

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) Nos. 7417/2007**

Judgment reserved on: 04.05.2009

% Judgment delivered on: 19.05.2009

M/s Brawn Pharmaceuticals Limited Petitioners
Through: Mr. HK Chaturvedi & Mr.B.K.Dash,
Advocates

versus

Ramu Pokhrel & Ors. Respondents
Through: Mr.K.C.Dubey, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

*

1. By way of this petition filed under Arts. 226 & 227 of the Constitution of India, the petitioner seeks quashing the award dated 30/11/2006 passed by the learned Labour Court.

2. The brief conspectus of the facts as set out in the petition are as under:

The petitioner was a small manufacturer of pharmaceutical products upto September, 1999 in its factory situated at W-11, Okhla Industrial Area, Ph.II, New Delhi-110020. The respondent Nos. 1 to 3 were employed with the petitioner as helper, packer and helper respectively vide their employment contracts dated 25.11.88, 1.2.91 and 1.10.90. All of them were unskilled workers and wage of Rs.565/- per month was fixed for them at the time of their appointment. The terms and conditions of the contract were read, understood and accepted by the respondents before taking their respective appointments with the petitioner. The Manufacturing activities of the petitioner continued upto September, 1999. Due to severe competition in the pharmaceutical industry and in view of acute shortage of raw materials and production orders, the petitioner, being a small manufacturer, found it difficult to sustain in the pharmaceutical industry. Under the circumstances, the petitioner was forced to close down its manufacturing activities after following the due process of law. The aforesaid situation compelled the petitioner to lay off the employees/workers in terms of the procedure laid down in

the industrial dispute Act, 1947, read with the conditions of the respective employment contracts with the workers. In the circumstances, more than 35 workers preferred to amicably settle their claims with the petitioner and some of them preferred to take alternative employment. However, the respondents, with malafide intentions preferred to launch legal battle against the petitioner instead of complying with the requests of the petitioner. The respondents refused to accept the alternative employment and did not present themselves for work at the alternate establishments at the appointed time or thereafter. On the other hand, the respondents made an illegal demand, which was beyond the capacity of the petitioner to fulfill. The respondents, with malafide intention preferred to raise an industrial dispute before the Conciliation officer under section 12 (4) of the Industrial Disputes Act, 1947, which was subsequently referred for adjudication before the Ld.Labour Court. The Ld. Presiding officer of the Labour Court passed the impugned award dated 30.11.2006 against the petitioner on the grounds and (i) the petitioner did not obtain the permission of the appropriate Govt. before laying off the employees and only intimation was given to the authorities regarding the decision taken by the management for lay-off and thus the provisions of Section 25M of the Industrial Dispute

Act, 1947 were not followed by the petitioner (ii) transfer or offer for alternative employment from Okhla to Ghaziabad is not covered in the explanation of section 25M of the Industrial Dispute Act. In view of the aforesaid findings, the Ld. Labour Court held that services of the respondents were illegally terminated by the petitioner and directed to pay compensation of Rs.75,000 to respondent no.1 and Rs.70,000/- to respondent no.2&3 each. Being aggrieved by the impugned award dated 30.11.2006 passed by the Ld. Labour Court, the petitioner has preferred the present Writ Petition.

3. Mr. H.K. Chaturvedi counsel for the petitioner urged that the tribunal failed to appreciate that the lay-off of the respondents was not intentional, whimsical, arbitrary or pre-planned but it was due to severe competition in the Pharmaceutical industry and non-availability of raw materials and production orders due to which the petitioner being a small manufacturer, found it difficult to sustain in the market and was compelled to close down its manufacturing activities resulting in the situation of lay-off of its about 35 employees. The counsel maintained that the statutory requirements regarding lay-off and decision of transfer of the respondents was duly intimated to the respondents as well as the Govt. authorities for necessary permission.

The counsel submitted that as per S. 25 M (5) of the I.D. Act if the Govt. fails to communicate the order granting/refusing the permission sought under S. 25-M within the stipulated period of 60 days then the permission is deemed to have been granted on the expiry of the 60th day. The counsel also contended that by virtue of S. 25-C of the I.D. Act and pursuant to the employment agreement between the petitioner and the respondents, no compensation is payable to the respondents and the tribunal erred in not considering the same. The counsel contended that the tribunal failed to appreciate that the respondents were neither terminated nor were forced out of their services by the petitioner and had it been so, the petitioner would not have offered alternate employments to the respondents, in terms of Explanation to S. 25-M of the ID Act, which offer was rejected by them, which in itself disentitles them for compensation. The counsel also pointed out that the tribunal erred in observing that the transfer of the respondents to Ghaziabad office was not covered under Explanation to S. 25-M of the ID Act. He urged that the respondents did not prove or bring on record any cogent evidence to prove that they were retrenched from their services. The counsel also maintained that the tribunal erred in not appreciating the financial difficulties and huge accumulated losses suffered by the petitioner due to closure of

its manufacturing activities, while awarding such an exorbitant amount of compensation to the respondents despite their refusal to accept alternative jobs. Grant of any amount would result in unjust enrichment of the respondents and would be prejudicial to the interest of the petitioner, the counsel contended. The counsel further submitted that out of 35 employees only these three respondents preferred legal proceedings while others amicably settled the matter with the petitioner and some even took up alternate jobs offered by the petitioner. The counsel contended that Chapter V-B of the ID Act is not applicable to the petitioner since the strength of the workmen employed with the petitioner was approximately 50 only at the relevant time.

4. Per Contra, Mr. K.C. Dubey, counsel for the respondents refuted the contentions of the counsel for the petitioner and submitted that the award passed by the tribunal is in compliance with the relevant legal provisions and the present petition should be outrightly rejected. The counsel averred that although, the labour court ought to have awarded full back wages with reinstatement, but still the respondent did not assail the said award due to their financial hardship. The counsel urged that the petitioner has raised several additional facts to

make out a case, which was not even set up before the tribunal. The counsel contended that the main issue before the tribunal was that whether the workmen were laid off or retrenched as per law and whether the proposed transfer was proper. It was not the case of the petitioner as to whether the provisions of the employment agreement were violated or not. The counsel pointed out that, be that as it may be, any terms and conditions imposed on the workman contrary to the statutory provisions are null and void and the management cannot misuse transfer as a colourable exercise of the power to terminate the services of the workman. The counsel averred that the respondents are out of employment and the present petition filed by the management is just for causing continuous harassment to the respondents. The counsel maintained that the petitioner did not comply with the legal requirements for closing down their establishment as provided under S. 25 O of the I.D. Act. The counsel urged that the permission is essentially to be sought from the proper authorities and for violation of same the award has been rightly passed against the petitioner. The counsel relied on following judgments in support of his contentions:

(a) Jaswant Singh Gill vs. Bharat Coking Coal Ltd. & Ors. Vs. – (2007) 1 SCC 663;

(b) Maruti Udyog Ltd. vs. Ram Lal & Ors. – (2005) 2 SCC 638;

(c) Uttranchal Forest Development Corporation vs. M.C. Joshi – 2007 (3) Scale 545; and

(d) Lal Mohd. & Ors. Vs. Indian Railway Construction Co. Ltd. – AIR 1999 SC 355.

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner raised the contention that the tribunal erred in applying Chapter V-B in the facts of the instant case as approximately about 50 persons were employed by the petitioner and therefore, provisions of S. 25-C ID Act were more appropriate. It is a question of fact, whether in the instant case as approximately about 50 persons were employed by the petitioner or not and law is well settled that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by manifest or apparent error of law. In this regard in

Harbans Lal v. Jagmohan Saran, (1985) 4 SCC 333, the Hon'ble

Apex Court observed as under:

5. We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence. The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business. The finding by both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. **The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court.** When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

7. Further in **Calcutta Port Shramik Union v. Calcutta River Transport Assn., 1988 Supp SCC 768**, the Hon'ble Apex Court observed as under:

10. The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. **In all such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds.** Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

8. It cannot be doubted that the entire scheme of the I.D. Act assumes that there is in existence an industry, and then proceeds on to provide for various steps being taken, when a dispute arises in that industry. Thus, the provisions of the Act relating to lock-out, strike, lay off, retrenchment, conciliation and adjudication proceedings, the period during which the awards are to be in force have meaning only if they refer to an industry which is running and not one which is closed.

9. The Hon'ble Apex Court in **Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union**, 1956 SCR 872, explained the concept of labour legislation in following terms:

In *Burn and Co. Ltd., Calcutta v. Workmen* 3 this Court observed that the object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these objects again can have their fulfilment only in an existing and not a dead industry. The view therefore expressed in *Indian Metal and Metallurgical Corpn. v. Industrial Tribunal, Madras* and *K.M. Padmanabha Ayyar v. State of Madras*¹ that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would, as held in *K.M. Padmanabha Ayyar v. State of Madras*², fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises — if one such can be conceived — after the closure of the business between the quondam employer and employees.

10. Before dealing with the contentions of the parties it would be worthwhile to reproduce Sections 2 (kkk) and 25-M of the ID Act, which are as under:

(kkk) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched;

Explanation : Every workman whose name is borne on the muster-rolls of the industrial establishment and who presents

himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause :

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment, then, he shall be deemed to have been laid off only for one half of that day :

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

25M. PROHIBITION OF LAY-OFF. - (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter, or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

(10) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation : For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

11. Chapter V-A of the Act relates to lay-off and retrenchment and Chapter V-B relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. In other words, Chapter V-A deals with the general provisions relating to lay-off and retrenchment, while special provisions have been made for certain establishments covered by Chapter V-B. Lay off owing to reasons mentioned in S.2 (kkk) when resorted to in contravention of S.25-M is illegal and punishable under S.25Q of the I.D. Act.

12. Explaining the purpose of seeking approval from the appropriate authority under the aforesaid provision, the Hon'ble Apex Court has observed as under in **Papnasam Labour Union v. Madura Coats Ltd., (1995) 1 SCC 501:**

18. In our view, the aforesaid observations in upholding the validity of Section 25-N squarely apply in upholding the validity of Section 25-M. It is evident that the Legislature has taken care in exempting the need for prior permission for lay-off in Section 25-M if such lay-off is necessitated on account of power failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny is called for. There may be various other contingencies justifying an immediate action of lay-off but then the Legislature in its wisdom has thought it desirable in the greater public interest that decision to lay-off should not be taken by the employer on its own assessment with immediate effect but the employer must seek approval from the authority concerned which is reasonably expected to be alive to the problems associated with the industry concerned and other relevant factors, so that on scrutiny of the reasons pleaded for permitting lay-off, such authority may arrive at a just and proper decision in the matter of according or refusing permission to lay-off. Such authority is under an obligation to dispose of the application to accord permission for a lay-off expeditiously and, in any event, within a period not exceeding two months from the date of seeking permission. It may not be unlikely that in some cases an employer may suffer unmerited hardship up to a period of two months within which his application for lay-off is required to be disposed of by the authority concerned but having undertaken a productive venture by establishing an industrial unit employing a large labour force, such employer has to face such consequence on some occasions and may have to suffer some hardship for sometime but not exceeding two months within which his case for a lay-off is required to be considered by the authority concerned otherwise it will be deemed that permission has been accorded. In the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of Section 25-M cannot be held to be arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed.

19. It may be pointed out that sub-section (3) requires recording of reasons for the decision taken, and a copy of the order is required to be communicated to all concerned. Further, by force of sub-section (4), permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period. Procedural reasonableness has been taken care of by these provisions. As regards substantive reasonableness, we feel satisfied, as the power in question would be exercised by a specified authority and as it can well be presumed that the one to be specified would be a high authority who would be conscious of his duties and obligation. If such an authority would be informed that lay-off is required because of, any sudden breakdown of machinery, which illustration was given by Dr Ghosh to persuade us to regard the restriction as unreasonable, we have no doubt that the authority would act promptly and see that the establishment in question is not put to loss for no fault on its part. As every power has to be exercised reasonably, and as such an exercise takes within its fold, exercise of power within reasonable time, we can take for granted that the statutory provision requires that in apparent causes (like sudden breakdown) justifying lay-off, the authority would act with speed.

13. The purpose of seeking approval is that the government is properly satisfied that the lay-off was not motivated or unjustified but such lay-off had to be resorted for compulsive circumstances beyond the control of the Company and its Management. If the Company became sick beyond revival and all attempts to revive have failed and the Company is no longer in a position to manage the factories and productive units then there can be no dispute to the bona fide lay-off resorted to by the management.

14. Although, S.25-M(5) mandates that if the appropriate Govt. does not reply to the application for permission sought within 60 days, then

the permission is deemed to be granted from the date of the application. But for operation of sub-section (5) it is essential that an application in the prescribed format is made to the appropriate government.

15. Sub-section (2) of Section 25-M clearly mandates that an application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. In the instant case, the management did not bring on record any evidence to prove that it had followed the mandate of the said sub-section and in the absence of the same; I am of the view that the tribunal has rightly passed the award in favour of the respondents and against the petitioner.

16. Respondents no.1 & 3 were transferred vide order no. BPI /PO/1999 dated 28.9.99 to Ghaziabad and respondent no.2 was transferred vide order no. Ref.BPL/PO/1999-2000 dated 28.9.99 to Asaf Ali Road and the transfer of respondent no.2 is clearly not hit by the explanation to S.25-M, ID Act. But since the petitioner management did not follow the procedure as mentioned in S.25-M(2) of the ID Act as

discussed above, therefore, the award passed by the tribunal does not suffer from any infirmity.

17. The conduct of the petitioner smells of some foul play and the petitioner has not put forth any cogent evidence or reasoning to believe its cock and bull story rather it raised new pleas before this court.

18. The Judgments cited by the parties do not have bearing in the facts of the present case and therefore, are of no assistance to them

19. In view of the foregoing discussion, I do not find any infirmity in the award.

20. The petition is devoid of any merit and therefore, is dismissed.

May 19 ,2009

KAILASH GAMBHIR, J