

V.R. Walvekar and anr. Vs. Gopal Narayan MaraThe and ors.

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Court : Mumbai

Decided On : Jun-18-2003

Reported in : 2004(1)BomCR418; 2003(4)MhLj478

Judge : R.M.S. Khandeparkar, J.

Acts : Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 - Sections 44

Appeal No. : W.P. No. 1593 of 2000

Appellant : V.R. Walvekar and anr.

Respondent : Gopal Narayan MaraThe and ors.

Advocate for Def. : A.S. Peerzada, Adv. for respondent No. 1

Advocate for Pet/Ap. : T.S. Shetty and ;Pushkar Gadkari, Advs., i/b., T.S. Shetty and Associates

Judgement :

R.M.S. Khandeparkar, J.

1. Heard the learned Advocates for the parties.Perused the records.
2. The petitioners are challenging the judgment and order dated 30-11-1999, passed by the Industrial Court in Revision Application No. 18 of 1997,partly

allowing the revision application and quashing and setting aside the order passed by the Labour Court on 19-2-1996 in Complaint No. 333 of 1987. By the said order dated 19-2-1996, the complaint filed by the respondent alleging that the petitioner-company was engaged in unfair labour practices under Item 1(a), (b), (d), (f) and (g) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as 'the said Act', was dismissed by the Labour Court on account of failure on the part of the respondent to prove the allegations therein. By the impugned order, the Industrial Court, while setting aside the said order, has held that the petitioners have committed unfair labour practices under Item 1(g) of Schedule-IV of the said, Act and, therefore, directed the petitioners to appoint the complainant within three months from the date of passing of the order. The impugned order is sought to be challenged mainly on the ground that the same is totally in contravention of the powers of the revisional Court under Section 44 of the said Act.

3. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the Industrial Court while being fully conscious of the scope of revisional powers under Section 44 of the said Act, had proceeded to consider whether the applicant in the revision application i.e., the respondent therein, has been able to disclose the error apparent on the face of the record so as to warrant interference in the order passed by the Labour Court, however, thereto merely by referring to the list of reported decisions which had been relied upon by the Labour Court while dismissing the complaint, jumped to the conclusion that interference by the Industrial Court was necessary 'as there are some vague allegations in the charge sheet' and thereafter proceeded to re-appreciate the evidence by itself. However, in the process of appreciation of the evidence rather than considering the materials placed before the Labour Court in that regard, merely referred to the charge sheet and holding that there is discrepancy between the English translation and the Marathi version of the charge sheet, and held that the Labour Court ought to have applied its mind to the charge sheet in English as well as in Marathi and has observed that the allegation of setting fire, as alleged in the Marathi version of the charge sheet, without any evidence in support thereto, was baseless and without substance and that therefore on 'humanity ground' if the employment is offered to the

respondent a fresh it would not cause irreparable loss to both the parties and therefore set aside the order of the Labour Court. Apparently, the revisional Court has exercised its jurisdiction not only arbitrarily but in total breach of procedure. It is to be noted that before deciding to re-appreciate the evidence on record, it was necessary for the revisional Court to ascertain whether the findings arrived at by the Labour Court were either contrary to the materials on record or disclosed perversity. The revisional Court has not done any such exercise in the matter in hand. Merely by referring to the charge sheet and comparing the Marathi version thereof with the English translation of the same, has jumped to the conclusion that the same justifies interference by the revisional authority in the order passed by the Labour Court. The records apparently disclose that the charge sheet furnished to the workman in English did not disclose the allegation of any incident of setting of fire to the property. Undisputedly, the reply to the charge sheet was submitted by the workman in the English language. There was no grievance of any prejudice having been caused to the workman on account of the alleged discrepancy in the charge sheet in the English language as compared to its Marathi version. Being so, unless the respondent in the revision application had disclosed either perversity in the findings arrived at by the Labour Court or the same being contrary to the materials on record, which could have justified interference in the order of the Labour Court, there was no justification for the Industrial Court to set aside the order passed by the Labour Court which apparently disclosed detailed analysis of the materials on record and proper application of mind after taking into consideration the various decisions relevant to the point in issue. Being so, it is apparent that the revisional authority has exceeded its jurisdiction while dealing with the matter under Section 44 of the said Act and that itself justifies interference by this Court in the impugned order and to set aside the same.

4. The impugned order also does not disclose any analysis of the material on record, though the revisional Court has observed in para 17 that it would re-appreciate the evidence. Apparently, thereafter, while setting aside the order passed by the Labour Court, without any appreciation of the evidence, the Industrial Court has arrived at the conclusion that the complainant had established the act of unfair labour practices on the part of the petitioners

under Item 1(g) of Schedule-IV of the said Act vis-a-vis the employee. The said finding, therefore, is totally perverse and cannot be sustained.

5. In the course of the hearing, a grievance was made by the learned Advocate for the respondent that even though the services of the respondent were sought to be terminated, the necessary terminal benefits have not been paid to the respondent. The learned Advocate for the petitioners, however, has fairly submitted that as per the calculations made by the petitioners, they are ready and willing to pay the same and has in fact handed over to the Advocate for the respondent four cheques in that regard, all dated 17-6-2003 and drawn in the name of the respondent. One of such cheques is for the sum of Rs. 5,303/-, drawn on State Bank of India, being the amount payable towards the privilege leave and sick leave, another cheque for the sum of Rs. 71,371/-, drawn on Grindlays Bank, being the contribution from pension fund as the employer's share, the third one for the sum of Rs. 15,691, drawn on State Bank of India, being the amount of gratuity and the fourth for the sum of Rs. 66,535.50, drawn on Standard Chartered Grindlays Bank, towards the contribution by the respondent to the provident fund (employees' account) as well as the interest thereon. All these cheques are handed over to the learned Advocate for the respondent, who has received the same without prejudice to the rights of the respondent, also while making grievance about the fact that the amount paid does not include the interest payable on the dues. The learned Advocate for the petitioners has also placed on record the statement of account disclosing the amount due and payable and copy thereof has also been furnished to the Advocate for the respondent. The said amount having been received by the Advocate for the respondent without prejudice to the rights of the respondent, it is not necessary for this Court to deal with the said issue any further in this matter. Suffice to observe that the amount, as disclosed from the statement of account filed by the petitioners, stands paid to the respondent. Needless to say that the cheques are subject to realisation. The respondent is required to issue proper receipts in relation to each of the cheques drawn in his favour by the petitioners and to forward the same to the petitioners.

6. The learned Advocate for the petitioners states that the petitioners had deposited a sum of Rs. 6,479/- in the Industrial Court towards the wages

payable to the respondent. In view of the petitioners having paid the terminal dues as per their calculations submitted today, and considering the request by the learned Advocate for the petitioners to permit the said amount of Rs. 6,479/- deposited by them to be withdrawn, I do not find any justification to reject the said prayer. Needless to say that the withdrawal of Rs. 6,479/- would not in any way prejudice the respondent as the amount paid today towards the terminal benefit has been accepted by the learned Advocate for the respondent without prejudice to the rights of the respondent. Accordingly, the petitioners are permitted to withdraw the said amount of Rs. 6,479/- deposited by the petitioners with the Industrial Court at Mumbai. The Industrial Court to do the needful on the petitioners approaching for withdrawal of the same.

7. For the reasons stated above, the impugned order passed by the Industrial Court is liable to be quashed and set aside and is accordingly hereby quashed and set aside while confirming the order passed by the Labour Court. The rule is made absolute accordingly with no order as to costs.

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