Marashtra General Kamgar Union, Bombay Vs Universal Dyeing and Printing Works and another

Court: Bombay High Court

Date of Decision: March 14, 1996

Acts Referred: Industrial Disputes Act, 1947 â€" Section 25

Citation: (1997) 2 LLJ 1097 : (1996) 2 MhLj 505 : (1996) 1 MhLj 505

Hon'ble Judges: J.K. Chandrashekhara Das, J; G.R. Majithia, J

Bench: Division Bench

Advocate: S.J. Deshmukh, for the Appellant; S.D. Puri, for the Respondent

Judgement

G.R. Mmymia, J.
The petitioner, Maharashtra General Kamgar Union, has challenged the order of the Industrial Court dated November

4, IW2, passed in Complaint (ULP) No. 1659 of 1990, in this writ petition under Article 226 of the Constitution of India :

2. The factual matrix is as under :

Respondent No. 1 (hereinafter "the Respondent") at the relevant time, employed about 130 workmen. Some of these workmen were retrenched

with effect from July 26, 1984 and some with effect from July 30, 1984. These workmen challenged the action of the respondent in applications

under Sections 78 and 79 read with Section 42(4) of the Bombay Industrial Relations Act, 1946. The contention of the 1 workmen in substance

was that the termination was illegal whereas the respondent''s contention was that the retrenchment was made after complying with the provisions

of Section 25F of the Industrial Disputes Act. It was also contended by the respondent that the workmen did not issue to ft approach notice

before the applications. In the light of the pleas in the pleadings, the Labour Court framed the following issues :

(1) Do the applicants prove that they have been retrenched from the services illegally ?

(2) Does the opponent prove that the retrenchment from the service was legally done ?

On issue No. 1 it was held that the workmen were legally retrenched from service. On Issue No. 2 it was held that the workmen had not led

positive and reliable evidence about the compliance of Section 42(4) of the Bombay Industrial Relations Act. Since the issue was not proved by

the workmen it was answered in the negative and in favour of the respondent-company. The Labour Court dismissed these applications vide order

dated July 29, 1988. Aggrieved against this common order, the workmen filed appeals before the Industrial Court that the retrenchment was valid

and was 4 effected after complying with Section 25F of the Industrial Disputes Act (for short ""the Act""). The appeals were dismissed vide order

dated July 24, 1989. The judgment of the Industrial Court was challenged in this Court in Writ 40 Petition No. 362 of 1990. The learned single

Judge rejected the writ petition observing thus :

Rejected.

The two authorities below have recorded concurrent findings of facts and the findings are correct.

The workmen did not serve approach notice 5 and therefore applications were not maintainable under B.1.R. Act. Even otherwise on merits the

retrenchment was due to shortage of work and provisions of Section 25F are complied with.

The decision of single Judge rejecting the writ petition was assailed in Appeal No. 1288 of 1990. The Division Bench of this Court dismissed the

same observing thus :

Hearing Counsel on either side and going through the impugned judgment of the Labour Court confirmed in appeal by the Industrial Court, the

learned single Judge was justified in dismissing the writ petition therefrom. The contention of learned Counsel that there was no issue before the

Labour Court on the question of approach notice is too late to be urged in this appeal. Nothing prevented the appellants petitioners from urging the

said question in appeal. Ale question was not urged in appeal. What is more, even in the writ petition the said question was not raised. It is too late

in the day to permit the petitioners to raise this question in this appeal against the dismissal of the writ. The question not raised in appeal from the

Labour Court''s judgment act not raised in the writ petition from the Industrial Court''s judgment cannot be permitted to be raised for the first time

in this appeal against the dismissal of the writ petition.

2. The appeal thus fails and the same is dismissed.

3. The petitioner, Maharashtra General Kamgar Union, which is espousing the cause of the workmen who had been unsuccessful before the

Labour Court, Industrial Court, single Judge of this Court and Division Bench of this Court, filed Complaint (ULP) No. 1659 of 1990 under items

5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short ""the

MRTU & PULP Act""). In the complaint it was, inter alia, stated that the respondent company had employed about 250 workmen in July 1984 and

out of these workmen, the respondent company terminated the services of 165 workmen on the purported ground of retrenchment. Out of these

165 workmen, around 142 workmen initiated proceedings under the Bombay Industrial Relations Act, 1946. These applications met the fate as

hereinbefore stated. The union further stated 10 that the respondent company engaged itself in unfair labour practice from September 1989 and the

unfair labour practice is still continuing. According to the union, the respondent started its manufacturing activities in September 1989 and

employed 60 new workmen and at the time of filing the complaint there were 78 workmen in its employment. Out of these 78 workmen. 36 were

workmen who were earlier removed but were re-employed. Not giving employment to the remaining workmen has resulted in unfair labour

practice. Along with the complaint, a list of workmen was also filed.

4. The respondent company controverted the pleas of the petitioner union. The Industrial Court formulated the following points for consideration :

(i) Does the complainant prove that there is sufficient cause for not filing the complaint in time, and therefore, the application or condonation of

delay deserves to be granted ?

(ii) Whether the complaint is barred by principle of res judicata as similar kind of relief has already been claimed and rejected by the High Court, in

Appeal No. 1288 of 1990 ?

Point No. 1 was answered in favour of the petitioner and Point No. 2 was answered in favour of the respondent. The Industrial Court held that the

remedy available u/s 25 of the Act was rejected by the single Judge and that decision was upheld by the Division Bench. It will be useful to

reproduce the conclusions of the Industrial Court which are as under :-

25. Section 59 of the MRTU & PULP Act, 1971 provides for a bar of proceeding under Bombay or Central Act.

It is significant to note and remember that even though the remedy about the application of Section 25H has been sought for by way of making

grounds in the Writ Petition and in appeal, it has not been granted by the Hon''ble Single Judge or Division Bench of the High Court. It cannot be

said that the said grounds were not considered by the High Court, as no finding has been given by the Hon''ble High Court. By implication it has to

be presumed and treated that whatever has been stated in the Appeal grounds have been considered on merits and when the relief is not granted

the grounds have been turned down.

Consequently the logical position boils down to this that once the remedy claimed u/s 25H of I.D. Act has been turned down by the Hon''ble

Single Judge and Division Bench of the High Court, the question of filing the complaint under the provisions of MRTU & PULP Act, 1971 for

similar kind of relief does not arise. If such complaints are entertained by the Courts of law, then there will be no end to the litigation and it will

tantamount to prevail upon the relief already not granted by Hon''ble High Court.

Therefore, even though the complainant is found to have succeeded in establishing a satisfactory cause for condonation of delay, the complainant

seems to be quite unfortunate in convincing the Court that the complaint is tenable, and there is no bar of principle of resjudicata and bar of Section

59 of MRTU & PULP Act, 1971. Thus, though the complainant is winning on one front, he is losing on most important front about the tenability of

the complaint itself. Hence, the complaint as such will have to be dismissed, being not tenable...

These observations indicate that the Industrial Court opined that as the plea covered by Section 25H of the Act was raised, adjudicated NQ upon

and finally decided and, as the plea was finally decided, the decision in the earlier proceedings operates as resjudicata in the instant proceedings.

5. Before we deal with the legal question 5 arising in this petition, it has become necessary to go backward. The workmen, whose cause is being

espoused by the petitioner, were retrenched from service with effect from July 26, 1984 and July 30, 1984. The retrenchment orders/notices were

challenged u/s 78 of the Bombay Industrial Relations Act. The only question which was raised and adjudicated upon was whether the retrenchment

had been ordered after following due process of law. The Labour Court and the Industrial Court upheld the contention of the management that the

retrenchment was ordered after complying with the provisions of Section 25F of the Act. Before the Single Judge of this Court, it was agitated by

the workmen that the plea whether approach notice was given or not was never put in issue. The learned Judges constituting the Division Bench

observed that this question cannot be gone into in appeal arising in Writ proceedings. No other question was agitated in this Court. This Court only

answered the question that was raised before it that the retrenchment was made after complying with the provisions of See. 25 of the Act. The plea

which has been raised in these 30 proceedings is that the respondent company started it,, manufacturing activities in September 1989 and that it

had employed 78 workmen and out of these 78 workmen, 36 workmen are those who were retrenched earlier and they were given employment.

The petitioner says : not giving employment to the other workmen who were retrenched on identical grounds as those who have been taken back

in service, amounts to victimization. The plea of the petitioner as unfolded in the complaint is squarely based on Section 25H of the Act which

reads thus :

25H Re-employment of retrenched workmen-Where any workmen are retrenched, and the employer proposes to take into his employ any

persons, he shall in such manner as may he prescribed, give an opportunity to the retrenched workmen who are citizens of so India to offer

themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

The opportunity as enjoined by this Section has to be given to the retrenched workmen after the employer decides to proceed with his

manufacturing activities. The case of the respondent has throughout been that in view of the recession in the market, it curtailed its manufacturing

activities and that reduction in manufacturing activities necessitated retrenchment of the employees. Once the company decides to recommence its

manufacturing activities and to give employment to persons, the condition precedent as enjoined u/s 25H has to be complied with. It cannot be

disputed that this plea was not available to the workmen in 1984 when the retrenchment orders/notices were issued. It became available to them

only after the manufacturing activities were started in September 1989. What was in issue in the earlier proceedings was whether the retrenchment

was valid and not whether the retrenched workmen have to be offered employment as envisaged by Section 25H of the Act. In order to attract the

plea of the resjudicata, it is necessary to establish that the matter was in issue in the former proceedings and the matter must have been in issue

directly and substantially. A matter cannot be said to he directly and substantially in issue in a suit or lis unless it was alleged by one party and

denied or admitted, either expressly or by necessary implication, by the other. It is not enough that the matter was alleged by one party. The word

substantial"" means of importance and value. A matter is substantially in issue if it is of importance and value for the purpose of decision of the main

proceedings. The question raised in the instant proceedings was not even remotely raised before the Labour Court or the Industrial Court or this

Court in the earlier proceedings. The conclusion arrived at by the Industrial Court that the decision in the earlier proceedings operates as

resjudicata is not only illegal but factually incorrect.

6. For the reasons stated above, the Writ Petition succeeds and is allowed. The order under so challenge is quashed. Rule is made absolute in

terms of prayer clause (a) and the following directions are issued :

(i) The parties, through their counsel, are directed to appear before the Industrial Court on April 8, 1996.

(ii) The parties will file their respective rejoinders and thereafter the Industrial Court will dispose of the matter expeditiously but not later than

December 31, 1996.1f, in any event the Industrial Court is unable to decide the matter, reference in this behalf has to be made to this Court.

(iii) No order as to costs.