R.D. Surve, Bombay Vs Tata Iron and Steel Co. Ltd., Bombay and others

Court: Bombay High Court

Date of Decision: Aug. 11, 1988

Acts Referred: Trade Unions Act, 1926 â€" Section 16

Citation: (1988) 3 BomCR 709 : (1989) 1 LLJ 384 : (1987) MhLj 1089

Hon'ble Judges: V.S. Kotwal, J; C.S. Dharmadhikari, J

Bench: Division Bench

Judgement

Dharmadhikari, J.
As both these appeals arise out of the order passed by the learned single Judge in Writ Petition No. 1599 of 1985 and

Writ Petition No. 2360 of 1985, they were heard together and are being disposed of by this common order.

2. The main question, which is raised in these appeals relates to the interpretation of Item No. 1 in Schedule IV of the Maharashtra Recognition of

Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Item No. 1 of the said Schedule reads as under :-

1. To discharge or dismiss employees -

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer''s rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or tramped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste;

(g) for misconduct of a minor or technical character without having regard to the nature of the particular misconduct or the past record of service of

the employee, so as to amount to a shockingly disproportionate punishment.

The words and expression used in item No. 1 are ""to discharge or to dismiss the employees"".

3. The petitioners in this case approached the Labour Court with a complaint that they are either discharged or dismissed by the respondents

employers by obtaining resignations under duress or by force. The Labour Court as well as the Industrial Court took the view that even a forced

resignation will not amount to discharge or dismissal of an employee within the contemplation of Item No. 1 of Schedule IV of the Act. The learned

single Judge held that a forced resignation is covered by the said item and, therefore, the complaints made were maintainable. It is this order of the

single Judge, which is challenged in these appeals.

4. Shri Damania, learned Counsel appearing for the appellant, contended before us that a resignation, whether forced or otherwise, is not covered

by Item No. 1, Schedule IV of the Act.

It is not possible for us accept this contention. In our view, the view taken by the learned single judge is the correct view of the matter.

5. This Court had an occasion to consider as to what is the effect of a forced resignation in Yeotmal District Central Cooperative Bank Ltd.,

Yeotmal v. Ramchandra Wamanrao Deshpande and others. (1978) LAB I.C. 1321 and Shiram Swami Shikshan Sanstha, Nagpur Vs. Education

Officer, Zilla Parishad, Nagpur and others, . In Shriram Shiksan Sanstha''s case the Division Bench held at 433 :

We feel that it is a well-settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is

brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to

an end in such case by the action on the part of the employer. It, therefore, amounts to termination of service by the employer.

In this decision a reference was also made to a decision in Abraham Reuben v. Karachi Municipality (AIR) 1929 Sin. 69 also to a decision of the

Karnataka High Court in Southern Railways Ltd. v. Padmanabhan (1979) Lab. I.C. 254.

6. A similar view was taken by this Court in Yeotmal District Central Cooperative Bank Ltd. v. Ramchandra Wamanrao and others., (supra) to

which one of us (Dharmadhikari), J) was a party. In this context reference could usefully be made to the following observations of the Supreme

Court in The Manager, Bengal Nagpur Cotton Mills Ltd. Vs. J. Bastian, :

That leaves only one question to be considered. It was urged before the authorities below that the present dispute is not an industrial dispute for

the reason that the respondent had not been dismissed, but he had voluntarily retired. If it was a case of voluntary retirement as pleaded by the

appellant undoubtedly the respondent''s application u/s 16 of the Act would be incompetent. But can the termination of the respondent''s services

be properly characterised as voluntary retirement ? In our opinion, there can be only one answer to this question and that is the one given by the

authorities below. It is true that the respondent offered to retire, but he made it perfectly clear from the start that he was willing to retire provided

he was given his due pension under the rules as well as custom. In addition to the pension he made a claim for gratuity. In fact, when his claim for

pension was rejected, he offered to continue to work as before and said that it was only if pension was granted that he would be willing to retire. It

is common ground that the appellant has no rules of superannuation and no case has been made out for terminating the respondent''s services either

under Standing Order 23 or 25. Therefore, it is not a discharge for any reasons, justified by the standing orders. It is discontinuance of service

brought about by the peremptory order passed by the appellant asking the respondent to hand over charge to Mr. Satyabralal, and naturally the

respondent submitted to order under protest. In our opinion, there can be no doubt that the appellant has illegally and improperly terminated the

service of the respondent, and so the dispute raised by him is an industrial dispute which was properly taken up by him before the Assistant Labour

Commissioner.

7. The words ""discharge and dismissal"" are not defined in the Act. Therefore, they will have to be construed not in their technical sense but as

understood in common parlance, or in industrial adjudication. So construed, the expression ""discharge or dismissal"" will include in its import forced

resignation. To construe it otherwise will defeat the very purpose and object of the legislation. Therefore, we agree with the view taken by the

learned single Judge in that behalf.

7A. It was then contended by the learned Counsel that from a bare reading of the complaint, no prima facie case is disclosed for entertaining a

complaint that the resignation was brought about by duress, coercion or force. In our view it is too premature to decide the said question. Certain

allegations are made by employees in their complaints. Ultimately as to whether the resignation is forced or a voluntary one must depend upon the

facts and circumstances of each case and no general rule can be laid down in that behalf. Therefore, obviously it is a matter of evidence and the

said contention cannot be decided on the basis of mere arguments only. In a given case if it is held that the resignation being forced one amounts to

discharge or dismissal, then also the employer can show that even if it is assumed that it is a dismissal or discharge, then also it was in accordance

with the law or the provisions of the standing orders etc. Such an inquiry is not shut out and, therefore, we do not feel that the contentions raised in

this in this behalf deserve to be considered at this stage. Ultimately the learned single Judge has remanded the matter back to the Labour Court for

deciding it in accordance with law. Therefore, in our view no interference is called for with the order passed by the learned single Judge in that

behalf.

8. However, we feel that the observations made by the learned single Judge in para 7 of the impugned order criticising the Courts below are wholly

uncalled for and unwarranted. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control, the

High Court is under a Constitutional obligation to guide and protect the Judicial Officer. Unless a Judicial Officer feels protected, it will be difficult

for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is sine qua non for the rule of law. In the

judicial hierarchy an honest difference of opinion is bound to be there, because you cannot have one and same head on all shoulders. This is the

reason why it is clarified by the Supreme Court that judicial pronouncements should be judicial in nature and should not normally depart from

sobriety, moderation and reserve.

9. In the present case the Courts below were called upon to interpret item No. 1 in Schedule IV of the Act. They took a view that the said item

will not take in its import a resignation even if it is a forced one. The learned single Judg has taken a different view, but on that count the criticism of

the lower Courts is wholly unwarranted. Therefore, the observations made by the learned single Judge in para 7 of the impugned judgment deserve

to be set aside.

10. However, in the view which we have taken, both these Appeals fail and are dismissed with on order as to costs.

11. The Lower Court is directed to hear and decide the matter as expeditiously as possible.