

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2908 OF 2015

Zee News Ltd.

... Petitioner

v/s

Smt. Sonika Tiwari & ors.

... Respondents

Mr.V.P. Sawant along with Ms.Malvika Kalra and Ms.Neha Prashani
i/by ALMT Legal.

Ms.Jane Cox along with Rajmohan Amonkar for Resp. No.1.

CORAM: N.M. JAMDAR, J.

DATED : 7 SEPTEMBER 2015

ORAL ORDER:

By this petition, the Petitioner challenges the orders passed by the Labour Court, Mumbai and the Industrial Court, Mumbai, dated 11 April 2014 and 13 February 2015, respectively, granting interim relief to the Respondent No.1 in the complaint filed by her.

2. Respondent No.1 was working as a Reporter with the Petitioner, which is engaged in the business of media and broadcasting. Her services were terminated by the Petitioner on 19 August 2012. She filed a Complaint (ULP) No.220 of 2012 in Labour Court, Mumbai, complaining of unfair labour practices under Item 1(b), (d),(e) & (f) of Schedule IV of the M.R.T.U. &

P.U.L.P. Act, 1971. According to her, she was working with the respondents for more than two years, however, she was not given benefits due to her. She resumed duty on 7 May 2012 after her marriage and was surprised to receive a show cause notice on 30 March 2012. On 7 May 2012, respondent No.3 (as numbered in the complaint) was at the relevant time working as Manager, Human Resources. According to the Respondent No.1, she became pregnant in the month of June 2012 and she intimated the said fact to Respondent No.3 on 17 July 2012. Thereafter she received a letter from Respondent No.2 stating that her performance appraisal report was not upto the mark. On 28 July 2012, she received a letter from respondent No.2 for training a programme. It was her case that some time in August 2012 due to extreme stress she fainted and was rushed to the hospital. She submitted a leave application on 3 August 2012 however her leave application was refused. Thereafter her services were terminated on 19 August 2012. On the basis of these allegations, respondent No.1 filed the complaint alleging unfair labour practices. Respondent No.1 also took out an application for interim relief.

3. The petitioner filed its say and contested the complaint and the application. According to the petitioner, respondent No.1 was not a workman and no relief could be granted to her. It was contended that the performance of respondent No.1 was not good and she was given warnings and memos to that effect. In spite of reminding her, her performance did not improve. It was contended

that the case made out by Respondent No.1 of harassment, was bogus. It was also contended that, after receiving a notice to improve her performance, an application was made on the ground that she was unwell so as to avoid further responsibility. It was contended that ground of pregnancy was put forth as an excuse to cover the unsatisfactory work.

4. The Labour Court held that services of the Respondent No.1 could not have been terminated in view of the provisions of the Maternity Benefit Act, 1961, so also her termination was in violation of Section 28F of the Industrial Disputes Act. The Labour Court accordingly disposed of the application for interim relief by directing the Petitioner to allow the Respondent No.1 to resume duty or deposit 50% of the wages every month till disposal of the complaint on merits. The Petitioner thereafter challenged the order passed by the Labour Court by way of Revision Application No.50 of 2014. The Revisional Court, after considering the submissions, held that *prima facie* nothing is shown that Respondent No.1, who was working as a Reporter, was doing any supervisory work. The Industrial Court also confirmed the finding of the Labour Court that, *prima facie*, the termination of Respondent No.1 was in violation of the legal position, particularly, the Maternity Benefit Act, 1961 and accordingly by order dated 13 February 2015, dismissed the revision application.

5. As far as the contention that Respondent No.1 is not a

'workman', the Industrial Court has rightly observed that nothing is placed on record by the Petitioner to show that Respondent No.1 was performing any supervisory duties. Admittedly, Respondent No.1 was employed as a Reporter and unless contrary material was produced by the Petitioner to show that she was not a workman, no error was committed by the Courts below in proceeding on the basis that Respondent No.1 was a workman.

6. Mr.Vishwajeet Sawant, learned counsel for the Petitioner submitted that, at an interim stage final relief has been granted to Respondent No.1, which is not permissible. Mr.Sawant relied upon the decision of the learned Single Judge of this Court in the case of *Executive Engineer, M.S.E.B. Morshi & anr. v/s Industrial Court, Amravati & anr.*, reported in *2001 (3) Mh.L.J. 320*. He also relied upon the decision of the Apex Court in the case of *Ramakant Rai (1) & anr. v/s Union of India & ors.*, reported in *(2009) 16 SCC 565*, to contend that, even assuming case is made out, it is not necessary that reinstatement needs to be granted in every case and compensation can be awarded and, therefore, such interim relief should not have been granted.

7. It is not impermissible in all situations to grant final or substantive relief at an interim stage. It will depend on facts of each case. In the case of *Executive Engineer* (supra), the learned Single Judge found that there were no exceptional circumstances in that case and, therefore, had set aside the order of the Industrial

Court granting final relief at an interim stage. Therefore, it will have to be seen whether circumstances of present case warranted grant of such a relief. Even otherwise, the Labour Court has not finally allowed the complaint at interim stage as contended. The Labour Court has directed the Petitioners to allow Respondent No.1 to resume on duty from the date of the order and there is no direction to pay back wages. The Petitioner is also given an option in case the Petitioners do not desire to allow the Respondent No.1 to resume on duty, to deposit 50% of the wages till the disposal of the complaint. There is no order as to back wages. The contention of the Respondent No.1 that she is in financial difficulty, has not been countered by the Petitioners.

8. The relief granted by both the Courts below is founded on the provisions of the Maternity Benefit Act, 1961. Mr.Sawant submitted that respondent No.1 had not invoked the provisions of the Act of 1961 expressly either in her communication or in her complaint and, therefore, findings rendered by both the Courts below are not tenable. The argument cannot be accepted. Even in the reply the Petitioner has not disputed that Respondent No.1 had become pregnant at the relevant time. In fact, it is the case of the Petitioners that the pregnancy is put-forth for an excuse to cover up the lapses committed by Respondent No.1 at work. The Respondent No.1 was pregnant when the order of termination was issued.

9. As regard the allegations of lapses in duty, Respondent No.1

herself had asked for a disciplinary enquiry with a female member as it was her case that Respondent No.3 was harassing her and all the allegations were baseless and the Petitioner had, in fact, given her increments for her good work. It is contended by Mr.Sawant that the termination is not based on misconduct and, therefore, no enquiry was necessary. According to him, as a consequence of refusal of leave, the Respondent No.1 ought to have joined the service and considering these facts the services of the Respondent No.1 were terminated, as provided in her appointment order. Therefore, as per the argument of the Petitioner, the order will have to be read as a discharge simplicitor.

10. In this context, the provisions of Maternity Benefit Act, 1961 need to be noticed. Sections 10 and 12 of the said Act read as under :

Sec.10: Leave for illness arising out of pregnancy, delivery, premature birth of child (miscarriage, medical termination of pregnancy or tubectomy operation) - A woman suffering from illness arising out of pregnancy, delivery, premature birth of child (miscarriage, medical termination of pregnancy or tubectomy operation) shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under Section 6, or, as the case may be, under Section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

Sec.12: Dismissal during absence of pregnancy. - (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on

such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2)(a) *The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:*

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) *Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.*

(c) *Nothing contained in this sub-section shall affect the provisions contained in sub-section (1)."*

Section 12 makes it unlawful for employer to discharge or dismiss a woman employee during her pregnancy.

11. Though it is correct that a notice is contemplated under Section 6 of the Act of 1961, while construing the provisions of the Act of 1961, it needs to be kept in mind that it is a welfare

legislation and is required to be construed accordingly. Respondent No.1 had placed on record a medical certificate of a gynecologist mentioning that she was taking treatment in view of her pregnancy and even from the reply of the Petitioners the petitioners were aware of this position. Therefore, if a relief is granted by both the Courts on the ground of breach of Section 12, in the exercise of equitable jurisdiction, I am not inclined to take it away merely because there was an irregularity of procedure or that a particular provision of law was not mentioned in the communication in the complaint.

12. The right of protection of service during the maternity period is essential to ensure equality at the workplace for a woman employee. The right of maternity protection is envisaged under various International Human Rights and Labour Conventions, and it is statutorily implemented in India through the Act of 1961. There is a growing increase in the women's participation at the workplace, especially in the urban areas. There is also an increase in the awareness to provide conducive working environment for women. Strict implementation of the Act, which ensures health and stress free environment for a working woman cannot be emphasized enough. Arbitrary termination of service during the maternity period, such as the present one, not only affects the concerned woman employee, but creates a sense of despair and disillusionment amongst the working women in general. Keeping the underlying object of the Act of 1961, in mind both the Courts

below have rightly passed the impugned orders, treating the termination as an exceptional circumstance, warranting an interim relief at this stage.

13. Apart from the provisions of the Act, 1961, both the Courts have *prima facie* found that even provisions of Section 25F of the Industrial Disputes Act are violated. Ms.Jane Cox for the Respondent No.1 relied on the decision of the Apex Court in the case of ***Punjab Land Development & Reclamation Corpn. Ltd., Chandigarh v/s Presiding Officer, Labour Court, Chandigarh & ors.***, reported in ***(1990) 3 SCC 682***, to contend that even discharge simplicitor, which is the case of the Petitioner, attracts the provisions of Section 25F of the Industrial Disputes Act. In view of this decision, therefore, in my opinion, both the Courts below did not commit any error in recording a *prima facie* finding that the provisions of the Maternity Benefit Act, 1961 and the Industrial Disputes Act, were breached.

14. Mr.Sawant submitted that there was no discussion by the Industrial Court while disposing of the Revision. Keeping in mind the parameters of Section 44 of the Industrial Disputes Act, the Industrial Court has confirmed the order of the Labour Court, at the same time, has rendered on its own finding. It cannot be said that the order of the Industrial Court suffers from non-application of mind.

15. Taking over all view of the matter, I do not find that the impugned orders have resulted in any failure of justice. Taking away the relief granted to the Respondent No.1 would other hand result in failure of justice. The writ petition therefore cannot be entertained and is rejected.

16. At this stage, learned counsel for the Petitioner seeks extension of the ad-interim order. The same is extended for a period of five weeks, on the condition that the Petitioner deposits wages as directed by the Labour Court of the period of one month, within a period of one week from today, with the Registry of this Court.

(N. M. JAMDAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.