
(2009) 11 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No. 1459 of 2005

Zim Laboratories Limited

APPELLANT

Vs

Nagpur General Labour Union

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21(2), 28

Citation : (2010) 1 ALLMR 209 : (2010) 124 FLR 515 : (2010) 1 MhLj 173

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.S. Ghate, for the Appellant; Khan, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Parties to both the petitions are practically same. Respondents in Writ Petition No. 3324/2007 are the employees of petitioner therein and they are members of respondent trade union. In Writ Petition No. 1459/2005, the said trade union filed ULPA complaint No. 1367/1997 before Industrial Court, Nagpur, for declaration of unfair labour practice under Item 9, Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (hereinafter referred to as Act 1 of 1972) and sought direction that the petitioner should be directed to provide work to its members with wages therefore. The complaint was allowed by the Industrial Court on 2nd February, 2005. Industrial Court directed the petitioner employer to treat the employees as continued in service from 07/09/1997 and provide them work as per seniority and availability of work. This order has been challenged in Writ Petition No. 1459/2005 by the employer. On 05/12/2005, while issuing Rule in the matter, for the reasons recorded therein, this Court stayed only the benefit of continuity granted by the Industrial Court. Thereafter, the individual employees came together and filed ULPN complaint No. 564/2005 before the Industrial Court, Nagpur and sought declaration of unfair labour practice under Item 9 of Schedule IV contending that by not providing them work and wages, their employer has indulged in unfair labour practice. The Industrial Court on 4th July,

2007 allowed that complaint and directed the employer (petitioner) to pay the wages from 2nd Feb.,2005 to those employees during subsistence of the contract of employment. This later order of Industrial Court is challenged in Writ Petition No. 3324/2007. In that writ petition, individual employees through their Advocate orally undertook not to proceed with coercive recovery.

2. In this background, I have heard Advocate S.S. Ghate for the petitioner employer and Advocate Shri R.B. Khan for respondent employees/trade union.

3. Advocate Shri Ghate has contended that the grievance in ULPN complaint No. 1367/997 was squarely in relation to termination and hence the recourse to Item 9 of Schedule 4 of the said Act No. 1 of 1972 was not available. The complaint ought to have been filed before the Labour Court in view of the specific item and arrangement made by the Legislature vide Item 1 of Schedule IV of the said Act. To substantiate his contention, he has invited attention of the Court to the complaint as filed and to the evidence as adduced on record. He has also relied upon the judgments of this Court reported at 1996 (72) F L R 166 in the case of Dilip v. Industrial Court, Nagpur and Ors. and Manoj Amdas Ingle and Others Vs. Member, Industrial Court and Another, . He contends that the said order is, therefore, without jurisdiction. The second limb of his argument is, in the written statement filed before the Industrial Court in that matter, application of provisions of the Bombay Industrial Relations Act to the petitioner industry and availability of elected representatives therein was specifically pleaded and was also established while cross examining the employee. He, therefore, states that the trade union had no locus to file the said complaint.

4. In Writ Petition No. 3324/2007, the learned Counsel argues that effort of individual employees was to enforce the orders of Industrial Court dated 02/2/2005 along with the orders of this Court dated 05/12/2005. He states that these orders did not constitute award and hence, Item 9 of Schedule IV was not attracted. He has invited attention of the Court to ULPN complaint No. 564/2005 to urge that said complaint itself shows that there was no other agreement or settlement between the parties to show its violation and therefore, the application of Item 9. To show that such court orders do not constitute an award, the learned Counsel has placed reliance upon the judgment of this Court, reported at 1992(1) Mh.L.J. 248 in the case of Jugilal Laxminarayan Yadav and Anr. v. State of Maharashtra and Ors.; 2004(100) F.L.R. 615 in the case of Bajaj Auto Limited v. Bhojane Gopinath D. and Ors. and 1997 (II) C.L.R. 1146 in the case of Divisional Controller, Maharashtra State Road Transport Corporation, Akola v. Syed Shabir Jani S/o Syed Alisaheb. He states that the moment it is shown that there is no base to invoke Item 9, the second complaint is also unsustainable and hence the order passed therein deserves to be quashed and set aside.

5. According to learned Counsel, in none of these matters, the employees have placed on record their service details, viz., date of entry, period of work, post on which they worked or their wages and hence, in absence of all these details, no

reliefs could have been given by the Industrial Court. He invites attention of the Court to certain orders passed in Writ Petition No. 3324/2007 to show that in fact an attempt to compute the amounts payable to individuals were undertaken by this Court by calling relevant details. He, therefore, states that both the petitions deserve to be allowed.

6. Advocate Shri R.B. Khan for trade union/employees states that in ULPA Complaint No. 1367/1997, no relief of reinstatement is sought by the employees and they have not pleaded any termination. He states that all pleadings show existence of relationship of employer and employee and absence of severance. He, therefore, contends that learned Member of Industrial Court has rightly taken cognizance of the matter. Because of these facts, according to him, judgments relied upon by the petitioner in this respect are not relevant.

7. Learned Counsel Shri Khan further states that the provisions of Section 21(2) of the Act No. 1 of 1972, require the representative union as complainant only while raising challenge under Item 2 and Item 6 of Schedule IV. He states that Section 28 thereof permits the individuals or their union to maintain such complaint.

8. About Writ Petition No. 3324/2007, learned Counsel states that because of technical objections being raised, the ULP complaint was filed by individuals, but there was no effort to execute the orders of the Industrial Court dated 02/2/2005 or then the order of this Court dated 05/12/2005. He contends that the relationship and its continuation was pointed out with corresponding obligation upon the petitioner to provide work and to pay wages. He, therefore, states that challenge on that account is also misconceived. He argues that the obligation to provide work is not in dispute and when there is breach of that obligation, the entitlement of the employees for wages cannot be disputed.

9. Perusal of ULPA complaint No. 1367/1997 clearly shows that in the entire complaint, nowhere the union has pointed out any severance of relationship. The pleadings in para 3 and 4 of the complaint, on which the petitioners have placed strong reliance, clearly show that the trade union pointed out that the employer was restraining the workers from performing their duty without formally terminating their services. The pleadings about not obtaining permission from the appropriate authority before effecting termination, not displaying seniority list, not serving three months notice or not paying retrenchment compensation are all aimed at showing that there was no termination. The petitioner employer filed its written statement and thereafter has cross-examined the witnesses (employees), examined by the trade union in that matter. The said cross-examination also does not show that the employer had at any time put an end to the contract of employment. The witnesses have stated that the employer then told them that he had no work and he would be providing the work whenever it would become available. He further stated that on the date on which they were deposing, the work was available. It is the stand of petitioner employer that the work was being provided to the employees as and when it was available.

10. The judgment of this Court, in the case of Dilip v. Industrial Court, Nagpur and Ors. (supra), shows that there the interim relief protecting the services of the employees was granted by the Industrial Court and this Court has found that under Item 1 of Schedule IV, that jurisdiction was exclusively vested with the Labour Court. Thus, the apprehension of termination was expressed in the proceedings before Industrial Court and in that background, the findings have been recorded. In the case of Manoj Amdas Ingle and Ors. v. Member, Industrial Court, Nagpur and Anr. (supra), the proceedings before the Industrial Court were for grant of regularization and permanency with consequential benefits with alternative prayer of a direction to reinstate the complainants in their former post and for payment of back wages. Thus, this prayer made in the alternative has met by this Court considering the challenge and in that case in para 20, this Court has observed that the substantive claim made in the complaint along with other reliefs, must be looked into to find out the jurisdiction. There cannot be any debate with this proposition. Here, as already observed above, the employees/trade union never complained any termination or retrenchment and never sought any relief in relation thereto. They pointed out that relationship was subsisting and hence, they were entitled to be provided with work and to be paid wages. Both these rulings are, therefore, not applicable in the present facts. It is also to be kept in mind that pleadings of labour in welfare jurisdiction also need more liberal approach and interpretation.

11. The contention that the complaint could not have been filed by the trade union is also misconceived and it is not necessary for this Court to discuss that aspect at length because of judgment of Division Bench reported in Mahindra and Mahindra Ltd. and Others Vs. Mr. Avinash D. Kamble and Others Etc. Etc., .

12. With the result, it is obvious that both the challenges raised by employer in Writ Petition No. 1459/2005 hold no merit.

13. The Industrial Court has in its order dated 02/2/2005, directed the petitioner to treat the employees as continued in service from 07/9/1997 and provide them work as per seniority and availability of work. At interim stage, this Court in Writ Petition No. 1459/2005, passed an order dated 05/12/2005 and stayed the effect of continuity granted by the learned Industrial Court. The challenge in writ petition No. 3324/2007 is on the basis of these two orders with contention that both these orders do not constitute award and therefore, Item 9 of Schedule IV is not attracted. There can be no debate with this proposition that order of Industrial Court dated 02/2/2005 or interlocutory order of this Court dated 05/12/2005 does not amount to award and therefore, it is not necessary for this Court to consider the judgments cited by the learned Counsel for petitioners in this respect, as already mentioned above.

14. Perusal of ULP complaint No. 564/2005 shows that in paragraphs 3 & 4, the employees have pointed out that their services are not terminated. They have contended that though there is no severance of relationship, they are not being provided with work and they are not being paid wages. Because of this, they

sought direction to employer to provide them work and to pay them wages. In support of their right to demand work and wages, they have pointed out previous history and in course thereof, they have mentioned the orders dated 02/2/2005 and 05/12/2005. It is to be noted that even in absence of mention of those orders, ULP complaint under Item 9 would have been maintained by individual employee. Advocate Shri Ghate has invited attention of the court to the findings of learned Member, Industrial Court in the impugned order dated 04/7/2007. The said findings in paragraph 6 show that the learned Member, Industrial Court has found that though the employees had orders in their favour, the employer avoided compliance thereof, by raising technical pleas. It has also recorded that an attempt has been made by the employer to give go by to the orders on technical grounds and said action on the part of employer also constituted unfair labour practice. It has thereafter concluded that the complainants before it have succeeded in showing that the employer had indulged in unfair labour practice under Item 9 of Schedule IV.

15. There was already a direction to provide work to the employees as per their seniority and availability of work. The employees entered the witness box and brought on record the fact that work was available. Not only this, but it appears that the Inspection Report dated 24/3/2006 was also proved before the Industrial Court by them. The said inspection was carried out by the Government Labour Officer and that authority found that the work was being provided to the employees, engaged on contract basis. Though, all this material came on record, the petitioner did not enter the witness box and did not place on record any material to show that the work was not available or then as per seniority the work could not have been made available to the employees. It is to be noted that even in ULPN complaint No. 1367/1997, the employer did not enter witness box. The learned Member, Industrial Court in this background has found that there was substance in the assertion of complainant before it that work was available, but it was not being provided to them and has, therefore, recorded the finding of unfair labour practice under Item 9 of Schedule IV. When there was no severance of relationship, as the work was available, the employer was duty bound to provide the work to these employees and if he had any objection thereof, burden was upon the employer to substantiate such objection by bringing on record necessary evidence. The employer has failed to do so in the matter. Existence of relationship and therefore, obligation of employer, is sufficient to attract Item 9 of Schedule IV and hence in present circumstances, it is not possible for this Court to treat ULPA complaint No. 564/2005 filed by the employees as an effort to execute the orders of Industrial Court or interim orders of this Court. Such an interpretation of pleadings therein is totally unwarranted. Employer did not dare to take oath in either matters to show his bonafides and avoided cross examination. This conduct itself shows malafides in its part and call for adverse inference.

16. In the impugned order dated 04/7/2007, passed in ULPA complaint No. 564/2005, learned Member, Industrial Court has directed the petitioner to pay

wages to the employees from 02nd February, 2005 during the subsistence of the contract of employment. The contention of the petitioner employer that the employees did not bring on record necessary service details and the entitlement of individual employee has not been computed, is, therefore, misconceived. This Court has only undertaken an effort to compute that benefit, but in the circumstances, it is not necessary. If the employer petitioner does not pay wages to the employees as directed by the Industrial Court, the employees can seek to execute the orders of Industrial Court dated 4/7/2007 in accordance with law, wherein entire exercise of computation can be undertaken.

17. In the circumstances, I do not find any case made out warranting exercise of writ jurisdiction in Writ Petition No. 3367/2007.

18. In view of the above discussion, Writ Petition Nos. 1459/2005 and 3324/2007 are dismissed. Rule discharged. However, there shall be no order as to costs.

19. At this stage, Advocate Shri Ghate states that the orders pronounced today be suspended for a period of Four weeks. The request is opposed by Advocate Shri Khan, who stated that the employees are unnecessarily being kept out of employment and no amount has been paid towards their wages also. However, considering the fact that interim orders/understanding was in force till today Operation of this judgment is suspended for four weeks from today. Interim order shall cease to operate automatically after four weeks.