(1996) 08 BOM CK 0052

Bombay High Court

Case No: Writ Petition No. 2032 of 1991

Prakash D. Bandiwadekar		APPELLANT
	Vs	
Killick Slotted Angles and Others		RESPONDENT

Date of Decision: Aug. 27, 1996

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2

Citation: (1996) 2 LLJ 833

Hon'ble Judges: B.N. Srikrishna, J

Bench: Single Bench

Judgement

B.N. Srikrishna J.

1. This Writ Petition under Article 227 of the Constitution of India impugns an order dated 17th December 1990 made by the Industrial Court, Bombay. Dismissing the Petitioners Complaint (ULP) No. 568 of 1988 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as ''the Act''.

2. The petitioner was an employee of the 1st Respondent company. On 17th September 1981 the 1st Respondent abruptly terminated the services of the petitioner without complying with any provisions of law and the Standing Order. The petitioner being aggrieved raised an industrial dispute for his reinstatement in service with continuity and back-wages. The industrial dispute was processed under the law and resulted in Reference (IDA) No. 293 of 1982 for adjudication of the Labour Court, Bombay. Pending the Reference, the industrial undertaking in which the petitioner was employed was permanently closed with effect from 31st August 1986. The Labour Court made an Award dated 29th April 1987 in Reference (IDA) No. 293 of 1982 holding that the petitioner was a ''workman'' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and the termination of his service was not justified. However, in view of the permanent closure of the Industrial

undertaking in which the petitioner was employed at the time of raising the dispute, the Labour Court was not in a position to grant relief of reinstatement. Since the evidence on record showed that the petitioner had some alternative source of income during the period of his employment the Labour Court was inclined to reduce the back-wages to 75% of what he would have been otherwise eligible. In the result, the Labour Court directed by its Award; (a) payment of one month''s notice pay and retrenchment compensation by treating the service of the petitioner as continuous service from 28th March 1972 to 31st August 1986 and (b) payment of 75% of the back-wages for the period from 17th September 1981 to 31st August 1986.

3. One would have thought that the saga of long litigation came to an end with the Award of the Labour Court. However, the litigation persisted. The 1st Respondent challenged the Award of the Labour Court by its Writ Petition No. 2619 of 1987 which was summarily rejected on 31st August 1987 by Brother Variava, J. The Learned Counsel appearing for the 1st Respondent sought two months time to comply with the impugned Award and made a statement that the 1st Respondent will not file an appeal and consequently this Court permitted the 1st Respondent to comply with the Award of the Labour Court within a period of two months from the date of its order.

4. On 30th October, 1987 the 1st Respondent forwarded a sum of Rs. 82,926.96 by a Cheque drawn in the name of the Petitioner. The petitioner accepted the payment under protest. The Petitioner noticed that the amount paid to him appeared to have been calculated on the basis of the wages last drawn by him without reckoning the increases in salary and other emoluments which he would have drawn under the two settlements which had taken place in the interregnum. The petitioner, therefore, addressed letter dated 9th November 1987 protesting against the correctness of the calculations made and demanding that he be paid the full amount which he was entitled to under the Award of the Labour Court, inclusive of wages in lieu of uninjured leave and bonus on the back wages due and payable to him. There was no response from the 1st Respondent to this letter. The petitioner thereafter wrote two subsequent letter dated 25th January, 1988 and 13th February, 1988. Finally, on 19th February, 1988 the 1st Respondent employer by its reply denied the contention of the Petitioner and maintained that the back-wages had been correctly calculated and that it had fully discharged its obligations under the Award of the Labour Court had also denied that it was liable to pay anything in addition to the amount already paid.

5. The Petitioner moved Complaint (ULP) No. 568 of 1988 before the Industrial Court at Bombay invoking item 9 of Schedule IV of the Act alleging that the amounts actually due to him under the operative Award of the Labour Court in Reference (IDA) No. 293 of 1982 not having been paid, there was an unfair practice and the part of the 1st Respondent employer. When this complaint came up for hearing, an

application for interim relief was moved on behalf of the petitioner and the Industrial Court by an order dated 30th June 1988 directed by 1st Respondent to deposit an amount of Rs. 85,000/-. This amount was directed to be invested in fixed deposit in Nationalised Bank. This has been done.

6. The Industrial Court thereafter tried the complaint and by the impugned order dated 17th December 1990 dismissed the Complaint by holding that the Complaint was barred by limitation and that the Petitioner was not entitled to recover the amount a claimed by him. The Industrial Court held that no unfair labour practice under Item 9 of Schedule IV was partly proved as far as payment according to the award was concerned. In the result, the Industrial Court dismissed the Complaint. Being aggrieved thereby, the Petitioner is before this Court.

7. This following two issues been urged for my consideration;

(i) In the facts and circumstances of the case, whether the Industrial Court was justified in dismissing the Complaint as barred by limitation?

(ii) Whether the 1st Respondent was justified in not making available the benefit of the revised settlements while calculating 75% of the back-wages payable to the Petitioner under the Award of the Labour Court in Reference (IDA) No. 293 of 1982?

8. Turning to the first issue, it appears to me that the finding of the Industrial Court that the Complaint was barred by limitation is erroneous. The Industrial Court seems to have taken the view that the limitation started running from the time the Petitioner received the cheque for Rs. 82,926.96 on 30th October 1987. The Industrial Court also seems to have taken the view that, because a covering letter had been sent along with the Cheque together with a receipt for the said amount, the Petitioner must be deemed to have knowledge of the exact amount of shortfall in the amount paid from that day and, therefore, the cause of action would arise from that day. It is not shown on record that the 1st Respondent had indicated in the covering letter or in the receipt that the amount of Rs. 82,926.96 paid by Cheque on 30th October 1987 did not include the amounts calculated on the footing that the two settlements in the interregnum were applicable to the Petitioner. There is also no material on record from which it can be ascertained whether there was anything stated in the said letter of the receipt with regard to the payment of bonus upon the back wages due and payable and also of the payment in lieu of uninjured leave for the period of the interregnum. In these circumstances, any reasonable person would certainly have had to carefully examine the contents of the two settlements in the interregnum work out the actual pay revision and revision of allowances which would be applicable to him and thereafter work out the details of the differential amounts payable towards back wages for the interregnum. Similarly, he would also require some amount of time to ascertain the actual percentage at which the bonus was disbursed to other workmen during the intervening periods and also work out the leave entitlement. To expect that all this could be done instantaneously upon

receipt of the cheque on 30th October, 1987, or even on 9th November 1987 when the Petitioner merely protested that according to him much more was payable, would be unrealistic. What is more, when the Petitioner protested by his three letters, the 1st Respondent did not even bother to reply the first two letters and gave its reply on 19th February 1988. It would have been reasonable for the petitioner to assume that his request was under active consideration of the 1st Respondent and this assumption could have been made for a reasonable period of time. From November 1987 to February 1988 is not so a unreasonable a long time that the Petitioner could have jumped to the conclusion that his request had been impliedly rejected. Finally, the Petitioner''s Complaint was filed on 15th April 1988, that is within a period of 90 days from the last letter written by the 1st Respondent. In these circumstances, I am of the view that the Industrial Court''s finding that the Complaint was barred by limitation was itself erroneous. Even assuming that the Complaint was beyond time, there was ample material on record for condonation of the delay, if any. In my view dismissal of the Complaint in the circumstances as barred by limitation was erroneous and the finding of the Industrial Court that the Complaint was liable to be dismissed as time barred is, therefore, liable to be reversed.

9. Turning to the second issue, the bone of contention appears to be only as to whether, while calculating the back wages for the period from 17th September 1981 to 31st August 1986, the wages of the Petitioner should be taken at the last drawn rate or whether the Petitioner was to be given the benefit of the two settlements which came about in the interregnum and would have applied to him had he not been wrongly dismissed from service. The other point for consideration is whether the Petitioner was entitled to the cash equivalent of the leave which he had been wrongly deprived from enjoying during the subsisting period and also whether the petitioner was entitled to be paid bonus on the amount of back wages payable for the said period.

10. Mr. Bapat, the learned Advocate appearing for the 1st Respondent, strenuously contended that the direction in the Award of the Labour Court made in Reference (IDA) No. 293 of 1982 was clear and did not include continuity of service. I am afraid that this is a wrong reading of the Award. The only relief refused by the Award of the Labour Court is the relief of "reinstatement with continuity of service". It cannot be forgotten that while the demand for reinstatement in service with continuity and back wages raised by wrongfully dismissed workman is pending adjudication, if the employer''s industrial undertaking is closed down upon a finding that the dismissal of the employee was wrongful, the industrial adjudicator is bound to grant full back wages for the period of the interregnum plus terminal benefits consequent upon closure. This is precisely what the Labour Court did. However, in view of the fact that the petitioner was found to have some alternative income during the interregnum, the Labour Court reduced the quantum of back wages to 75% of the full back wages. It is implicit in the concept of back wages, unless there is a clear-cut contrary

direction in the Award, that the workmen would be entitled to the amount which he would have earned had he remained in uninterrupted service throughout the period from the date of wrongful dismissal to the date upto which relief has been given. In the instant chase, there is clear finding in the Award of the Labour Court made in Reference (IDA) No. 293 of 1982 that the termination of service of the petitioner was wrongful and illegal. Normally, the consequent relief would have been an order of reinstatement together with full back wages. However, in view of the fact that the Industrial establishment of the 1st Respondent had been closed permanently from 31st August 1981, there could be no order of reinstatement made. The Labour Court was, therefore, justified in directing back wages for the period from the dismissal (17th September 1981) to the closure of the undertaking (31st August 1986). In my view, this direction would only mean that the petitioner''s back wages would have to be calculated by giving him the benefits of all the wage improvements under settlements which might have taken place between the said two dates. The petitioner would be entitled to be compensated for all wrongful monetary loss caused to him as a result of the act of the 1st Respondent which has been held to be illegal and wrongful. Had the petitioner continued in service, he would certainly have been paid bonus for accounting years falling between 1981 to 1986 at the same rates as declared payable to other workman, he would have been certainly entitled to enjoy leave or would have accumulated leave to the extent permissible in law during the said periods. Consequently, the 1st Respondent must answer fort its wrongful act by compensating the petitioner as if he had not been dismissed from service. Hence, the backwages payable to the petitioner for the interregnum should also include payment on these two accounts. In my view the reasoning of the Industrial Court, while rejecting the claim of the petitioner, even on merits, is erroneous and needs to be interfered with.

11. The actual amount payable to the petitioner would be matter of detailed calculations. With the scanty materials placed before me, it is impossible to correctly compute the said amount and, therefore, the matter would have to go back to the Industrial Court for the limited question of computation of the exact amount due to the Petitioner.

12. In the result, the impugned order of the Industrial Court dated 17th December 1990 made in Complaint (ULP) No. 568 of 1988 is hereby quashed and set aside. Complaint (ULP) No. 568 of 1988 is restored to the file of the Industrial Court, Bombay. The Industrial Court shall, after calling upon the parties to file detailed calculations and copies of the two settlements which took place in the period between 1981 and 1986, compute actual amount that is due and payable to the petitioner in terms of the Award of the Labour Court made in Reference (IDA) No. 293 of 1982 after giving credit for amounts already paid. If the Industrial Court finds that there is a short-payment, then it shall make a declaration under Item 9 of Schedule IV of the Act and make consequential orders granting relief to the petitioner. The Industrial Court may also consider the question of granting interest

on the short-payment, if any, found.

13. The Bank Guarantee given by the 1st Respondent to the Industrial Court shall be kept alive until final disposal of the Complaint.

14. Rule accordingly made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

15. Issuance of certified copy of this judgment in expedited.