(1984) 04 BOM CK 0057

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 402 od 1982

Ramachandra Vithuji Kothare		APPELLANT
	Vs	
Industrial Court, Nagpur and Others		RESPONDENT

Date of Decision: April 11, 1984

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 25(F), 25F
- Trade Unions Act, 1926 - Section 28, 30

Citation: (1986) 1 LLJ 363 : (1985) MhLj 709

Hon'ble Judges: Dhabe, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner challenges in this petition the orders of the Courts below passed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act").

2. The petitioner was employed as a conductor in the services of the respondent No. 2 Maharashtra State Road Transport Corporation. It is not is dispute that he was a temporary employee. His services were terminated with effect from 24th September, 1976 by offering him one month''s wages in lieu of one month''s notice under the provisions of Regulation 61 of the Bombay State Transport Service Regulations (for short "the Regulations") framed by the respondent No. 2 Coporation under the provisions of S. 45 of the Road Transport Corporations Act, 1950. It is pertinent to notice at this stage that the respondent No. 2 Corporations is a statutory Corporation created under the provisions of the Road Transport Corporations Act, 1950 and is "State" within Art. 12 of the Constitution of India and is, therefore, subject to the fundamental rights in Chapter III of the Constitution. Although the order of termination dated 24th September, 1976 did not disclose any

reason therein for termination of services of the petitioner, the reason advanced on behalf of the respondent No. 2 for terminating services of the petitioner was that on or about 13th September, 1979, he was found in a state of intoxication, i.e. was under the influence of liquor and was unable to control himself and to attend to his duties properly. The evidence was led by both the parties before the Labour Court about the reasons for termination of services of the petitioner. The defence taken in the proceedings before the Labour Court by the petitioner was that he had some stomach trouble and had taken some medicine. However, the respondent No. 2 and relied upon the spot statement wherein he had admitted that he was under the influence of liquor at that time.

3. The learned Labour Court upheld the order of termination of services of the petitioner and rejected the application of the petitioner under Ss. 28 and 30 of the Act for declaring that the termination of his services amounted to an unfair labour practice, that it should be set aside and that the petitioner should be reinstated in service with backwages. However, the Labour Court directed that in addition to the notice pay an amount equal to one month''s wages should be paid to the petitioner towards the retrenchment compensation as per the provisions of S. 25(F) of the Industrial Disputes Act, 1947 (for short the I.D. Act), because according to the Labour Court the termination of services of the petitioner technically amounted to "retrenchment" within the definition of the said word given in S. 2(oo) of the said Act. The revision was preferred by the petitioner before the Industrial Court under S. 44 of the Act, which was, however, dismissed and the impugned order of the learned Labour Court was maintained. Being aggrieved by the orders of the Courts below, the petitioner has preferred the instant writ petition in this Court.

4. The learned Counsel for the petitioner in the first instance has urged before me that the termination of the petitioner''s services amounted to "retrenchment" within the meaning of S. 2(oo) of the I.D. Act and hence the compliance with the mandatory provisions of S. 25(f) was necessary before effecting termination of his services. It is not in dispute that the petitioner has put in more than one year''s continuous service and that the retrenchment compensation as per the provisions of S. 25(F)(b) was not paid to the petitioner at the time of termination of his services. It is urged on behalf of the respondent No. 2 that the termination of services of the petitioner on the ground of loss of confidence is not covered by the definition of the word "retrenchment" under the I.D. Act. The said question is no more res integra because of a series of decisions of the Supreme Court in which it has taken a view that the termination of services for any reason whatsoever except by way of punishment is retrenchment within the meaning of the said word under the I.D. Act. It is clear that any reason referred to in the definition of the expression retrenchment would include the reason of loss of confidence, unless it is the case that it is by way of punishment. In the instant case it is the case of the respondent No. 2 Corporation itself that the termination of service is not by way of punishment. If the termination of service is not by way of punishment, then the termination for any reason

amounts to retrenchment as defined in the I.D. Act. In regard to reason about loss of confidence, in another case preferred against the respondent No. 2 Corporation, a Division Bench of this Court at Aurangabad has taken a view that such termination of service under Regulation 61 of the Service Regulations amounts to retrenchment within S. 2(oo) of the I.D. Act vide writ petition No. 1127 of 1980 (Bom), Tulshiram Mehta v. Maharashtra State Road Transport Corporation decided on 9th December, 1982. This view is supported by another earlier decision of the Division Bench of this Court in Namdeo v. State industrial Court, W.P. No. 781 of 1974 decided on 21st July, 1981 by Ginwala and Joshi, JJ., in which case also the simple termination effected after dropping the domestic enquiry was held to be within the mischief of Ss. 2(oo) and 25(F) of the I.D. Act.

5. In oen of the recent decisions of the Supreme Court in the case of Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, , the Supreme Court has again considered all its previous decisions and had held that it is not necessary to fall within the definition of the expression "retrenchment" under the I.D. Act that there must be discharge of surplus labour as ordinarily understood but that the termination for any reason whatsoever is covered by the said definition because as held by it in the case of The State Bank of India Vs. Shri N. Sundara Money, , the words "for any reason whatsoever" are very wide. In regard to its old decision in the case of Hariprasad Shivshankar Shukla v. A. D. Divelkar AIR 1957 S.C. 121 , which had been the spearhead of the attack on behalf of the employers, the Supreme Court again reiterated that the said decisions should be confined to its own facts as held in the decision in Sundara Money''s case (supra) : as also in its subsequent decision in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, : Santosh Gupta Vs. State Bank of Patiala, and in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., . The Supreme Court further observed in para 12 of the decision in M. Boraiah''s case (supra) that the stage has come when the view indicated in Sundara Money''s case has been "absorbed into the consensus" and there is no scope for putting the clock back or for an anti-clockwise operation.

6. I have quoted the above observations of the Supreme Court because it is one of the contentions on behalf of the respondent No. 2 that the question about Hariprasad''s case (supra) is kept open again by the Supreme Court. The above observations, however clearly indicate that the view taken by the Supreme Court from Sundara Money''s case onwards would prevail over the view taken in Hariprasad''s case. The question is thus no more open to doubt. In view of the above judgments in this Court, as well as the Supreme Court, it has to be held that the termination of services of the petitioner by offering him only month''s wages and not retrenchment, compensation also as required by the provisions of S. 25(F)(b) of the I.D. Act would amount to retrenchment within the meaning of S. 2(oo), which is in violation of the mandatory provisions of S. 25(F)(b) of the I.D. Act and is, therefore, illegal and void.

7. The learned counsel for the petitioner has contended that the provisions of Regulations 61 are in derogation of the provisions of S. 25(F) of the Industrial Disputes Act and, therefore, are liable to be struck down. I do not think that the Regulation 61 as such is bad. Regulation 61 lays down a statutory condition of service relating to notice for termination of service by a subordinate legislation, which is even otherwise normally provided for in the ordinary contract of employment. The provisions of S. 25-F are the provisions of statute which superimpose or superadd certain obligations upon the employer in respect of his contract of employment statutory or otherwise with the workmen to who the Industrial Disputes Act applies. The effect of the provisions of S. 25-F would be that irrespective of contract of employment the mandatory requirements of S. 25-F will have to be complied with by the employer in the case of a workman to whom the Industrial Disputes Act applies.

8. If there is any inconsistency in the sense that the terms in the contract of employment are unfavourable to the employee, then to that extent the provisions of S. 25-F will prevail. It must be seen that Regulation 61, what is framed by the respondent No. 2 Corporation under the power under S. 45 of the Road Transport Corporations Act, is applicable to all the employees of the respondent No. 2 Corporation, some of whom may not be workmen within the meaning of the said expression under S. 2(s) of the Industrial Disputes Act. Regulation 61 need not, therefore, be declared as bad on the ground that it is in derogation of the provisions of S. 25-F of the Industrial Disputes Act. Moreover so far as the period of notice for termination services of the permanent employees is concerned, Regulation 61(b) is ore favourable to the employees as it provides for a notice of 60 days for termination of their services. As I have already pointed out if there as any inconsistency, the provisions of S. 25-F will prevail to the extent of inconsistency. Therefore, the requirements of giving at least one month''s notice, indicating reasons for retrenchment as well as payment of retrenchment compensation as per S. 25-F(b) of the Industrial Disputes Act have to be followed irrespective of the actual contents of the provisions relating to termination of service on the ordinary contract of employment.

9. The learned Counsel for the petitioner had raised two other questions regarding the validity of Regulation 61 on the ground that it does not lay down any guidelines and is, therefore, violative of the Arts. 14 and 16 of the Constitution of India and another contention that the principles of natural justice should be deemed to be included under Regulation 61 and at least show cause notice should be issued before effecting the retrenchment. However, in view of a Division Bench judgement of this Court reported in Manohar P. Kharkhar and another Vs. Raghuraj and another, given in regard to the identical provisions of Regulation 48 of the Air Corporation Regulations, wherein the validity of the said provisions has been upheld and because of the specific provisions in the disciplinary procedure Rule (VI) wherein the principles of natural justice have been included in regard to the disciplinary

matters, the learned Counsel for the petitioner did not press these contentions.

10. Then remains the question about the relief to be granted to the petitioner in the instant case. The learned Counsel for the petitioner has urged that the termination of services of the petitioner effected in contravention of the mandatory provisions of S. 25-F of the Industrial Dispute Act is illegal and void and, therefore the normal relief of reinstatement with full backwages should be granted in the instant case. Although it is true that the normal relief in such a case is of reinstatement with backwages, it is a matter always of sound exercise of discretion of the Court in this regard and that the Court would normally take into consideration all relevant facts and circumstances before granting such relief. If there are such circumstances that relief of reinstatement should not be granted in a particular case the Court can depart from normal rule of granting reinstatement in such matters, and in lieu thereof can grant suitable compensation to the employee concerned.

11. The learned Counsel for the respondent No. 2 has contended that the normal rule of reinstatement should be departed from in the instant case because it is established and has been held by both the Courts below that the termination was proper on the ground of loss of confidence. The reason advanced in this case is that the petitioner wa in a state of intoxication and was unable to control himself and to discharge his duties properly, which has resulted in loss of confidence of the respondent No. 2 in the petitioner. The Bus conductor in his service of the Corporation not only discharges his duties in relation to the Corporation itself, but comes in contact with the public generally, with whom he is expected to behave properly. According to the respondent No. 2 when the ground of being found in the state of intoxication and unable to work, is upheld by the Courts below, it would not be a proper case to direct reinstatement of the petitioner in service. In support of the above contention the reliance is placed on behalf of the respondent No. 2 upon the decision of the Supreme Court reported in the case of Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, in which case, where the termination was effected on the ground of loss of confidence, the Supreme Court declined to grant relief of reinstatement and instead granted the relief of compensation to the employee in the said case. The view taken by the Supreme Court in the aforesaid decision supports the contention of the counsel for the respondent No. 2. Relying upon the same I hold that the petitioner should not be reinstated in service but should be granted suitable compensation in lieu of reinstatement.

12. The next question would be about the payment of backwages and compensation to the petitioner in lieu of reinstatement. The normal rule again is that the petitioner is entitled to full backwages, unless there are circumstances to show that the whole or any portion of the backwages should be withheld. After the decision of the Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , the burden is upon the employer to

bring out the circumstances and satisfy the Court why the full backwages should not be paid to the concerned employee. However, it is always again the question of sound exercise of the discretion of the Court, which should take into consideration all the relevant facts and circumstances in considering the question whether to grant full backwages or not to the employee concerned. In the instant case the petitioner has categorically stated in para. 20 of the petition that he is out of employment, that he is sharing and that he has no other means of livelihood. There is merely a vague denial of these allegation on behalf of the respondent No. 2 Corporation.

13. As regards the question of discretion it must be seen that this is a case under Ss. 28 and 30 of the Act. Section 30 of the Act empowers the Labour Court to grant reinstatement with or without backwages or the payment of reasonable compensation. Taking into consideration all the aspects including the fact that the petitioner is out of employment and also the fact about the possibility of getting employment in future. I am of the view that the ends of justice would be met by directing the payment of amount of Rs. 25,000/- to the petitioner towards his claim of backwages and also the compensation in lieu of reinstatement. The respondent No. 2 is directed to pay the above amount of Rs. 25,000/- within a period of two months from the date of this order.

14. In the result the writ petition is partly allowed. The impugned order of the Courts below are set aside. The respondent No. 2 is directed to pay Rupees 25,000/- towards the backwages and compensation to the petitioner within a period of two months from the date of this order, failing which the respondent No. 2 is directed to pay interest upon the same at the rate of 12 per cent. per annum from that date. Rule made absolute in the above terms. However, there would be no order as to costs in this petition.

15. The learned Counsel for the respondent No. 2 at this stage prays for leave to appeal to the Supreme Court on the ground that Special Leave has been granted against the decision of this Court in Writ petition No. 1127 of 1980 decided on 9th December, 1982. The question about the scope of the definition of the word "retrenchment" given in S. 2(oo) of the I.D. Act has been settled by a series of decisions of the Supreme Court referred in this petition and particularly its judgement in the case Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, . I do not, therefore, think that this is a fit case for grant of leave to appeal to the Supreme Court. Hence the leave to appeal to the Supreme Court is rejected.