MRTU & PULP Act.

5. Being aggrieved by this order of the learned Labour Judge, the management filed five revision petitions before the Industrial Court at Jalgaon. The learned Member of the Industrial Court dismissed all the revision petitions and therefore the five writ petitions came to be filed in this Court.

6. The learned single Judge after hearing both the sides and after considering all the circumstances and especially the law laid down by various decisions of this Court and the Apex Court, issued the directions that the petitions were allowed. The order passed by the Labour Court was set aside and the Labour Court was directed to give an opportunity to the management to lead evidence on the point of proving the charges framed against the employees and then consider the aspect whether the management proved the charges and whether the punishment awarded was proportionate to the charges proved and mould the decision accordingly. It is further directed to the Labour Court to dispose of the matters as per law on or before March 31, 2002 and against this order the five Letters Patent Appeals are filed.

7. The main point canvassed before us by the learned counsel on both sides is that whether it was proper and legal on the part of the learned single Judge to remand the matters to the Labour Court, giving an opportunity to the management to lead evidence to frame the charges against the employees and this aspect is being canvassed on the basis of the rulings of the Supreme Court which are referred to by the learned single Judge in his judgment.

8. The learned counsel for the appellants has argued that when the Labour Court came to the conclusion that the enquiry held by the management was fair, proper and by following the principles of natural justice, the only question remains to be decided whether the findings recorded by the enquiry officer on the basis of the evidence were perverse and this aspect was considered by the learned Labour Judge and he came to the conclusion that the findings recorded by the enquiry

officer on the basis of the evidence led before him were perverse. There was no reason for the Labour Court to give opportunity to the management to lead evidence with respect to the charges framed, once the Labour Court had come to the conclusion that the enquiry was fair and proper, the learned Judge, therefore, rightly disposed of the matters finally.

9. It is also argued by the learned counsel for the appellants that the management had not sought any permission from the Labour Court to lead evidence with respect to the charges framed against the employees at the earliest opportunity available to the management and therefore, it was not necessary for the Labour Court to call upon the management to lead any evidence in support of the charges framed against the employees.

10. In this respect, the learned counsel for the appellants has relied upon the ruling of the Apex Court in the matter of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, . It is strongly contended by the learned counsel for the appellants that in this judgment of the Constitution Bench of the Supreme Court, the view taken by the Supreme Court in Shambhu Nath Goyal Vs. Bank of Baroda and Others, is accepted as correct law by the Constitution Bench of the Supreme Court and it is held that the management must avail the first available opportunity to seek permission to lead evidence to prove the charges framed against the employees and that can be done only by making a plea to that effect in the written statement or filing a separate application along with the written statement to seek such permission, if permission is not sought in this way, then at any later stage the management cannot come before the Court with a plea that the management be allowed to lead evidence to prove the charges framed against him.

11. There is no doubt that as to when the management should seek leave of the Court to lead evidence on the charges framed against the employees is finally concluded by this judgment of the Constitution Bench of the Supreme Court. The permission must be sought on the first available opportunity, that means at the time of filing the written statement. The learned counsel for the respondents also agrees to this position.

12. However, certain other aspects are required to be considered with respect to the facts obtaining in the present matters and for that purpose, first, we will have to go to the written statement filed by the management in all these five matters before the Labour Court. The written statement in all the five matters is practically one and the same and it will suffice to refer to para 16 in the written statement filed in complaint (ULP) No. 152/1995 which is the subject matter in LPA No. 70 of 2001. The relevant paragraph is page No. 59 of the compilation and it reads as under:

"12. The respondent says and submits that he had arranged to conduct a proper and legal domestic enquiry before initiating and deciding final action against the complainant. In case the said enquiry is held to be affected by breach of any

principle of law either relating to natural justice or otherwise, the respondent craves leave to substantiate charges of misconducts by leading proper evidence and additional evidence and justify the final action against the complaint. The respondent, therefore, prays that necessary issue relating to validity and legality of the domestic enquiry conducted by the respondent may kindly be framed."

13. The italicised is the most important in this paragraph. The learned counsel for the respondents has argued that the enquiry will vitiate under two circumstances, firstly if the enquiry is not held fairly and properly and by following the principles of natural justice and secondly that if the finding is perverse because the enquiry officer has failed to appreciate the evidence led before him. In either case, the enquiry will vitiate and the management will get an opportunity to lead evidence to substantiate the charges framed, if a specific alternative plea is taken to that effect by the management in the written statement.

14. The learned counsel for the respondents therefore, has relied upon the ruling of the Apex Court in the matter of Bharat Forge Company Ltd. Vs. A.B. Zodge and another, and he has specifically referred to the observations made by the Apex Court at p. 645 of LLJ:

"A domestic enquiry may be vitiated either for non-compliance with the rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognised."

15. The learned counsel for the appellants has argued that in the matter of Bharat Forge Company Ltd. an application was made by the management to lead evidence. That application was rejected and therefore, the Court came to that conclusion. In the present case no such application was made by the management and therefore, the observations made in the Bharat Forge Company Ltd. case would not be applicable to the present matter.

16. If the two rulings of the Apex Court one in the Bharat Forge Company Ltd. and another in the KSRTC matters are read together, then it will be borne out that whether the enquiry is set aside by the Labour Court on the ground that the enquiry was not held properly and fairly and by following the principles of natural justice or on the ground that the findings recorded on the basis of evidence placed before the enquiry officer were perverse, then in either case, the management will have an opportunity to lead evidence before the Labour Court to prove the charges framed against the employees and that such a relief must be sought by the management at the earliest opportunity that means in the written statement or by filing a separate application along with the written statement. Belated application will not serve the purpose of the management.

17. In such circumstances, we have to refer back to the written statement filed by the management before the Labour Court in para 12 quoted above. The

learned counsel for the respondents has rightly argued that the management reserved its right of leading evidence to prove the charges framed against the employees by the specific words used in the written statement. The italicised portion of the written statement makes it clear that if the Court comes to the conclusion that the enquiry held was affected by breach of the principles of natural justice, or otherwise, then the respondents be given an opportunity to lead evidence. In the present case, so far as fairness of the enquiry the Court gave the decision in favour of the management. So there was no reason for the management to seek an opportunity to lead evidence to prove the charges. But with respect to the findings recorded by the enquiry officer, the Labour Court came to the conclusion that those were perverse means otherwise the Labour Court has held that the enquiry was not proper and legal. So as per the wording used in the written statement the management had reserved its right to lead evidence to prove the charges against the employees. If the learned Labour Judge has not properly appreciated the written statement and had not given the opportunity to the management to lead evidence on coming to the conclusion that the findings recorded were perverse, then it was not the fault of the management. The learned Labour Judge, on coming to the conclusion that the finding recorded was perverse on the basis of evidence led before the enquiry officer, then the learned Labour Judge ought to have given an opportunity to the management to lead evidence on the charge framed against the employees.

18. The management had no opportunity to make an application to the Labour Court that because of such a pleading in para 16 of the written statement, the management has reserved its right to lead evidence to prove the charges, and therefore, the permission be granted to lead the evidence. That so happened because on recording the findings, the learned Labour Judge without bringing it to the notice of the management the findings recorded, directly delivered the final judgment in the matter in favour of the complainants. Definitely the management was deprived of leading any evidence in support of the charges framed even when a right to that respect was reserved by the management by taking specific plea in the written statement. So on reading the above quoted two rulings of the Supreme Court, in this case, it will have to be held that though the management had reserved its right by taking a specific plea in the written statement to lead evidence to prove the charges framed against the employees, the management was deprived of that right by the learned Labour Judge by delivering the judgment finally in the matter without calling upon the management to exercise that right.

19. The learned counsel for the appellants has placed strong reliance on the purshis filed by the management before the Labour Court, a copy of that purshis Exhibit-1 is at page 92 in the compilation in the LPA No. 70 of 2001. Here the management has specifically stated that the management did not want to lead further evidence in the matter. Purshis was given on January 16, 1999.

20. It appears that before passing that purshis, one witness was examined by

the management by way of rebuttal to the evidence led by the complainant and that was with respect to the allegation regarding perverse findings recorded by the enquiry officer. The Court came to the conclusion that the findings recorded by the enquiry officer were perverse after filing of this purshis dated January 16, 1999 in the judgment delivered in April 1999.

21. Learned counsel for the respondents has rightly argued that the purshis was then given only with respect to the allegation regarding perversity of findings recorded by the enquiry officer. It was not for closing the evidence of the management to prove the charges framed against the employees. At that time, that question had not arisen and therefore, the management had no reason to pass any such purshis that management was closing its case with respect to leading evidence to prove the charges framed against the employees.

22. The first stage of the enquiry before the Labour Court ended by holding that the enquiry was fair and proper and as per the principles of natural justice. Second stage of enquiry before the Labour Court ended by holding that the findings recorded by the enquiry officer were perverse and there the third stage starts that of giving an opportunity to the management to lead evidence in support of the charges framed against the employees. Obviously, this third stage is subject to the condition that the management had reserved such a right in the written statement filed by the management. It is already pointed out that the management had reserved such right in the written statement. So when the learned Judge came to the conclusion that the findings recorded by the enquiry officer were perverse, then the learned Labour Judge ought to have called upon the management to lead evidence to substantiate the charges framed against the employees. This position is borne out by the observations made by the Supreme Court in the case of Bharat Forge Company Ltd. (supra).

23. The endeavour of the Supreme Court in all these cases is that there should not be delay in concluding the proceedings and therefore whatever stand the management has to take with respect to the allegations made by the complainant, that stand must be taken in the written statement itself. But once that stand is taken by the management, then the Court will have to work out the proceedings before it, according to the stand taken by the management. It will not be necessary for the Labour Court to call upon the management to lead evidence to substantiate the charges framed against the employees if no such right is reserved by the management in the written statement filed by the management. So in the present case, we find that though the management had reserved its right to lead evidence to substantiate the charges framed against the employees, the Labour Court failed to give that opportunity to the management and from that view the decision given by the Learned single Judge is quite right and it requires no interference.

24. In view of this, the Letters Patent Appeals are dismissed. In the given circumstances, there will be no order as to costs.