(2001) 12 BOM CK 0071

Bombay High Court

Case No: Writ Petition No''s. 1476 and 2605 of 1999

Maharashtra Mantralaya and Allied Government Employees'' Co-operative Credit Society Ltd., Mumbai		APPELLANT
	Vs	
Raju Sonu Rane and Others		RESPONDENT

Date of Decision: Dec. 5, 2001

Acts Referred:

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28

Citation: (2002) 2 BomCR 472 : (2002) 92 FLR 1112 : (2002) 2 MhLj 708

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: P. Ramaswamy, Piyush Shah, C.U. Singh, Shobhana Gopal, instructed by Sanjay Udeshi, in W.P. No. 1476 of 1999, for the Appellant; P. Ramaswamy, Piyush Shah, C.U. Singh, Shobhana Gopal and Sanjay Udeshi, in W.P. No. 2605 of 1999, for the Respondent

Judgement

Nishita Mhatre, J.

These are cross petitions filed by the Maharashtra Mantralaya and Allied Government Employee''s Co-op. Credit Society Ltd. and the employee against the orders of the Labour Court in a complaint filed u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as ''MRTU AND PULP Act'') and the order of the Industrial Court passed in revision. The petitioner in writ petition No. 1476 of 1999 and respondent No, 1 in Writ Petition No. 2605 of 1999 is the employer society. The employee is respondent No. 1 in writ petition no. 1476 of 1999 and petitioner in Writ Petition No. 2605 of 1999.

2. The facts giving rise to these petitions are as follows :

On 7-3-1972, the employee joined the services of the Maharashtra Mantralaya and Allied Government Employee''s Co-op. Credit Society Ltd., which is the employer herein, as a peon. In 1977, the employee was confirmed in service and was promoted as a clerk on 2-4-1981. A Notice was issued to the employee by the employer-society that he had remained absent unauthorisedly. The employee answered this notice dated 25-1-1993 by his reply dated 5-3-1993 and stated that he was on authorised and sanctioned leave. A memo was issued on 10-2-1993 to the employee denying him entry on the ground that he did not possess the required qualifications for a clerk. Allegations were traded between the employer society and the employee against each other through various letters. On 20-4-1994, the employee requested the Chairman of the Society for payment of overtime wages. Instead of this amount being paid to the employee, a campaign against him of harassment commenced, according to the employee. Ultimately, he was reverted from his position of clerk to his original position of peon. Being aggrieved by this, the employee filed complaint (ULP) No. 956 of 1994 challenging his reversion. The reversion order of the society was upheld by the Industrial Court. Writ petition filed by the employee against the order of the Industrial Court was dismissed.

3. The employee was issued a chargesheet dated 17-6-1994 for certain acts of misconduct including that he had committed mistakes in the work assigned to him and that he was trying to cheat the administration by wrong information in the matter of the loan applications and that he was interfering in the financial loan transactions of members. The enquiry committee constituted to enquire into the charges against the employee came to the conclusion that the employee deserves to be dismissed from service. However, instead of dismissing him, if appears that the society reverted the employee. On 14-10-1994, a second show-cause notice was issued to the employee alleging that he had wrongly scrutinised the loan application of one Shri Hile and that he had remained absent without permission for more than 10 consecutive days. A domestic enquiry was held against the employee on the basis of his chargesheet. According to the employee, after the evidence of Shri Hile was recorded by the enquiry officer, the enquiry officer insisted that the employee should examine himself and did not wait for the evidence of alt the society''s witnesses to be completed. As this was in violation of the principles of natural justice, the employee requested the society to change the enquiry officer and submitted that great prejudice would be caused if this was not done. The society, however, did not accede to the demand of the employee. The employer proceeded with the enquiry and completed the same. The report and findings of the enquiry officer, as submitted to the employer society, show that the enquiry officer did not find the employee guilty of any of the charges levelled against him. The employer society did not accept these findings and differed with the same. The society called upon the employee by their letter dated 8-12-1995 to show cause as to why he should not be dismissed as they had found that the findings of the enquiry officer did not consider the past service record of the employee. The employee was then

issued order of dismissal on 20-12-1995.

4. The employee then filed a complaint under Item 1(a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act before the Labour Court. The employee contended that action has been taken against him by the society only because of his trade union activities and that he had not committed any act of misconduct. He also contended that dismissal from the service amounted to victimisation as the enquiry officer had in fact exonerated him from all the charges levelled against him. He further contended that no show cause notice was issued to him by the employer society for justifying their action in departing from the findings of the enquiry officer.

5. Written statement was filed by the society wherein they admitted that an earlier chargesheet dated 17-6-1994 had been issued to the employee and that the enquiry committee had found him guilty of the charges levelled against him. The society had therefore, reverted him as peon. The employer society further pleaded, inter-alia, that the action taken against the employee was based on a complaint by one Shri Hile that the employee had not paid him the loan amount which was already sanctioned by the management; that the enquiry officer had erroneously exonerated the employee from the charges levelled against him and since, the charges were grave, the punishment of dismissal imposed on the employee was just and fair.

6. The evidence of the employee was recorded on 4-8-1997. Thereafter, an application was filed by the society for permission to lead evidence about the contents of the chargesheet on the basis that the enquiry officer''s report was based on no evidence and because the enquiry officer had concluded the enquiry and had held that the society had not proved any misconduct against the employer. This application was allowed by the Labour Court and the society was permitted to lead evidence on the basis of chargesheet dated 14-10-1997. The society examined one Gamre, who was presiding over the enquiry committee which enquired into the charges contained in the chargesheet dated 17-6-1994 and the General Manager of the society, Shri Tawade. Both the witnesses claimed that it was on the basis of the complaint made by Shri Hile that action was taken against the employee.

7. The Labour Court on appreciating the evidence led before it came to the conclusion that (i) the employee had proved that the employer society had committed an unfair Labour Practice under Item l(d) of Schedule IV of the MRTU and PULP Act; (ii) although the employee was not entitled for reinstatement. He was entitled to compensation of Rs. 1 lakh that in lieu of reinstatement. Being aggrieved by this order, Revision applications were filed under the MRTU and PULP Act by both the employee as well as the society. The Industrial Court was of the view that the Labour Court had committed a serious error in allowing the employer to adduce evidence before him to justify the steps taken by it. The Industrial Court granted the employee reinstatement but with only 50% as backwages. Being aggrieved by this order, both the employer society as well as the employee have filed the present

petitions.

8. Mr. Ramaswamy, learned counsel for the employer, submits that the Labour Court has erred in granting compensation in lieu of reinstatement when it had come to the conclusion that the charges levelled against the employee had been proved in the enquiry held before it. He submits that the Industrial Court committed a grave error by relying upon the enquiry report and the findings of the enquiry officer when evidence was led before the Labour Court to prove the charges against the employee. He further submits that the two chargesheets issued to the employee i.e., one on 17-6-1994 and the other on 14-10-1995 were based on different and disparate charges and therefore, there could be no legal victimisation. He further submits that a second show-cause notice had been given to the employee along with the report of the enquiry officer prior to imposition of the punishment and, therefore, the term "legal victimisation would not be attracted to the present case. He further submits that once the Labour Court had found the employee guilty of the charges levelled against him, the Industrial Court should not, in exercise of its powers u/s 44 of the MRTU and PULP Act, dwell on the question of the evidence and ought to have accepted the findings of the Labour Court. He urges that the charges against the employee are so grave that no reasonable person could direct him to be reinstated in service. The learned Counsel further submits that respondent No. 1 had committed a serious act of misconduct by scrutinising the loan application, although this was not his duty and that the employee had not disbursed the loan to Shri Hile after encashing the cheque which was in the name of Shri Hile. He submits that before the punishment imposed by the society could be interfered with, it was necessary for the Industrial Court to consider the seriousness of the charges levelled against the employee. Not having done so, the Industrial Court has committed a grave error and, therefore, the order of the Industrial Court was required to be set aside. The learned Counsel however does not press the second charge, that is of habitual absence or absence without permission or absence without proof for more than ten consecutive days over staying the sanctioned leave without a satisfactory explanation.

9. As against this, the learned Counsel for the employee submits that the procedure adopted by the Labour Court was wholly erroneous inasmuch as it permitted the employer-society to lead evidence in Court to justify the charge against the employee only because the Enquiry Officer had found that petitioner was not guilty of the charges. The learned Counsel submits that it was only after the evidence of the employee was completed before the Labour Court that the employer-society requested Labour Court by application dated 5-8-1997 for permission to lead evidence on the basis of the chargesheet dated 14-10-1997, afresh. He submits that permitting the society to lead evidence had gravely prejudiced the employee as the Labour Court had ignored the report and findings of the enquiry officer that the employee was not guilty of any of the charges levelled against him in the chargesheet dated 14-10-1997. He submits that the victimisation of the employee is

apparent as the society had already taken action on the basis of the alleged chargesheet dated 17-6-1997 regarding the wrongful scrutiny of loan application by the employee by reverting him. He submits that the punishment imposed on the employee was nothing short of victimisation and hence, the employee is entitled to reinstatement with continuity of service and full backwages. The learned Counsel further submits that by allowing the society to lead evidence, the Labour Court had ensured that whatever lacunae were present in the enquiry proceedings were filled in by the evidence led before it. He also finds fault with the finding of the Industrial Court that the employee had suppressed the fact, that there was an outstanding loan in the name of Shri Hile while scrutinising his loan application.

10. The main contentious issue between the parties is whether the procedure adopted by the Labour Court of permitting the employer-society to lead evidence merely because the enquiry officer had exonerated the employee, was in accordance with the principles of natural justice and industrial jurisprudence as evolved over the years. Admittedly, an enquiry was held against the employee for certain acts of misconduct contained in the chargesheet of 14-10-1994. The enquiry officer has admittedly exonerated the employee of all the charges levelled against him and, therefore, none of the charges have been proved in the enquiry proceedings. Obviously, this has led to the employer society taking a different view in the matter and rejecting the findings of the enquiry officer. The Labour Court on the basis of the application made by the employer society has allowed it to lead evidence after the completion of the testimony of the employee. This evidence was with respect to the fairness or otherwise of the enquiry and the findings of the enquiry based on the chargesheet dated 14-10-1994. The Labour Court has committed a serious error by adopting such a procedure. Once an enquiry has been accepted by an employee, it would not be open for the employer to say that the enquiry conducted by him against such an employee is not fair or has not been conducted in accordance with the principles of natural justice and failed. This stand, it appears, has been taken up by the employer society only because the findings of the enquiry officer were against it. The employer society could differ with the findings of the enquiry officer and reject the same. But to contend that the enquiry conducted by the enquiry officer appointed by them is contrary to the principles of natural justice would not be proper.

11. Mr. Ramaswamy''s contention that no prejudice had been caused to the employee as evidence had been led by the society to prove the charges against the employee in Court cannot be countenanced. The whole procedure adopted by the Labour Court being erroneous, the question of the employee being prejudiced or not does not arise. In any event, the findings of the Labour Court do show that the employee has been prejudiced as the findings of the enquiry officer had exonerated the employee of all the charges levelled against him. The material witness, Shri Hile who had been examined before the enquiry officer and who had deposed against the society was not examined by the employer society before the Labour Court.

Instead, two other witnesses were examined. The submission of learned Counsel for the society that the enquiry officer had closed the enquiry without examining the witnesses of the society because the employee had created terror during the enquiry proceedings is not borne out by the record. The employee had merely questioned the procedure adopted by the enquiry officer and this could not in any manner have caused terror in the mind of either the Enquiry officer or witnesses of the employer society.

12. The Industrial Court has held that the unfair labour practice committed by the employer society was one of legal victimisation. In the present case, this will have to be determined on the basis of the record before the Court. The employee had been initially chargesheeted on 17-6-1994 for certain acts of misconduct including that of committing mistakes in his work and cheating the administration by giving wrong information in the matter of loan applications and interfering in the financial loan transactions. These charges were enquired into by the enquiry committee headed by one Shri Gamre (who was examined before the Labour Court in the present complaint). According to the employer society, this enquiry committee was constituted as there were several complaints by members against the employee and the society having accepted the fact that the employee was guilty of the charges levelled against him could have concurred with the punishment of dismissal which was suggested by the enquiry committee. However, the society reverted the employee to the position held by him earlier, that is, of peon. Not being satisfied with this, the society issued a fresh chargesheet containing besides the charge of absenteeism, the same charges of wrongful scrutiny of loan applications on the basis of the complaint made by Shri Hile. The enquiry officer appointed to enquire into the charges contained in the charge-sheet dated 14-10-1994 had no option but to exonerate the employee of the charges as Shri Hile had retracted from his complaint and had stated before the enquiry officer that the loan was encashed by him. The society then adopted the wrong procedure before Labour Court of examining the witnesses to establish the charges only after the deposition of the employee was completed. This obviously shows that the society had an axe to grind against the employee and had made all attempts to get rid of him. This would amount to legal victimisation as held by the Supreme Court in the case of Syndicate Bank, Manipal v. M. C. Bhat (deceased) by L.Rs. reported in 1998 I CLR 941. In this case, the Apex Court has held that the term victimisation is to be construed so as to give the general dictionary meaning to it. The Apex Court has given various instances which amount to factual victimisation. Legal victimisation has been also interpreted to mean that if an employee is dismissed or discharged for a major misconduct and this dismissal is found to be shockingly disproportionate and considering the past service record of the delinquent, no reasonable employer could ever impose such a punishment it would be an unfair labour practice and an instance of victimisation in law or legal victimisation independent of factual victimisation.

13. In the present case, I am of the view that the action against an employee amounted to not only legal victimisation but also factual victimisation. It was incumbent on the society to give the employee an opportunity to show-cause as to why the action proposed by the society of dismissal should not have been effected against the employee. The society while calling upon the employee to show-cause has not given any reasons for disagreeing with the findings of the enquiry officer. The society has merely stated that the findings are not acceptable and that the enquiry officer had not considered the documents and oral evidence before it while exonerating the employee and that the enquiry officer has without using his intelligence decided against the employer-society. In the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Apex Court in paragraph 19 of its judgment has held thus :--

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision, and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records it findings on the charges framed against the officer."

14. In view of this, it must be held that the employer has gravely erred in not giving an opportunity to the employee to show cause as to why the action proposed should not be taken against him as it had differed with the findings of the Enquiry Officer. The Labour Court has lost sight of this fact and has permitted the employer society to lead evidence which again is contrary to the principles of industrial jurisprudence as no issue was framed regarding the fairness of the enquiry. For this reason alone, the order of Labour Court requires to be set aside.

15. Mr. Ramaswamy''s next contention was that the punishment of dismissal could not by any stretch of imagination be construed shockingly disproportionate as the employee was guilty of gross misconduct. He submits that the Labour Court has found that the employee is guilty of misconduct alleged against him and that the society had proved the same in Court. According to the learned Counsel, the Labour Court was in error by coming to the conclusion that the society had committed unfair Labour Practice under Item l(d)(g) of the MRTU and PULP Act. He further submits that in any event, Item l(g) has not been pleaded by the employee and, therefore, there is no question of finding the employer-society guilty of unfair

labour practice under this Item. He urges that the misconduct which has been proved is not of a minor nature which would attract the provisions of Item l(g) but is a serious misconduct of fraud and dishonesty in connection with the employer''s business.

16. These submissions of the learned counsel cannot be accepted for the reason that the employee had been exonerated of all charges of misconduct by the Enquiry officer. The Labour Court adopted a flawed procedure by allowing the employer society to lead evidence to prove the misconduct before it. As stated above, this procedure is against the cannons of industrial jurisprudence and therefore, cannot be accepted. What remains therefore, is the order of the enquiry officer whereby the employee was exonerated. In view of this it cannot be said that the employee was guilty of the acts of misconduct. The question of assessing whether the past service record of the employee was clean or not also would not arise and the employee would have to be reinstated in service. Moreover, once it is held by the Industrial Court that the action of the employee did not warrant the punishment of dismissal, he has been rightly reinstated. In any event, the action of employer-society of dismissing the employee for patently false reasons cannot be accepted.

17. The judgments cited by Mr. Ramaswamy in the cases of Syndicate Bank (supra), Divisional Controller Maharashtra State Road Transport Corporation, Akola v. Syed Shabir Jani s/o Syed Alisaheb reported in 1997 2 CLR 1146 Colour Chem Ltd. v. A. L Alaspurkar and Ors. reported in 1995 I CLR 638 Bhagirathmal Rainwa v. Judge, Industrial Tribunal, Jaipur and Anr. reported in 1995 I CLR 925 "all deal with the quantum of punishment in the event the employee is found guilty of misconduct. In the present case, I agree with the finding of the Industrial Court that the employee cannot be considered to be guilty of the charges framed against him. The question, the employee suppressing the material facts regarding an outstanding loan in the name of Hile also does not arise as this was not a part of the job assigned to the employee. The employee being a clerk was merely expected to receive the loan applications and check whether loan form was in order and he was required to submit the loan clerk for scrutiny. Admittedly, these clerks have not done their duty and no action has been taken against them.

18. The order of the Labour Court and Industrial Court are set aside. The employee is entitled to reinstatement as a peon with continuity of service with full backwages. Writ Petition No. 1476 of 1999 is dismissed and writ petition No. 2605 of 1999 is allowed.

19. Writ petitions are disposed of accordingly.

20. Mr. Shah prays for 8 weeks stay of the order. Stay granted. However, in the meantime, the employer society will continue to pay wages to the employee at the rates directed by this Court in its earlier orders.

Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.