

(1983) 07 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 3047 of 1976

Voltas Limited

APPELLANT

Vs

M.M. Kendrekar, Presiding Officer and Another

RESPONDENT

Date of Decision : 07-07-1983

Acts Referred:

Citation : (1984) 2 BomCR 15

Hon'ble Judges : P.S. Shah, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : P. Ramaswami, for the Appellant; Party-in-Person, for the Respondent

Judgement

H.H. Kantharia, J.—By this Special Civil Application under Articles 226 and 227 of the Constitution of India M/s. Voltas Limited, a Company incorporated under the Companies Act, having their registered office at 19, Graham Road, Bombay- 400 038 and branch at Voltasagar, Dr. Ambedkar Road, Bombay- 400 033 (hereinafter referred to as the Company) challenges an award dated 9-3-1976 passed by the learned Presiding Officer, 4th Labour Court, Bombay, in Reference (IDA.) No. 330 of 1974 directing the Company to reinstate Narayan K. Naik, one of their employees (hereinafter referred to as the workman) with full back wages.

2. The workman had been in the employment of the Company as "Sepoy" intermittently for a period of 8 years from 28-10-65 to 24-9-73 on temporary basis. His last employment in this manner was from 18-9-73 to 24-9-73 which was, as per the appointment letter dated 18-9-73, automatically to cease on 24-9-73 unless extended in writing; but it could be terminated on any day earlier without any notice and without assigning any reason. The appointment was on basic salary of Rs. 45/- per month plus dearness allowance as may be in enforce from time to time. He was not given work on and from 25-9-73. He felt aggrieved on account of termination of his services in this manner by the Company and, therefore, lodged a complaint with the Government Labour Officer on 16-2-74. During the intervening period he was going to the Company off and on with a hope to get re-employment, but in vain. It appears that the Deputy

Commissioner of Labour intervened and the matter was admitted in conciliation. Since it was not settled the Conciliation Officer submitted failure report on 29-6-74. Under the circumstances, in exercise of the powers conferred by Clause (c) of sub-section (1) of section 10 read with sub-section (5) of section 12 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the Deputy Commissioner of Labour (Administration) Bombay, made a reference by his order dated 31-7-74 to the 4th Labour Court, Bombay, for adjudication of the dispute between the Company and the workman. The schedule annexed to the order of reference indicates that the demand of the workman was that he should be reinstated with full back wages and continuity of the services with effect from 24-9-73.

3. The case of the workman as per his statement of claim was that he was an employee of the Company as "Sepoy" and "Sepoy-cum-Hamal" on temporary basis. It was a regular practice with the Company that the employees in "Sepoy" or "Sepoy-cum-Hamal" and similar categories were recruited initially as temporary employees and confirmed later according to their seniority. However, in his case, although he had joined the Company on 28-10-65 and had become a member of the Company's Provident Fund on 7-7-68 and was the senior-most employee in the said category he was not made permanent inspite of the fact that there was an agreement dated 31-12-70 signed before the Conciliation Officer between the Company and the Union representing the workman like him. According to him, he was not made permanent with ulterior motive and juniors to him viz. (1) Suresh Gangan and (2) Govind Keshav Dutt were made permanent thus violating the terms of the agreement dated 31-12-70. He further contended that the Company had neither charge-sheeted him nor had conducted any enquiry and without assigning any valid reason or without giving notice in writing arbitrarily discharged him from services which amounted to unfair labour practice and violation of principles of natural justice. He, therefore, demanded reinstatement with continuity of service and back wages. The Company resisted his claim and as per written statement it was their case that the workman was purely temporary having been employed intermittently from 28-10-65 to 24-9-73 if and when there was a leave vacancy or rush for work. Thus he was under the employment at their Air-conditioning and Refrigeration department (Central Plant Sales) from 28-9-71 to 11-11-71. However, he did not attend work with effect from 1-11-71 and on 4-11-71 they came to know that he had applied for a post at the Company's factory at Thane and was given employment there. Subsequently, when Thane establishment of the Company learnt that although he was already an employee of the Company upto 11-11-71 he sought such employment with them at Thane without disclosing the facts, they terminated his temporary services by a letter dated 5-11-71. Thereafter, the workman requested the Company, after tendering an apology to re-employ him and solely on humanitarian consideration he was again given temporary employment whenever such employment was available. He then worked with the Company intermittently upto 24-9-73. The Company further contended that from 1-11-71

to 24-9-73 there were adverse remarks regarding his performance in work. Therefore, at the end of his employment on 24-9-73 his services stood automatically terminated and he was not given work thereafter. Thus they did not terminate his services, contended the Company. Regarding Suresh Gangan and Govind Keshav Dutt being confirmed the Company said that they were not employed on the same job as the present workman and their service record was good. Hence they were confirmed. According to Company, the temporary employees were not confirmed as per their seniority only, but according to performance in the discharge of duties. They then averred that the workman was made a member of the Provident Fund on 7-7-68 through oversight. The Company further canvassed that they did not charge sheet the workman because he was not dismissed or discharged as and by way of punishment for any misconduct. The Company thus neither indulged in unfair labour practice nor did they violate the principles of natural justice, added the Company. They, therefore, prayed for the dismissal of the claim of the workman.

4. At the trial the workman examined himself and the Company one of their officers. On consideration of the evidence, oral and documentary, the learned Labour Judge came to a conclusion that the workman was a temporary hand but his services were illegally terminated. He was accordingly entitled to reinstatement with full back wages. The reasons for such conclusions arrived at by the learned Labour Judge were that the Company found the workman quarrelsome and argumentative and his work was not satisfactory. According to the learned Labour Judge the Company wanted to get rid of the workman because he had sought employment at Thane factory during the period when he was already in employment of the Company. And the Company terminated his services without giving him an opportunity to explain the charges of mis-conduct, in violation of the standing orders, further concluded the learned Labour Judge. He accordingly passed the impugned award.

5. Being aggrieved, the Company filed the present Special Civil Application. The matter came up before the Division Bench of this Court on 8-11-76 to which one of us (Shah, J.) was a party. On that day the learned Advocate appearing on behalf of the Company and the workman filed consent terms which were admitted by the workman. He also then stated that he had received the cheque for Rs. 7,000/- from the Company as per the consent terms. Thus on a monetary settlement between the parties the matter was disposed of with no order as to costs. Later, the workman appears to have felt that the settlement was not advantageous to him. Therefore, he went on filing some kind of applications in this Court which he described as writ petitions numbering fifteen which were rejected by this Court from time to time. The last of such application was Civil Application No. 2339/82 praying for setting aside the consent terms dated 8-11-76 which was rejected by Chief Justice Madon (as he then was) and Pendse, J., on 3-9-82. It further appears that the workman then took the matter to the Supreme Court through the Supreme Court Legal Aid Committee and filed Civil Appeal No. 563/83 after obtaining special leave. The matter come up before

the Supreme Court on 19-4-83 when upon hearing the Counsel the Supreme Court made the following order :

"Mr. G.B. Pai, Senior Advocate, for the respondent has fairly stated before the Court that since the petitioner who was an employee of the respondent carries a grievance in regard to the consent terms as a result of which Special Civil Application No. 3047 of 1976 filed by the respondent in the High Court of Bombay was settled, the respondent is willing that the consent order made on Special Civil Application No. 3047 of 1976 be set aside. This is a fair suggestion on behalf of the respondent and we accordingly allow the appeal, set aside the order dated 3rd September, 1982, as also the order dated 8th November, 1976 disposing of the Special Civil application No. 3047,76 in terms of the consent terms and restore that special civil application on file and remit it to the High Court for disposal according to law. Since the case is an old one we would request the High Court to dispose it of as expeditiously as possible and in any event not later than the expiration of one month from the re-opening of the Court after Summer Vacation. The allegation, if any, made by the petitioner against the respondent will stand withdrawn."

That is how the matter is back before us and we have fully heard it on merits.

6. Now, Mr. Ramaswami urged that the Company did not terminate the services of the workman, services having automatically come to an end as per the appointment letter dated 18-9-73 and he cannot claim right to resume work. Thus according to him there was no termination at all as the services of the workman came to an end automatically on 24-9-73. We are not able to persuade ourselves to agree with Mr. Ramaswami on this proposition. Admittedly, the workman was employed initially on 28-10-65 and he worked with the Company intermittently for a period of 8 years. The employment of such a workman cannot come to an end automatically just because an averment is made in the appointment letter that his services would automatically cease on 24-9-73. Even temporary workmen have a right to continue in services if otherwise everything is alright. They cannot be thrown out of employment without following due procedure according to law. In the instant case the workman was getting employment from time to time for all the eight years and in the ordinary course he was again entitled to such employment on and after 25-9-73. Just because he was employed on temporary basis intermittently it would be wrong to say that his services come to an end automatically. In a similar case the appointment of a workman was intermittent on a purely temporary basis and on the last occasion for a period of 9 days which could be terminated earlier without assigning any reasons as per the appointment letter. It was contended by the employer that the order of appointment carried an automatic cessation of service by efflux of time. The Supreme Court in that case of *The State Bank of India Vs. Shri N. Sundara Money*, explained the terminology "termination". That was the case of retrenchment but since every termination spells out retrenchment, the Supreme Court explained "termination" as under :---

"Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination, howsoever, produced."

The Supreme Court further observed :

"Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a combusive order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provisions."

Thus the services of the workman before us were terminated by the company by putting a clause in the appointment letter that his services would automatically come to an end on 24-9-73. Therefore, the contention of Mr. Ramaswami that the Company had not terminated the services of the workman can not be accepted.

7. Next, whether the termination of services by the Company in this manner, in our case, was an arbitrary, unjust, improper, unfair and illegal act on the part of the Company. Admittedly, the workman was getting employment, of course intermittently, from 28-10-65 to 24-9-73 may be, in leave vacancy, sick vacancy or whenever there was a rush for work. What had happened on 25-9-73 that he was not given work thereafter? Do they suggest that thereafter nobody went on leave or no person proceeded on sick leave or there was no rush for work at all so as to re-employ the workman? No, that is not so. It is the case of the Company that the workman was not given work again because his reports were not good and his work was not found satisfactory. The evidence of the witness examined on behalf of the Company shows that further chance was not given to the workman because he was argumentative and quarrelsome. If that is so, the Company positively terminated the employment of the workman as and by way of punishment. It is well settled law that no workman can be punished without affording him a reasonable opportunity of being heard. Thus before any action is taken against a workman a domestic inquiry should be held and it is only when he is found guilty of mis-conduct alleged against him that a workman can be punished. Mr. Ramaswami urged that the acts alleged against the workman by the witness of the Company being argumentative and quarrelsome would not amount to mis-conduct for which he could be punished and as such there was no necessity of holding inquiry against him. Now the expression "mis-conduct" has not been defined in the Industrial Disputes Act, 1947. The dictionary meanings of

the words "mis-conduct" are "improper behaviour" intentional wrong doing or deliberate violation of a rule of standard of behaviour "And, therefore, what would be a mis-conduct will depend upon facts and circumstances of each and every case unless acts of mis-conduct are enumerated in the service conduct rules governing the employees. To be argumentative and quarrelsome will definitely mean improper behaviour or a deliberate violation of rule of standard of behaviour on the part of any workman. Again, the present workman had taken up an employment at Thane Factory of the Company when he was in fact already in the employment with the Company. That would be an intentional wrong doing by the workman. Therefore, it will be reasonable to say that the acts on the part the workman before us were acts of mis-conduct. Hence, when the Company sought to terminate his services on these grounds it was incumbent upon them to have held an enquiry, so as to give him an opportunity to explain the charges levelled against him. Admittedly, he was neither charge-sheeted nor an enquiry held against him. And to terminate his services without charge sheeting and holding an enquiry, can positively be said to be arbitrary. The Company thus terminated the services of workman without observing the principles of natural justice. The workman was condemned without being heard. It may be noted here that the learned Labour Judge relied upon certain standing orders by which the service conditions of the workman were governed. A perusal of the award under challenge shows that the said standing orders were produced by the Company in the Court of the learned Labour Judge. One of grounds in this Special Civil Application is that the workman was working in commercial establishment of the Company to which no standing orders were applicable and therefore the Labour Court erroneously held that the Company had contravened the standing orders. Since the standing orders were produced by the Company before the learned Labour Judge he relied upon them and according to those standing orders services of the workman could not be terminated as and by way of punishment although he was a temporary hand, without he being given an opportunity of explaining the charges of mis-conduct alleged against him. But assuming for the sake of argument that the standing orders were not applicable to the present workman, even then it is more than clear that the Company arbitrarily terminated the services of the workman which would be illegal any time.

8. That apart, what appears to us in this case is that the Company also acted mala fide and indulged in acts of unfair labour practice. The way in which the Company conducted itself was highly improper and unjust. First of all it was highly unfair on the part of the Company to have employed the present workman for a long period of eight years purely on temporary basis and that too intermittently with no security of job. The Company thus indulged in an act of perpetual wrong which amounts to unfair labour practice. Such temporary employments have been held to be unfair labour practice and so long as our State is concerned, in Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, such act has been enumerated as unfair labour practice under Schedule IV, Item 6, according to which it would be a

general unfair labour practice on the part of an employer to employ employees as badlis, casuals and temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees. Such a provision has now been introduced in the Industrial Disputes Act, 1947 when it was amended in the year 1982. The record further shows that at least two temporary employees viz., (1) Suresh Gangan and (2) Govind Keshav Dutt who were junior to the present workman were confirmed in preference to him. So long as Suresh Gangan is concerned he was confirmed on 14-5-74 and his performance seems to be better than that of the present workman and as such we will exclude his case. But Govind Keshav Dutt who was very much junior to the present workman was confirmed as Mazdoor on 1-6-72, that is, much before the services of the present workman were terminated. He was also working as Sepoy. A comparison of the performance of the said Dutt and the present workman will show that there was hardly anything to choose between the two. Thus their service records, as produced by the Company, show that both of them were average or poor in some respects and upto the mark in certain respects. In other respects both were positively good. If, therefore, Govind Keshav Dutt could be confirmed, why not the present workman. According to the Company Dutt was working in the category of Mazdoor whereas the present workman was a Sepoy and, therefore both were not working in the same category. Nomenclatures of their designations apart, both belong to the same echelon among the employees of the Company and there was no reason for the Company to prefer one against the other in the matter of making them permanent. Even as per settlement dated 31-12-70 between the Company and the Voltas and Volkart become permanent. But for the reasons that he was argumentative and quarrelsome and had taken up job at Thane Factory when he was in fact working with the Company, the employer here indulged in vindictive attitude against the workman and did not confirm him. All this goes to show that the Company did not act bona fide We would like to make it clear here that we are not dealing with the case of the workman either for confirmation or for permanency, as rightly the learned Labour Judge has also not done, because permanency was not the term of reference made by the Government to the Labour Court. We have incidentally referred to this aspect of the matter with a view to point out that the Company was not fair to the workman. Not to be fair to the workman and to take arbitrary action against him would amount to an act of victimization. The term "victimization" has been interpreted and explained and the principles of law relating thereto have been laid down by the Supreme Court in Workmen Vs. Williamson Magor and Co. Ltd. and Another, as follows :

"The word "victimization," has not been defined in the statute. The term was considered by this Court in the case of Bharat Band Limited v. Employees of Bharat Bank Limited, reported in 1950 L.L.J. 921. This Court observed. "It (Victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with." A submission was made on behalf of the management in that case that

"victimization" had acquired a special meaning in industrial disputes and connoted a person who become the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed."

This submission, however, was not considered by the Court. When however, the word ("victimization") can be interpreted in two different ways the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the Management.

This Court in the case of K.C.P. Employees Association, Madras v. Management of K.C.P. Limited, Madras and others, reported in 1977(I) L.L.J. 322, observed :

"In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over stepping the proved facts". We would therefore, accept the interpretation of the word "victimization" in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimization of the superseded workmen."

Further, the Company contended that the workman was made member of the Provident Fund somewhere in the year 1968 through oversight. If that was so, what steps did the Company take to rectify it. The record shows nothing. It indicates that this contention of the Company is an after thought. All these circumstances clearly point out that the Company did commit grave and gross injustice on an economically exploited person like the present workman. Therefore, we hold that the act of termination of the services of the workman was illegal.

9. Mr. Ramaswami submitted that when the learned Labour Judge held that the services of the workman were terminated as and by way of punishment without holding a domestic inquiry, the Company should have been given an opportunity to lead evidence to prove such mis-conduct and, therefore, the matter should be remand. We are not able to agree with Mr. Ramaswami because when the Company's witness gave evidence in the Labour Court that the workman was not given further chance because he was argumentative and quarrelsome the Company knew it fully well that they were doing away with the services of the workman on account of such acts on the part of the workman. The company's intention in this respect was clear when it gave evidence. If the Company wanted to prove such acts by holding an enquiry against the workman it was incumbent upon them to have requested the learned Labour Judge first to give them an opportunity to lead evidence in respect of such mis-conduct. Not having done that it cannot lie in their mouth now to ask for such an opportunity. It is not even one of the grounds on which this Special Civil Application is filed. It is only at the stage of the arguments that Mr. Ramaswami raised such a contention. We, therefore, decline such a concession to the Company.

10. Regard being had to all these circumstances we find no infirmity in the impugned award made by the learned Labour Judge. We find no substance in this application which fails. Rule will have to be discharged. But before we do not that we would like to make certain clarification on the question back wages. As stated above, this matter had come up for hearing on 8-11-76 in this Court when it was settled by and between the parties and was disposed of. It is because the workman took the matter to the Supreme Court, in the circumstances stated hereinabove, that by an order dated 19-4-83 of the Supreme Court the matter came back here. So long as the back wages from 25-9-73 to 8-11-76 are concerned there is no problem and the Company is bound and liable to pay the same to the workman in consequence of the award made by the learned Labour Judge. The problem is for intervening period from 8-11-1976 to 19-4-1983. Here we may point out that on 8-11-76 the workman settled the dispute with the Company on monetary basis by accepting the cheque for Rs. 7,000/-. When he felt that the settlement was not advantageous to him he should have returned the said cheque to the Company and should have repudiated the settlement. He should have then taken proper steps according to law so that the matter could have been restored to the file of this Court and could have been heard on merits and decided one way or the other right at that point of time. After having pocketed a sum of Rs. 7,000/- the workman allowed the matter to linger on from 8-11-76 to 19-4-83 for which the Company is in no way responsible. It is none of the fault of the Company that the disposal of the matter was delayed from 8-11-76 to 19-4-83. Again, the matter was remanded by the Supreme Court to this Court not on merits but by the consent of the Company. Record does not show that the Company was in any way guilty for the so-called "less advantageous" terms of settlement filed in this Court on 8-11-76. The Company, therefore, cannot be punished by ordering them to pay back wages for this intervening period. That would be quite unjust and unfair to the Company. The workman, however, would be entitled to full back wages again from 19-4-1983 till the day he is re-instated. In other words, the workman will be entitled to full back wages from 25-9-73 to 8-11-76 and from 19-4-83 till the day he is reinstated. When the Company pays the back wages to the workman which they shall do forthwith, they shall be at liberty to deduct the sum of Rs. 7,000/- which they have already paid to the workman on 8-11-1976. Subject to this clarification the application stands dismissed. Rule discharged accordingly.

Before the hearing of this matter began, at the request of the workman we ordered the Company to pay an amount of Rs. 500/- to the workman to meet the costs, charges and expenses for conducting this petition. The Company had accordingly paid the said amount to the workman. Hence, no order as to costs.