Dinkar Bali Palekar Vs Bharat Forge Ltd. and Others

Court: Bombay High Court

Date of Decision: Dec. 22, 1995

Citation: (1996) 73 FLR 1095 : (1997) 3 LLJ 482

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

Bench: Single Bench

Advocate: N.M. Ganguli, for the Appellant; A.M. Vernekar, for the Respondent

Judgement

1. These two Writ Petitions under Article 226 of the Constitution of India arise under identical circumstances and raise identical issues of facts and

law. They can, therefore, be conveniently disposed of by common judgment.

2. The Writ Petitioners in the two Writ Petitions are ex-workmen of the First Respondent Company which has a factory at Mundhwa, where it

manufactures steel forgings and machined components.

3. For the sake of convenience, the Writ Petitioners in both Writ Petitions shall he referred to as ""the workmen"" and the First Respondent in both

Writ Petitions shall be referred to as ""the employer Company"".

4. The workmen were employed in the factory of the employer-company from May 1, 1970 till their services were terminated on October 24,

1981 and each of them was last drawing wages of about Rs. 925/- per month. Some time in the year 1981, the workmen of the employer

company raised on industrial dispute with regard to their conditions of service and resorted to industrial agitation to coerce the employer company

into accepting their demands. There was ""go-slow'' of work by the workmen resulting in a lock-out being declared by the employer company from

May 28, 1981 to August 3, 1981. After the lifting of the lock-out, the workmen started reporting for duty. However, a large number of workmen

claimed that they owed allegiance to a trade union by name ""Association of Engineering Workmen"" and they started resorting to acts of violence

and hooliganism to cow down the management of the employer company and the other workmen. The employer company moved the Industrial

Court, Pune, to obtain appropriate injunctions against the said union and the workmen. During the said period, the employer company had hired

matadors and other vehicles to bring the workmen and staff to the factory and to drop them back at their residences.

5. Once such matador bearing Registration NO. MTZ 5597 was hired form A. S. Chinchankar and was used for transporting the workers from

their residences to the factory and back. On September 29, 1981, the said matador was taken from the factory for dropping the workmen at their

residences in Hadapsar area. After the employees got down from the matador and the empty matador was being driven back to the factory, when

it approached near the Baban Hari Tupe Vasti, it was heavily stoned by a group of persons, as a result of which the driver was compelled to stop

the vehicle. As soon as the driver of the matador stopped the vehicle, he was pulled out and assaulted by some miscreants. The miscreants then

sprinkled kerosene on the matador and set it on fire. The fire destroyed the said matador. A complaint was registered with the concerned police

station and the Police arrested 5 workmen of the employer company. When the employer Company came to know about these developments, it

addressed a letter dated October 18, 1991 to the Police Inspector in charge of Wanawari Police Station and sought confirmation whether some of

its employees, including Dinkar Bali Palekar, had been arrested by them in connection with the incident of arson of the matador on September 29,

1981. The employer company also requested the Police to inform them if any other employees of the company had been involved in the matter and

had been arrested. The Police Inspector of Wanawari Police Station addressed a letter dated October 15, 1981 to the employer company and

informed them that Dinkar Bali Palekar had been arrested in connection with the said incident and charged with offences under Sections 147, 148,

149, 436 and 437 of the Indian Penal Code.

6. In the meantime, the employer company received a report dated October 1, 1981 from one Ashok Tukaram Jadhav, who was working as a

contractor''s employee in the factory. In his report in Marathi, Ashok Tukaram Jadhav stated that on September 29, 1981 at about 9 p.m., while

he was going past the canal at 17.1/2 Nali, Hadapsar, on his way to residence, he had seen about 17 to 18 persons hiding in the sugarcane field;

just then he saw a matador coming from Hadapsar after dropping workmen; the persons hiding ran to the road, blocked the vehicle and heavily

stoned the matador, because of which the driver stopped the vehicle. As soon as the matador was stopped, some persons pulled down the driver

and severely assaulted him, Palekar, an employee of the employer company, who lived nearby, started pouring kerosene on the matador from a

big can; along with him Thokale Master, jayawant Kolpe, Walunjkar, Bosale, Palekar, Lokhande, Gadekar, Subhash Tupe and his brother

assaulted the driver, poured kerosene on the said matador and set it on fire. He also stated that, as soon as the farmers from nearby gathered

there, the miscreants released the driver and ran away. Ashok Jadhav claimed to have positively identified the persons named by him, as they were

persons from his locality and there was light on account of the brightly burning matador. Though he had disclosed these facts to the employer

company, Ashok Tukaram Jadhav requested that his name should not be disclosed under any circumstances anyone for any reason, as he

apprehended grave danger to his life. Considering the matter as a whole, the Personnel Manager made a note dated October 17, 1981 indicating

the circumstances of grave suspicion against the employees who were suspected to be involved in the arson incident. It was indicated in the note

that, in view of the circumstances, the Company had lost confidence in the employees concerned and decided to terminate their services. The

services of Palekar and Kolpe came to be terminated by letters of termination of service dated October 22, 1981 addressed to them. The action

was taken under Standing Order 23(1) and their services were terminated with effect from October 24, 1981. Each workman was paid one

month''s salary in lieu of notice, an additional 13 days'' wages in lieu of notice as per the provisions of the Standing Order and an amount equivalent

to retrenchment compensation at the rate of 15 days'' salary per year of service.

7. The workmen challenged their terminations of service by their Complaints (ULP) No.60 of 1984 and 61 of 1984 before the Labour Court at

Pune under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter

referred to as ""the Act"") by invoking Items 1 (a), (b) and (d) of Schedule IV of the Act. By Order dated October 16, 1989 made in both the

Complaints, the Labour Court, Pune, allowed the Complaints, declared that the employer-company had engaged in unfair labour practices within

the contemplation of Items 1(a), (b) and (d) of Schedule IV of the Act in discharging the Petitioner-workmen by the Orders of Discharge dated

October 22, 1981 and directed reinstatement of the two Petitioner-workmen with full back wages and continuity of service.

8. Being aggrieved by the Orders of the Labour Court, the employer company moved the Industrial Court by their Revision Applications (ULP)

No.77 of 1989 and 79 of 1989. The Industrial Court allowed the Revision Applications, set aside the Orders of the Labour Court and dismissed

the Complaints. Being aggrieved by the Orders of the Industrial Court, the Petitioner workmen are before this Court by their present Writ

Petitions.

9. The first contention vehemently urged, by Shri Ganguli, learned Advocate for the Petitioners, is that Standing Order 23(1), which employers the

employer company to pass an order of discharge simpliciter, must be declared void by this Court in exercise of its Writ Jurisdiction. He relied on

certain observations made by the Supreme Court in Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and

another 1987 II LLJ 171 and L. Michael and Another Vs. Johnson Pumps Ltd., . It is not possible to accept this contention of Shri Ganguli. It is

true that, in the case of certain public Corporations, the Supreme Court did take the view that the Statutory rule/regulation, which empowered the

Corporation/Government company to terminate the services of the employees simpliciter was hit by Article 14 of the Constitution of India as

investing arbitrary and uncanalised power in the employer which was ''State'' within the meaning of Article 12. The ratio of the said judgment is

hardly applicable in the present situation for the reason that the employer company in the two Writ Petitions is neither a Statutory Corporation, nor

a Government company, nor any other entity falling within the expression ''State'', as defined in Article 12 of the Constitution. In any case, the law

on the subject has now been amply clarified by a large Bench of the Supreme Court recently in Rajasthan State Road Transport Corporation and

Another Vs. Krishna Kant and Others, . The large Bench of the Supreme Court in this case reconsidered the observations of previous Benches to

the effect that Certified Standing Orders had statutory application and became part of statutory terms and conditions. Explaining away and

disagreeing with the said observations, the Supreme Court pointed out (Paragraph 32) :

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily

imposed conditions of service and are binding both upon the employers and employees, though they do not amount to ""statutory provisions"". Any

violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by die Industrial Disputes Act or the

Civil Court where recourse to Civil Court is open according to the principles indicated herein.

In my view, these observations of the Supreme Court leave no doubt that the Standing Orders are but conditions of service, albeit in the nature of

contractual terms superimposed upon the parties by operation of statute. I am, therefore, unable to accept the contention urged by Shri Ganguli

and I reject the contention of Shri Ganguli that the Standing Orders in question are void for inconsistency with Art. 14 of the Constitution.

10. Though Mr. Ganguli was at pains to take me through the entire record to impress upon me that the terminations of services of the workmen

amounted to dismissals for misconduct under the guise of discharges simpliciter, I am afraid that the matter is really not at large before me. This

Court is merely exercising its Writ Jurisdiction judicially to review whether the order of the Industrial Court is legally sustainable. The Industrial

Court has the power of judicial superintendence (though mistakenly called Revisional powers) u/s 44 of the Act. The Industrial Court has exercised

the said power and set aside the orders of the Labour Court as unsustainable in law. It, therefore, remains to be seen whether the Industrial Court

was justified in doing so.

11. Shri Ganguli harped on the fact that, the evidence was led before the Labour Court, the report of Ashok Jadhav had not been proved at all as

Ashok Jadhav was not examined before the Labour Court. He also highlighted the fact that the same Ashok Jadhav had been examined before the

Criminal Court and had been disbelieved by thd Magistrate who acquitted the present Writ Petitioners. Shri Ganguli contended that the plea of loss

of confidence on the part of the employer-company was nothing but victimization within the meaning of item 1(a) of Schedule IV of the Act, was

not in good faith but in colourable exercise of the employer''s rights within the meaning of item 1(b) and was for patently false reasons within the

meaning of item 1(d). All these unfair labour practices having been rightly found and declared by the Labour Court; there was absolutely no

warrant for the Industrial Court to interfere with the Orders of the Labour Court, in the submission of the learned Advocate.

12. In The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another, , the Supreme Court pointed out that, where an employer

has two options, viz., (a) of serving a charge-sheet on an employee and dismissing him after submitting him to a disciplinary enquiry, or (b) of

terminating the service of the employee suspected of involvement in a deleterious activity by an order of discharge simpliciter, from the mere fact

that the employer chooses to pass an order of discharge simpliciter, the order does not become mala fide or one passed in colourable exercise of

the employer''s power to discharge the workman from service, if such power was otherwise properly exercised. The Supreme Court emphasised

that the test was one of bona fide exercise of power and, as long as there was no mala fide exercise of power, the action was not liable to be

interfered with.

13. In L. Michael and Another v. M/s. Johnson Pumps India Ltd. (Supra), the locus classicus on the subject of discharge simpliciter, the

observations made by the Supreme Court in paragraph 21 are very significant. Observed the Supreme Court :

21. Before we conclude we would like to add that an employer who believes or suspects that his employee, particularly one holding a position of

confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him

without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be

bonafide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which

means honestly with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of

victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested

judicially. In the instant case this has not been done. There is only the ipse dixit of the employer that he was, suspecting since 1968 that the

appellant was divulging secretes relating to his business. The employer has not disclosed the grounds on which this suspicion arose in 1968. Further

after 1968, the appellant was given two extra increments, in addition to his normal increments as stated already, in appreciation of his hard work.

This circumstance completely demolishes even the whimsical and tenuous stand taken by the employer. It was manifest, therefore, that the

impugned action was not bona fide.

14. The judgment of a Division Bench of our High Court in Srinaryan Mevalal Gupta v. Padamjee Pulp and Paper Mills Ltd. and Others 1991 I

CLR 93, and the judgment of a learned single judge in Sindhu Education Society and Others v. Kacharu Jairam Khobragade and Another 1994 I

L.L.N. 914, follow the principle laid down in Johnson Pumps (supra) and emphasise the fact that in all such matters the action of the employer had

to be tested on the touchstone of bonafides and, unless it failed on the said test, there was no justification for interfering with the action of the

employer. Significantly, the instant case, though the Labour Court came to the conclusion that there was victimisation and that termination of

service was a colourable exercise of employer''s power, the Labour Court singularly lost sight of the fact that the Petitioners were not impugning

the bonafides of the action at all, and the refrain throughout the trial in the Labour Court was that the action was mala fide because the employer

had failed to hold a domestic enquiry. As held by the Supreme Court in TELCO (supra) malafides of the action must be independently

demonstrated and cannot be inferred merely from the fact that the employer had chosen the easier option of discharge simpliciter. In any event, the

facts and circumstances of the present case indicate that the only person who could connect the petitioners with the incident of arson was Ashok

Jadhav and he was mortally afraid of coming forward to give evidence. The fact remains that Ashok Jadhav''s report put forth sufficient material

before the employer company, acting bonafide merely to suspect the Petitioners of involvement in the arson incident, though there might not have

been adequate evidence to convict them either before the criminal Court or even at a domestic enquiry. It was precisely to meet such a situation

that Standing Order 23(1) was framed and the Industrial Court has rightly held that the exercise of the said power by the employer could not be

faulted. I see no reason to differ from the view taken by the Industrial Court on this issue.

15. I am also inclined to agree with the view of the Industrial Court that the Labour Court has approached the matter in a highly technical manner,

its approach somewhat bordering on prejudice. A proper perspective would have indicated that there was more than ample material on record

which might have introduced an honest employer interested in protecting his business interests to act precisely in the same manner as done by the

employer company. The Labour Court has repeatedly harped on the fact that the employer company failed to hold the enquiry or failed to prove

the misconduct by leading cogent evidence before the Labour Court. In my opinion, the said fact is wholly immaterial. It was never the case of the

employer company that the two employees were guilty of any specific misconduct and therefore, failure to demonstrate a misconduct by leading

cogent evidence either in a domestic enquiry or before the Labour Court was wholly immaterial. The action of the employer was merely a

defensive action, very much permissible under the terms of Standing Order 23(1). Even after scanning the entire record with the help of Shri

Ganguli, I am unable to discern any material on record from which the bonafides of the employer''s action could be successfully impugned.

16. That there was an incident of arson is indisputable. That there was some material which connected the concerned workmen with the said

incident and could have given rise to a haunting suspicion of their involvement, is evident. That the material was such as could have been accepted

by any reasonable employer is indubitable. To say that the employer-company did not prove the misconduct of arson against the workmen, is

chasing the mirage since the employer did not allege any misconduct against them. Looked at from any angle, I see no reason to differ from the

view taken by the Labour Cost in both the cases.

17. There is another aspect of the matter, which needs to be notified. The petitioners were invoking the jurisdiction of the Labour Court under the

Act. The unfair labour practice alleged were (a) ''victimisation'', (b) ''colourable exercise of power'' and (c) for ''patently false reasons''. As to (a),

there is no independent evidence. All that is alleged is that, because the petitioners have been unfairly dealt with, it amounts to victimisation. Though

Shri Ganguli cited the judgment of the Supreme Court in Workmen Vs. Williamson Magor and Co. Ltd. and Another, in support of this

proposition, I am not satisfied that there was any unfair dealing with the petitioners-workmen. Though Shri Ganguli urges that, out of the 14

workmen suspected of the arson incident, only two had been discharged from service. There is hardly any material placed on record from which a

clear-cut inference of discrimination or victimisation can be drawn.

18. Shri Ganguli''s argument that the Industrial Court exceeded its jurisdiction, because it interfered with findings of facts has no substance. The

Industrial Court has rightly and cogently demonstrated how the findings of the Labour Court are wholly unsustainable. True that the Industrial

Court has not used the word ''perversity'' to describe the findings of the Labour Court, but that is precisely what it has implied.

19. In the circumstances, I am of the view that there is no justification for interfering with the two impugned orders of the Industrial Court. I find no

merit in the Writ petitions, which are hereby dismissed. Rules discharged. No order as to costs.