(1986) 09 BOM CK 0040

Bombay High Court

Case No: Writ Petition No''s. 2700 and 2703 of 1982

Pratibha Sambaji Kubal		APPELLANT
	Vs	
Ravindra Hindustan Platinum Pvt. Ltd. and Others		RESPONDENT

Date of Decision: Sept. 19, 1986

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F, 25G, 25H, 25O
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 10

Citation: (1987) 54 FLR 328 : (1994) 3 LLJ 279

Hon'ble Judges: Bharucha, J

Bench: Single Bench

Advocate: Nishita Mhatre and P.M. Patel, for the Appellant; Mahesh Bhat and H.M. Madon, for the Respondent

Final Decision: Allowed

Judgement

Pendse, J.
These two petitions impugn the judgment and order passed by the 2nd respondent, a Member of the Industrial Court, on 17th July 1982.

2. The petitioners in the petitions were appointed by the 1st respondents in 1977. On 26th July 1979 the 1st respondents sought to retrench the services or the petitioner with effect from that very day. By another letter, dated 31st July 1979 the 1st respondents informed the petitioners that they were retrenched from the close of working hours on 31st July 1979. The letters stated that retrenchment compensation and one month''s notice pay had been offered to the petitioners and that they should collect their legal dues from the 1st respondents after the receipt of the letters.

3. On 13th September, 1979 the services of ail workmen of the 1st respondents were terminated on the basis of the closure of its establishment. On 23rd October, 1979 the 1st respondents'' establishment was restarted. Some of the original employees were taken back, but re-employment was not offered to either of the petitioners.

4. On 22nd January, 1980 the petitioners and other workmen filed complaints before the Industrial Court u/s 28 of the M.R.T.U. and P.U.L.P. Act, 1971. They alleged that the 1st respondents were guilty of the unfair labour practices mentioned in Item 4(a) and (f) of Schedule II and Items 5, 7, 9 and 10 of Schedule IV of that Act At the hearing before the Industrial Court, only the complaint in respect of Item 9 of Schedule IV was pressed.

5. The Industrial Court by its judgment and order, dated 17th July 1982 dismissed the complaints filed by the petitioners and by two other workmen.

6. In regard to the petitioners, the Industrial Court noted the afore-mentioned letters of retrenchment and that the petitioners had not disputed the averments in that behalf contained in the 1st respondents'' pleading. The Industrial Court observed that if a workman was retrenched u/s 25-F of the Industrial Disputes Act, he had two-fold rights. The first was to challenge the order of retrenchment itself as null and void and to seek reinstatement by raising an industrial dispute. Alternatively, he could claim compensation. It was well-settled law that an order of retrenchment could not be ignored and would subsist until set aside. The question whether the petitioners were lawfully retrenched and whether the 1st respondents had failed to give them an opportunity to offer themselves for re-employment could be determined not on complaint proceedings instituted under the M.R.T.U. and P.U.L.P. Act but while adjudicating an industrial dispute u/s 10 of the Industrial Disputes Act, 1947. It was doubtful whether non-compliance with the provisions of Sections 25-F and 25-H would amount to a failure to implement a settlement or agreement as required by Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. This being so, it could not be concluded that the 1st respondents had committed an unfair labour practice by failing to give an opportunity to the petitioners to be re-employed when its establishment was re-started. Accordingly the Industrial Court held that the petitioners had failed to establish that the 1st respondents had committed any unfair labour practice and, therefore, dismissed the complaints.

7. Mrs. Mhatre, learned counsel for the petitioners, submitted that Section 25-F of the Industrial Disputes Act had not been complied with in that the petitioners had not been offered the payments required thereby to be made as a condition precedent to retrenchment. She submitted that Section 25-G had also been breached by the 1st respondents because the seniority list of the 1st respondents'' workmen had not been displayed and the rule of "last come, first go" had not been followed. She also submitted that the provisions of Section 25-H had been breached in that the 1st respondents had not given to the petitioners an opportunity to offer themselves for the employment when its establishment was re-started.

8. Mrs. Mhatre drew my attention to the judgment of the Supreme Court in Mohan Lal Vs. Management of Bharat Electronics Ltd., The Supreme Court there held that there was a catena of decisions which ruled that where a termination of service was illegal, especially where there was an ineffective order of retrenchment, there was neither termination nor cessation of service and a declaration followed that the workman concerned continued to be in service with all consequential benefits.

9. Having regard to this judgment, Mrs. Mhatre submitted that the Industrial Court was in error when it said that a workman who was retrenched u/s 25-F had to challenge the order of retrenchment as being null and void and to seek reinstatement by raising an industrial dispute.

10. Mrs. Mhatre also cited the judgment of the Supreme Court in S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, . It was contended before the Supreme Court on behalf of the employer in that matter that though it might have contravened the provisions of Section 25-O of the Industrial Disputes Act, it nonetheless would not amount to a failure to implement a settlement entered into between it and the Union of. its workmen and, therefore, that the act of closing down a particular division was not an unfair labour practice u/s 28 of the M.R.T.U. and P.U.L.P. Act read with Item 9 of Schedule IV thereof. The Supreme Court found itself unable to accept the view taken by a single judge of this Court cited in support of the employer''s submission. The Supreme Court held that it was an implied condition of every agreement, including a settlement, that the parties thereto would act in conformity with the law. Such a provision was not required to be expressly stated in a contract. The Supreme Court found that the division had been closed in contravention of the provisions of Section 25-O. There was, thus, it held, a failure on the part of the employer to implement the settlement and the employer was guilty of the unfair labour practice specified in Item 9 of Schedule IV.

11. Mrs. Mhatre submitted that the Industrial Court was, therefore, in error when it said that it was doubtful whether non-compliance with the provisions of Section 25-F and Section 25-H amounted to a failure to implement a settlement or agreement.

12. Mr. Bhat, learned counsel for the 1st respondents, drew my attention to the fact that the complaints proceeded upon the basis that the petitioners'' services had been retrenched on the day upon which there was a closure of the 1st respondents'' establishment. The retrenchment of the petitioners on an earlier date was not the subject of challenge in the complaints nor was it alleged that the 1st respondents had breached the provisions of Section 25-G and Section 25-H, It was in the pleading and evidence of the 1st respondents that reference was made to the letters by which the petitioners'' services were retrenched on a day earlier to the closure of the establishment. The petitioners had even thereafter not amended their complaints so that the 1st respondents had had no opportunity to refute the allegations in regard to Sections 25-F, 25-G and 25-H either in their pleading or in evidence. Mr. Bhat

submitted that an amendment on remand at this stage would be tantamount to permitting the petitioners to file a new complaint.

13. What Mr. Bhat says in regard to the pleadings and evidence is correct but it is apparent from the Industrial Court''s judgment that both sides advanced arguments on Sections 25-F, 25-G and 25-H. The Industrial Court, in its judgment, proceeded in this regard upon a basis which is erroneous. Had it been established that the 1st respondents had breached the provisions either of Section 25-F or Section 25-G or Section 25-H, there would have been an unfair labour practice as contemplated by Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. The Supreme Court''s judgment in the case of S.G. Chemical and Dyes Trading Ltd. (supra) puts the matter beyond doubt. The Supreme Court''s judgment in the case of Mohan Lal (supra) also puts beyond doubt the competence of the court hearing a complaint under the M.R.T.U. and P.U.L.P. Act to determine whether the employer had committed a breach of Sections 25-F, 25-G, 25H and 25-O of the Industrial Disputes Act. The Industrial Court was in error, therefore, in holding that a breach of Section 25-F could only be established upon a reference under the Industrial Disputes Act.

14. It is correct that the petitioners ought to have, in the first place, pleaded that they had been sought to be retrenched on a day earlier that the day of closure of the 1st respondents" establishment and ought to have averred breaches of Sections 25-F, 25-G and 25-H. At any rate, they ought to have done so by amendment after the pleading and evidence on behalf of the 1st respondents disclosed that they had been sought to be so retrenched. Nonetheless, it seems to me that it would be inequitable to workmen- complainants in a labour matter to take so strict a view as to dismiss these petitions. The interests of justice require that the petitioners ought to have an opportunity of amending their complaints as aforesaid and the 1st respondents of establishing their case in this behalf.

15. Accordingly, the order of the Industrial Court is set aside insofar as it affects the petitioners in these two petitions. The petitioners should within a period of 4 weeks from today amend their complaints in the manner indicated above. If this is not done within the stated time or any permitted extension, their complaints shall stand dismissed. In the event that the amendments as aforesaid are carried out, the 1st respondents shall put in pleadings in reply within a further period of 4 weeks. The parties shall be at liberty to adduce further evidence, both documentary and oral, before the Industrial Court in the complaints. The Industrial Court shall then decide the complaints having regard to the material and evidence that has been placed on record and the observations herein contained. It shall, as far as is possible, hear and decide the complaints on or before 31st March, 1987.

No order as to costs.