
(2000) 02 BOM CK 0089
In the Bombay High Court
Case No : Writ Pettition No. 955 of 1987

V.R. Pastekar and Others

APPELLANT

Vs

The Managing Director, Marathwada Development
Corporation and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 25

Citation : (2000) 3 ALLMR 141 : (2000) 4 BomCR 458

Hon'ble Judges : V.K. Barde, J;A.S. Bagga, J

Bench : Division Bench

Advocate : R.G. Deo, for the Appellant; S.M. Kulkarni and R.P. Pawar and V.B. Ghatge, A.G.P., for the Respondent

Judgement

V.K. Barde, J.—Original 7 petitioners filed this petition. However, during the pendency of this petition. Petitioner No. 1-V.R. Pastekar, petitioner No. 3-U.N. Joshi, Petitioner No: 5-H.P. Pawar and petitioner No. 6-N.D. Basarkar have withdrawn and now only the petitioner No. 2 P.R. Barde, petitioner No. 4 A.Y. Ralsokar and petitioner No. 7 B.R. Wattamwar are contesting the petition.

2. The case of the petitioners is that the petitioners were employed by the respondent No. 1 Marathwada Development Corporation (hereinafter referred to as the M.D.C. for short) in the year 1971/72 on various posts. They were taken in the Powerloom Division of the M.D.C. There were 48 Co-operative Societies running Powerlooms and to support them by giving technical and managerial advice, the Division of M.D.C. was started. Petitioners have further contended that till the year 1983, they continued to hold various posts in the Powerloom Division of M.D.C. and thereafter, they were transferred to Textile Corporation of Marathwada (hereinafter referred to as the TEXCOM) respondent No. 3 and since then, they are in the services of respondent No. 3.

3. The contention of the petitioners is that in the year 1977, there was some

internal arrangement between M.D.C. and TEXCOM with respect to the 48 Co-operative Societies engaged in powerloom activities and at that time, the employees from TEXCOM were transferred to M.D.C. While effecting these transfers their services, which they had rendered under the TEXCOM, were fully protected with respect to their salaries, length of service, earned leave at their credit and especially seniority. However, while transferring the petitioners in the year 1983 from M.D.C. to the TEXCOM those very benefits were not given to the petitioners and, therefore, the petition is filed to claim the benefits of protecting their services especially with seniority that they were having while working under the M.D.C.

4. In support of this contention, the petitioners are contending that whatever activities the M.D.C. was handling in Powerloom Division are being handled by the TEXCOM. Whatever responsibility and work was allotted to petitioners when they were working in the Powerloom Division of M.D.C. the same work and responsibility are being carried out by the petitioners while in service under the TEXCOM. Thus, practically there is no difference in the nature of services of the petitioners. There is also practically no difference between the activities being carried out by the M.D.C. in Powerloom Division and the activities being carried out by the TEXCOM with respect to powerloom and in such circumstances, petitioners services ought to have been protected in every respect while they were transferred from M.D.C. to TEXCOM.

5. It is also contended that the M.D.C. is having share capital in the TEXCOM and in that way, TEXCOM is subsidiary of M.D.C. and, therefore, while transferring the services of the petitioners from M.D.C., their services ought to have been protected.

6. At the time of argument, it is also argued by the learned Counsel Shri Deo for the petitioners that even though it is being contended that the Powerloom Division of the M.D.C., is closed that is not the fact. M.D.C. is yet having Powerloom Division and certain activities with respect to Powerloom Division are yet continued by M.D.C.

7. It is also the contention of the petitioners that the M.D.C. had sent letter dated 28-11-1983 and an impression was created on the mind of the petitioners and others that M.D.C. was likely to close down its Powerloom Division and thereby rendering persons like the petitioners as surplus and they would be retrenched and they would be jobless and M.D.C. was using its good offices for providing alternative services to the petitioners in case their services were to be terminated by one way or other on closing down Powerloom Division of the M.D.C. So, under the fear that the petitioners were likely to lose their service in M.D.C., the offer of service in TEXCOM was accepted by petitioners and they got themselves relieved from the services of M.D.C.

8. It is the contention of the petitioners that instead of following provisions regarding retrenchment u/s 25-F of the Industrial Disputes Act, a trick was

played to remove these persons from service by creating an impression that they were being given alternative service. The petitioners, therefore, have contended that whatever has happened in the year 1983 was because of the wrong impression created by M.D.C. with respect to the service of the petitioners. Their service conditions should not have been changed and especially their seniority while working under M.D.C. ought to have been taken into consideration while giving them employment in the TEXCOM but that was not done. Petitioners had made representation to that effect. However, there was no proper response either from M.D.C. or TEXCOM with respect to their contention that their seniority and other service conditions be protected.

9. Further development that took place which gave rise to this petition is that on 14th June 1987 a notice of change as per the provisions of section 42(1) of the Bombay Industrial Relations Act, 1946 was given by the respondent No. 3 TEXCOM and there a change was proposed to retrench the services of 186 employees. The 7 petitioners were named in the list of 186 whose services were to be terminated by way of retrenchment. The petitioners then came to know about their plight as they were not given seniority as per their services under the M.D.C. They were shown junior most in the service of TEXCOM and, the petition is filed to save them from retrenchment from the services of respondent No. 3 TEXCOM with a prayer that their seniority be protected. There is also prayer that petitioners be absorbed in the services of M.D.C. and that these are the only reliefs which are being sought by the petitioners.

10. There was a proposal of transferring the shares of TEXCOM to Maharashtra State Textile Corporation (hereinafter referred to as "the M.S.T.C." for short) and the petitioners have also challenged that proposal. However, at the time of the arguments, the learned Counsel for the petitioners has not pressed for the relief with respect to challenge to the transfer of shares of TEXCOM to the M.S.T.C. The learned Counsel for the respondents have also pointed out that though there was a proposal for transferring the shares of TEXCOM to the M.S.T.C., no further steps were taken with respect to that proposal and now there is no such move and, therefore, there is no substance in the relief which is being sought with respect to the transfer of shares of TEXCOM to M.S.T.C.

11. It does appear that there was a proposal. However, that proposal is given up and now there is no question of transfer of shares of TEXCOM to M.S.T.C. So, so far as this relief is concerned, the writ petition does not survive.

12. The respondent No. 3-TEXCOM had proposed a change as per Notice of Change dated 14-6-1987. However, the learned Counsel for the respondent No. 3 Shri Powar has made a statement that thereafter there was a settlement between the recognised Union and TEXCOM with respect to the Notice of Change and as per that settlement, some of the employees have sought voluntary retirement. The four petitioners i.e. 1, 3, 5 and 6 whose names were there in the list of 186 have also accepted the settlement and, therefore, to their extent, the writ petition stands disposed of. However, the petitioners Nos. 2, 4 and 7 did not

accept the settlement.

13. The learned Counsel for the respondent No. 3 has, therefore, made a statement that now as there is a settlement with respect to the Notice of Change that notice is not going to be implemented. There cannot be retrenchment on the basis of that notice as it has outlived its purpose and so, no action can be taken with respect to petitioners Nos. 2, 4 and 7 on the basis of that notice of change with respect to all 186 workers named in that notice of change it has come to an end. In view of this, there is no need to give any relief to the petitioners as prayed in prayer clause (D). No effective steps with respect to the notice of change of retrenchment in consequence can now be taken. In view of the statement made by the learned Counsel for the respondent No. 3 which was recorded by this Court on 12-1-2000, we do find that now the petition has become infructuous with respect to the notice of change dated 14-6-1987 and the proposed retrenchment. So that chapter is also closed.

14. Now, the only question remains is whether respondent No. 3 can be directed to protect the seniority of the petitioners as they were having when they were in service of M.D.C. or the M.D.C. can be directed to absorb petitioners in their services as being prayed in prayer clause (C) of the petition.

15. Though these two points appear to be different, are to be considered on one and the same set of facts. The facts as disclosed in the petition and mostly as admitted by the respondents are like this. On 28-11-1983 as per Exhibit A annexed to the petition (page 37) ,a letter was written to the petitioners by the Director Incharge of M.D.C. wherein the petitioners were informed that M.D.C. had decided to withdraw the techno-managerial services extended to various Powerlooms Industrial Co-operative Societies and the TEXCOM had decided to extend similar services of Powerloom Industrial Cooperative Societies and therefore, TEXCOM was to recruit some persons for giving the said services. In the light of this situation, the M.D.C. had recommended the names of the petitioners to TEXCOM to recruit them for new services being stated by TEXCOM. It was also made clear that TEXCOM was not bound to accept recommendation/ proposal made by the M.D.C. and TEXCOM was to recruit the persons as per the requirement of the TEXCOM and it was made clear that if the TEXCOM had given appointment to the petitioners on they being selected by TEXCOM the M.D.C. would not object but their services with TEXCOM would be fresh appointments.

16. On receiving this communication, the petitioners made representation on 2-12-1983 as per Exhibit B annexure to the petition (page 39) to the M.D.C. and contended that in case they were given employment in TEXCOM, their services be protected and especially the service conditions including the seniority should be protected.

17. It is also noticed that as per Exhibit C annexure to the petition (page 45) on 28-11-1983, the company Secretary a Chief Administrative Officer of TEXCOM informed the petitioners that they were given appointments on various posts

under the TEXCOM as per the terms and condition mentioned in the letter dated 28-11-1983. The important conditions for us are that:

(i) The length of service rendered by you in M.D.C. from 1-4-1973 or date of first appointment in M.D.C. to the date of your relief from M.D.C. shall be counted only for working out the amount of gratuity payable to you.

(ii) You will be treated as confirmed employee in TEXCOM.

(iii) The balance of leave to your credit at the time when you leave M.D.C. will be credited to your leave account in TEXCOM.

Excepting the gratuity amount and credit of leave as mentioned above, you shall not be entitled nor shall you claim for any other benefit you may be entitled to in the employment of M.D.C.

However, as stated above, granting of above benefits would not be in any way construed as continuation of your services in TEXCOM as your appointment is fresh appointment only.

18. Thus, by this letter it was made clear that the petitioner's appointment in TEXCOM was fresh appointment and they will get only two benefits; one with respect to gratuity earned and another earned leave to their credit at the time of leaving their services from M.D.C. Their seniority while in the service of M.D.C. was not to be counted on being appointed in TEXCOM because they were fresh appointees so far as TEXCOM is concerned.

19. In the background of this letter dated 28th November 1983, each of the petitioners as per Exhibit-D annexure to the petition (page 49) informed the M.D.C. that petitioner was accepting the appointment of TEXCOM on the terms and conditions mentioned in the appointment letter and further requested the M.D.C. to relieve the petitioner from M.D.C. to enable him to join the services of TEXCOM.

20. The learned Counsel for the respondents have placed very much emphasise on the wording of this letter dated 7-12-1983 written by the petitioners to the M.D.C. especially "I am accepting the appointment of TEXCOM on the terms and conditions mentioned in their appointment letter" i.e. letter dated 28th November 1983- Annexure-C. So, once the petitioners have accepted these service conditions and have accepted the job under TEXCOM now they cannot re-open the question of seniority that too in the year 1987-four years after accepting terms and conditions of the appointment.

21. It is worth noting that the M.D.C. by its letter dated 7-12-1983 Exhibit-E (page 50) had communicated to the petitioners that they were being relieved from the services of M.D.C. w.e. from 7-12-1983 so as to allow them to join their duties under the TEXCOM. Not only that, the condition of notice before leaving the service was relaxed in case of the petitioners as per this letter. Furthermore, in this letter reference is given of the letter dated 28-11- 1983 and 7-12-1983.

That means, the letter from M.D.C. as per Exhibit-A and letter of the petitioners as per Exhibit-D. So, on 7-12-1983, the petitioners stood relieved from the services of M.D.C. as per communication given by the M.D.C. on the letter of appointment issued by the TEXCOM and letter of request to relieve sent by the petitioners to the M.D.C. on 17-12-1983. Both the M.D.C. and TEXCOM informed the petitioners by separate letters that the representation made by the petitioners on 13-11-1983 regarding protection of their services cannot be accepted. Letter from M.D.C. is Exhibit-F annexure to the petition (page 52). So on 17-12-1983 itself the petitioners came to know that the M.D.C. was not willing to accept their representation and the appointment in TEXCOM would be as per the terms and conditions in the appointment letter.

22. The letter from TEXCOM-Exhibit-G to the petition (page 53) also makes it clear that the petitioners have to accept the appointment as per the terms and conditions given in the appointment letter. It was informed to them that they would not be considered as they have joined the services of the TEXCOM unless they accept the service as per the terms and conditions laid down in the appointment letter. So, here again, TEXCOM has made its stand clear that except those terms and conditions which were mentioned in the appointment letter, no other terms would be acceptable to the TEXCOM. Further situation which is obtained is that the petitioners started to work under the TEXCOM. They have accepted the salary from TEXCOM and they had severed all their relations with M.D.C. It means that they accepted service of the TEXCOM as per the terms and conditions mentioned in the letter of appointment.

23. In the circumstances as pointed above, it can very well be said that the petitioners are now estopped from claiming any other service condition than those accepted between the parties as per the letter of appointment by the TEXCOM. So, now the petitioners can in no circumstances, claim that their seniority be protected as per their seniority in the M.D.C. They had accepted fresh appointment under the TEXCOM. They acted on that letter for 3 years. So now, they cannot challenge the position which is in existence because of their acceptance of appointment. The petitioners for all purposes are fresh recruits under the TEXCOM. It was a contract between the TEXCOM and the petitioners and now TEXCOM cannot be directed to give them seniority as per their seniority under the M.D.C.

24. So far as the contentions of petitioners that an impression was created that petitioners were likely to lose their service if they did not join service of TEXCOM and that being helpless, they accepted the terms and conditions laid down by the TEXCOM and joined the services of TEXCOM are without any basis. The situation which was to take place was brought to the notice of the petitioners. They were given an option and they have selected their option. There is also no substance of the petitioners that even after 1983, the M.D.C. is running Powerloom Division. No such evidence is there on record. The very purpose of handing over Powerloom Division of TEXCOM was to reduce the duplicity of work and to have

only one organisation to look after a particular type of industry. So, once everything was brought to the notice of the petitioners and the petitioners were given their options, they cannot say that they were forced or they were misled. The petitioners exercised their option in the given circumstance and that was the best position for them to opt for and accordingly, they had opted. Not only that they accepted appointment letter from TEXCOM but they voluntarily wrote to M.D.C. to relieve them from service. They got themselves relieved from the service of M.D.C. and started working under the TEXCOM and took all other advantages of service under the TEXCOM. So, 3 years after that, they cannot ask for reverting the situation. The hands of clock cannot be set back.

25. Once it is found that M.D.C. is not having the Powerloom Division, the petitioners who were actually working in Powerloom Division cannot be given employment in M.D.C. The prayer of the petitioners that they be absorbed in M.D.C. is altogether without any basis. They have left the services of M.D.C. in Powerloom Division and so the question of their absorption by the M.D.C. does not arise. Hence, the relief sought by the petitioners in clause (C) and (D) cannot be granted. In view of this, the petition stands dismissed. Rule discharged. In view of the circumstance, no order as to costs.

26. Petition dismissed.