Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1337 OF 2000.

NRC Limited
a Public Limited Company
registered under the Indian
Companies Act, 1913, having its
Registered Office at Ewart House,
Homi Modi Street,
Mumbai-400 001 and Works at
Mohone-421 102, District Thane. .. Petitioner

Vs.

Mr.Baliram Gangaram Tare.
Atali, Kalyan,
District : Thane .. Respondent

Along with
CIVIL APPLICATION NO. 5795 OF 2000.

Mr.Baliram Gangaram Tare.
Atali, Kalyan,
District : Thane .. Applicant
Vs.
N R C Limited
Mohone-421 102
District Thane. .. Respondent

Along with
WRIT PETITION NO. 1213 OF 2000.

NRC Limited
a Public Limited Company
registered under the Indian
Companies Act, 1913, having its
Registered Office at Ewart House,

Homi Modi Street,
Mumbai-400 023 and Works at
Mohone-421 102, District Thane. .. Petitioner

Vs.

Mr.Eknath Dhondiba Salve
Takshashila Nagar,
Near HN Bus Stop, Galegaon,
Mohone – 421 102,
District : Thane .. Respondent

Along with
CIVIL APPLICATION NO. 4901 OF 2000.

Mr.Eknath Dhondiba Salve
Takshashila Nagar,
Near HN Bus Stop, Galegaon,
Mohone – 421 102,
District : Thane .. Applicant
Vs.
N R C Limited
Mohone-421 102
District Thane. .. Respondent

Along with

WRIT PETITION NO. 1343 OF 2000.

NRC Limited
a Public Limited Company
registered under the Indian
Companies Act, 1913, having its
Registered Office at Ewart House,
Homi Modi Street,
Mumbai-400 001 and Works at
Mohone-421 102, District Thane. .. Petitioner

Vs.

Mr.Shrimant G. Bansode
M.S.Kurkure Chawl,
Panchasheel Nagar,
Galegaon, Mohone,
District : Thane .. Respondent

Along with
CIVIL APPLICATION NO. 5761 OF 2000.

Mr.Shrimant G. Bansode
M.S.Kurkure Chawl,
Panchasheel Nagar,
Galegaon, Mohone,
District : Thane .. Applicant
Vs.
N R C Limited
Mohone-421 102
District Thane. .. Respondent

Mr.Piyush Shah, for the Petitioner in Writ Petition No.1337 / 2000, Writ Petition No.1213 of 2000 and Writ Petition No.1343 of 2000.

Mr.N.M.Ganguli, for the Respondent in all Petitions and Applicant in Civil Application No.5795 of 2000, Civil Application No.4901 of 2000 and Civil Application No.5761 of 2000.

CORAM: N.M.Jamdar, J.
Wednesday 9 September, 2015

Oral Judgment :

This group of petitions concerns the employees of the Petitioner and the facts in these petitions being identical so also the legal position, they are taken up for disposal together.

2. The Petitioner is a public limited Company registered under the Companies Act. The Respondents were working with the Petitioner-company some time in the year 1969. On 29 May 1989, the Petitioner entered into a settlement with the Maharashtra General Kamgar Union in respect of certain allowances payable. On 31 December 1990 on the expiry of the settlement, union submitted a Charter of Demands. The charge-sheets came to be issued to the Respondents in all these three Writ petitions and an inquiry was held. Pursuant to the inquiry they were held guilty. An application was filed by the Petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1947 for seeking approval of the action taken against the Respondents. It was the case of the Petitioner that the action was taken against the Respondents under the certified standing orders. It was the case of the Petitioner that Respondents were charge-sheeted for various misconducts and acts subversive of discipline. The inquiry officer submitted his report pursuant to which the Respondents were discharged from services paying them 15 days wages of ₹ 4,239 as required under Section 33(2)(b) of the Act.

3. The Respondents filed their reply and contended that the application filed by the Petitioner was liable to be rejected as there was no offer of one month's wages as required under Section 33(2)(b) of the Act. It was contended that one month's wages were ₹6,806 and ₹ 4,239 were 15 days wages.

4. The Industrial Court considered the rival contentions and came to the conclusion that the Petitioner had not paid the amount of one month's wages i.e. 30 days. It was the contention of the Petitioner that there were only 26 working days and therefore, could not claim 30 days wages. However the Industrial Court held that correct amount not being paid the application was liable to be dismissed.

5. The petitions were admitted on 18 April 2000 and interim relief was refused. Thereafter the Petitioner filed Letter Patent Appeal and the Letter Patent Appeal was disposed of by directing the Petitioner to deposit deficit amount of ₹ 1,200 in each of these petitions and interim relief was granted.

6. The learned counsel for the Petitioner submitted that the Tribunal has taken hyper technical view of the matter and merely because the minuscule amount remained to be paid, the entire application under Section 33(2)(b) be rejected. The learned counsel for the Respondents on the other hand submitted that even assuming the ground on which the application was dismissed is not legal, the Industrial Tribunal has to consider whether the inquiry was fair and proper and therefore, at the most the matter needs to be remanded back.

7. As regards the contention based on section 33(2)(b) of the Act, the decision of the Division bench of this Court in **S.Ganapathi and others vs Air India and another** – *F.L.R.*

(Bom.H.C.) 1992 (65), needs to be noticed. The relevant passage is reproduced as under :

> *"16. A clear reading of the provisions of section 33(2)(b) of the said Act will indicate, as has been observed by the learned Judges of the Patna High Court, who have reproduced the observations of the Supreme Court in the case of Syndicate Bank Ltd. v. V. Ramnath Bhat, that essentially the payment in question is be made in order to "soften the rigour of unemployment that will face the workman, against whom the order of discharge or dismissal has been passed". This is a provision analogous to some of the requirements whereby termination of an employee is permissible on payment of equivalent of one or more months' salary. <u>What was essentially intended by the Legislature is that one month's salary or wages were required to be paid to the employee concerned. Undoubtedly, this is a mandatory provision and, therefore, will have to be strictly construed, but the enforcement cannot be carried to unreasonable limits and that too in border line cases</u>. We are on a much stronger footing in this case where admittedly there has been substantial compliance with the requirements of the section even according to the case of the appellants. <u>All that the law has provided for is that the employee should not be sent away "empty-handed"</u>. This is only one of the procedural requirements which must be conformed to and as has been rightly observed by the earlier judgment of this Court referred to supra, that <u>if there is marginal shortfall and if it is demonstrated in a given case that it was a bona fide error that the defect is certainly curable</u>. In substance and in principle, therefore, it will have to be held that such a situation cannot be construed as constituting a breach of the mandatory provisions of the Act sufficient to deny approval on this ground alone."*
>
> *(Emphasis supplied)*

8. In view of the observations of the Division bench to the effect that if there is a marginal shortfall and it is demonstrated that it was an error, the defect can be curable and in substance and principle such a situation cannot be construed as constituting a breach of the mandatory provisions of the Act. In the present case the Petitioner has put forth the contention that according to it the wages for 26 days had to be paid and not for 30 days and they were paid. The learned Industrial Court has, without ascertaining whether Petitioner is ready to pay the shortfall of 4 days, straightaway rejected the application. Such approach is contrary to the decision of the Division bench in the case of *S.Ganapathi* (supra).

9. As regards the contention of the learned counsel for the Respondents in respect of remand is concerned, in the reply to the application under Section 33(2)(b), the Respondents did not take up any ground that the inquiry was not fair and proper. The impugned order records the submission of the Petitioners that a detailed inquiry has been held against the Respondents and after following the rules the termination is effected. At that time Respondent did not contend that it was not so. However the only submissions of the Respondents was of non-compliance of Section 33(2)(b) in respect of payment of the amount. Even oral arguments regarding the fairness of enquiry have not been made before the Industrial Court. The learned counsel for the Respondents submitted that it is duty of the Industrial Court to

examine this aspect. However, it is equally the duty of the workmen if it wishes to contend that the inquiry was not fair and proper to put forth such argument so that employer also has an opportunity to deal with the same. The only inference that can be drawn is that the argument was not made because such ground does not exist.

10. Furthermore the time span of this litigation needs to be kept in mind. The event for which the Respondents were charge-sheeted, occurred 20 years ago. The inquiry was completed in the year 1997. Most of the record will now not be available. Respondents have all crossed the age of superannuation.

11. The learned counsel for the Petitioners has placed on record a chart of the amounts due and paid to the Respondents. There appears to be some dispute regarding exact quantum of gratuity to be paid. As regards the gratuity and Provident fund is concerned, the Respondents will be entitled to the amount of gratuity as due and payable and also Provident fund if not already paid. For that purpose, for the purpose of receiving their amount of gratuity, the Respondents can approach the Labour Court Thane, i.e. the competent authority. If such an application for gratuity is made by the Respondents, the authority will decide the same expeditiously and pass a suitable order. The learned counsel for the Petitioners ensures that all cooperation will be given to the competent authority for the purpose of arriving at the correct amount of gratuity.

12. In the circumstances, the Writ petition will have to succeed and accordingly Rule is made absolute in terms of prayer clause (a) in all petitions. No order as to costs.

13. The Respondents are permitted to withdraw the amount deposited by the Petitioners in this Court with accrued interest, if any.

14. With the disposal of the Petitions the Civil Applications do not survive.

(N.M.Jamdar, J.)

“Certified to be true and correct copy of original signed Judgment.”