
(1992) 08 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 3144 of 1984

Zenith Steel Pipes and Industries Limited

APPELLANT

Vs

G.K. Ashtekar and Others

RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:

Citation : (1993) 3 LLJ 500

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : M.M. Varma and Pankaj Patel, for the Appellant; Meena H. Doshi, instructed by and Haresh Mehta and Co. for R-1, for the Respondent

Final Decision : Dismissed

Judgement

H.H. Kantharia, J.—The first respondent-workman moved the First Labour Court at Thane by filing a complaint (ULP) No. 8 of 1980 alleging unfair labour practices on the part of the petitioner- company covered by item 1 (a), (b), (d), (e), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU & PULP Act") stating that the termination of his services was on account of ictimisation, not in good faith but in the colourable exercise of the employer's rights and for patently false reasons. He succeeded in the said complaint to the extent of getting the relief of reinstatement with continuity of services but loss of 50 per cent back wages. The judgment and order passed by the learned Labour Judge on June 27, 1983 was challenged in revision by both the petitioner-company and the first respondent-workman, the petitioner-company contending that the relief of reinstatement with continuity of services and 50 per cent back wages passed by the learned Labour Judge was not warranted by facts and circumstances of the case and the first respondent-workman contending that the judgment and order passed by the learned Labour Judge denying him 50 per cent back wages was not correct. The learned Member of the Industrial Court, Thane, who heard the said revision applications dismissed

both the revision applications and held by a judgment and order dated July 20, 1984 that the petitioner-company had indulged in unfair labour practice which is covered by item 1 (b) and (f) of Schedule IV of the MRTU & PULP Act and consequently the first respondent-workman was entitled to reinstatement with 50 per cent back wages and continuity of services. In other words, the learned Member of the Industrial Court confirmed the judgment and order passed by the learned Labour Judge.

2. Being aggrieved, the petitioner-company invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

3. Now, at the hearing, Mr. Varma, learned counsel appearing on behalf of the petitioner-company, submitted that he does not want to challenge the impugned judgment and order passed by both the Courts below to the extent of granting relief of reinstatement and continuity of services to the first respondent-workman but his objection is to the grant of relief of 50 per cent back wages inasmuch as there were justifiable reasons on account of which the Courts below should not have granted any back wages to the first respondent-workman. In reply, Mrs. Doshi, learned Counsel appearing on behalf of the first respondent-workman, urged that for the valid reasons, both the Courts have concurrently held that the ends of justice will be served if the first respondent-workman was denied 50 per cent back wages and granted only 50 per cent of the same and this Court while exercising supervisory writ jurisdiction under Article 227 of the Constitution need not interfere with this concurrent finding arrived at by both the Courts below.

4. Now, the reasons for denying 50 per cent back wages to the first respondent-workman are given by the learned Labour Judge in para 28 and part of para 29 of his judgment in order dated June 27, 1983 which reads as under:

"28. The Complainant has admitted in his evidence that there is a shop by name Guru kripa Winding Works. It is in the name of his wife but he is signing on her behalf. The Company has produced copies of bills showing that the complainant has signed the bills of the aforesaid shop as proprietor. It is nowhere suggested that the complainant's wife has been doing any active work in the shop. It would, therefore, follow that the shop is only nominally in the name of the wife, but is being run by the complainant himself. That would be a sufficient proof of complainant's gainful employment since his termination".

"29. The Company has brought on record the complainant's income from such gainful employment. Even assuming that it was substantial, it would not be justifiable to fully deprive the complainant of his back wages. In fact, the ordinary rule is that a workman should be entitled to full back wages in case he is held to be entitled for reinstatement. I have held above that the complainant's services have been terminated by way of colourable exercise of power and not in good faith. The complainant, in such circumstances, must get a reasonable amount of back wages in absence of proper proof of income from the gainful

employment. I quantify the same at 50%".

5. The learned Member of the Industrial Court gave the following reasons for coming to the conclusion that the first respondent-workman was entitled to 50 per cent back wages in para 21 of his judgment:

"21. Lastly, it was contended on behalf of the employer-company that the back wages were not properly awarded by the learned Judge, Labour Court, Thane. In the submission of Mr. L.C. Joshi, no back wages ought to have been given to the Complainant particularly when it was found that he was carrying on some business in the name of his wife and also when the amount of income from such business was not quantified by the complainant himself".

"As against this, Shri Padmanabhan submitted that the learned Judge of Labour Court, Thane was wrong in granting only half back wages and he went on to submit further that in the absence of any evidence of income it was incumbent on the part of the Labour Court to grant reinstatement with full back wages and continuity of service".

"The submission of Shri Padmanabhan might appear sound on the question of back wages and it cannot be ignored that non-compliance with Section 25F of the Industrial Disputes Act, 1947 involving non-payment of retrenchment compensation makes the retrenchment void, ab initio. Ordinarily, therefore, reinstatement with back wages should follow. But reinstatement with back wages is not a "must" in every instance of retrenchment effected without payment of retrenchment compensation which is required to be paid u/s 25F of the I.D. Act, 1947. The learned Judge, Labour Court, Thane in the instant case, was justified in awarding reinstatement with half back wages. Neither party challenged the evidence before the Labour Court, Thane, as to the probable income of the business which the Complainant was carrying on in the name of his wife. The employer-company was entitled to seek for the production of document showing the income from the business of the complainant's wife. However, the employer-company did not call upon the Complainant workman to produce such document. Having regard to all the facts in the instant matter, and having regard to the fact that the relief must be fashioned with eye on mutual equities, the order of reinstatement with 50% of back wages was justified".

6. I find no compelling reason to disagree with the above observations made by the learned Labour Judge and the learned Member of the Industrial Court. I completely agree with the observations made by them and find no necessity of repeating the same argument in my language. Mrs. Doshi is right in her submission that the first respondent-workman was punished as and by way of denying 50 per cent of back wages because of the fact that he was carrying on business in the name of his wife on account of which he had earned some money. Mr. Varma on behalf of the petitioner-company invited my attention to a division bench ruling of this Court in Jaysing Pandurang Sawant v. The Maharashtra Co-operative Engineering Society and Ors. 1988 ICLR 407 and

submitted that in a similar case the workman was held disentitled to back wages. On going through the said judgment, I am of the view that the facts appearing therein are different and distinguishable from those appearing in this case. In the said case, right from the year 1969, memos and warnings for late and irregular attendance and absence from work without permission were given on a number of occasions to the petitioner-workman and the record further showed that the petitioner had remained absent from work on many occasions without obtaining prior leave or without submitting medical certificates with regard to his so-called sickness. The Labour Judge dealing with that matter was of the opinion that ends of justice would be met if the excessive and harsh punishment was set aside and the petitioner was ordered to be re-appointed all afresh but this Court set aside the said Award made by the Labour Judge and substituted by a direction to the respondent-employer to reinstate the petitioner-workman with continuity of services right from the day his services were terminated and, in the circumstances, his demand for back wages was rejected. The petitioner therein thus was granted by this Court better relief than granted by the Labour Judge and it is under those circumstances that his demand for back wages was rejected. Here on account of his earning by the first respondent-workman during the period when he committed misconduct that he was visited with punishment of loss of back wages to the extent of 50 per cent. And regard being had to the totality of the facts and circumstances of this case, I feel that the conclusions of the Labour Judge and the Member of the Industrial Court in granting 50 per cent of the back wages should not be interfered with by this Court while exercising supervisory writ jurisdiction under Article 227 of the Constitution as it cannot be said that under such facts and circumstances such finding arrived at by the two Courts below was perverse.

7. In the result, the writ petition fails and the same stands rejected. Rule is accordingly discharged but with no order as to costs.

8. Office is directed to supply certified copies of this judgment to both sides out of turn on priority basis.