

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7923 OF 2016

M/s Satish Motors Limited,
Adalat Road, Aurangabad,
Through : Its Director

-- PETITIONER

VERSUS

Shri Syed Ashrafali Syed Maqsadali,
Age-43 years, Occu-Nil,
R/o Abrar Colony, behind Minaj Hotel,
Beed-bye-pass, Aurangabad.

-- RESPONDENT

Mr.T.K.Prabhakaran, Advocate for the petitioner.
Mr.Vinod P.Patil with Mr.A.M.Taksal, Advocates for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/09/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The issue to be decided in this petition is as to whether a cause of action would survive for the Labour Court to exercise jurisdiction U/Item 1 of Schedule IV of the MRTU and PULP Act, 1971, after the respondent employer declares by an affidavit / written say before the Labour Court that there is no oral termination or termination of any kind or that the complainant is not terminated.

3. The respondent is said to have been working with the petitioner/Management at its Automobile Workshop from 1991. On 21/08/2003, he preferred Complaint (ULP) No.135/2003 under Section 28(1) of The MRTU and PULP Act, 1971. An application for interim relief u/s 30(2) was also filed. Contention was that some accountant/Officer of the petitioner orally refused employment to the respondent w.e.f. 20/08/2003 and therefore, it would amount to termination U/Item 1 of Schedule IV.

4. The petitioner/Management filed a written say dated 25/08/2003 which is supported by an affidavit, specifically contending in paragraph No.2 that there is no oral termination or otherwise termination on 19/08/2003 or 20/08/2003. It is stated in paragraph Nos.6 and 7 that the respondent / workman has disobeyed the instructions at his work place on 19/08/2003. He refused to perform his work. In paragraph No.8, it was contended that the respondent had stopped reporting for duties from 20/08/2003 and has rushed to the Court only to evade disciplinary action.

5. The Labour Court did not grant any ad-interim protection to the respondent. However, by order dated 02/09/2003, the Labour

Court directed the petitioner to deposit 3 months wages in lieu of reinstatement and the respondent was given the liberty to withdraw the said amount.

6. It is stated that on 16/09/2003, the petitioner issued the first charge sheet with regard to willful disobedience of the instructions of the Superior. On 18/09/2003, a second charge sheet was issued alleging that the respondent herein was unauthorizedly absent from 20/08/2003. In my view, considering the date of the charge sheet, the allegation of absenteeism would be restricted to 29 days from 20/08/2003 till 18/09/2003. It is stated that after the completion of the domestic enquiry, the respondent was dismissed from service by way of punishment on 18/12/2007.

7. In the light of the above facts, it emerges that after the dismissal of the respondent, the petitioner/Management filed its written statement on the same day before the Labour Court contending that the respondent has now been dismissed from service. Xerox copies of the enquiry proceedings and the order of dismissal was produced.

8. By judgment dated 22/12/2012, the Labour Court dismissed

the complaint by holding that, there is no oral termination as on 20/08/2003, that the employer has denied oral termination as on the first available opportunity through an affidavit dated 25/08/2003, that the workman did not summon or lead evidence of the said accountant whom he claimed had terminated his services and that the workman had not challenged his dismissal dated 18/12/2007.

9. It is noteworthy that the Revision (ULP) No.38/2011 filed by the respondent/workman u/s 44 of the Act before the Industrial Court was allowed by judgment dated 27/06/2012. Since it was an ex-parte judgment, the petitioner had filed Misc.Civil Application No.1/2012 seeking restoration of the revision petition. By order dated 18/10/2013, the Industrial Court rejected the Misc. Application and hence the petitioner had approached this Court in WP No.9843/2013. By judgment dated 01/10/2014, the writ petition was disposed of and the respondent was granted the liberty to call in question his dismissal dated 18/12/2007. The revision petition was remitted to the Industrial Court for a re-hearing.

10. It was after the abovesaid order of remand that the revision petition was reheard by the Industrial Court and upon considering

the rival contentions, the same has been allowed by the impugned judgment.

11. The Grievance of the petitioner is that it had never accepted oral termination on 20/08/2003 and had specifically denied it by an affidavit. It had subsequently intimated the Court that the respondent was dismissed by order of punishment dated 18/12/2007 which was never challenged. It was never the case of the petitioner that the respondent has abandoned service. It is, therefore, prayed that the impugned judgment deserves to be quashed and set aside.

12. The issue before the Industrial Court was with regard to whether the judgment of the Labour Court is perverse or not.

13. The worker had specifically averred oral termination. The Management, though has denied oral termination, had taken a stand that the worker is subjected to a domestic enquiry. It produced copies of the record and proceedings before the Labour Court. The respondent contended that it was a false picture projected by the Management that there is no oral termination, though the respondent was in fact orally terminated.

14. It is also the contention of the respondent that the Industrial Court has rightly found the impugned judgment of the Labour Court to be perverse and erroneous and hence has rightly exercised its jurisdiction u/s 44. Revisional jurisdiction can be exercised the moment perversity is noticed in the judgment of the Labour Court. As such, the respondent should be reinstated in service and thereafter if the petitioner desires to initiate disciplinary proceedings, the same can be done strictly in accordance with the rules and the service conditions applicable.

15. While considering the rival contentions, as noted hereinabove, the issue would be as to whether the Labour Court could exercise its jurisdiction in a complaint of unfair labour practices based on the foundation of oral termination, when the employer specifically denies the factum of termination through an affidavit.

16. In the matter of Ram Singh Vs. J.K.Jute Mills and another. [2002(95) FLR 1058], the Allahabad High Court has concluded in paragraph No.8 as follows :-

“8. Learned counsel for the petitioner has relied upon the case in S.K.Yadav Vs. J.M.A. Industries and others, [1993 (67) FLR 111(SC)]. Similarly, the learned counsel for the employer has

relied upon several decisions. But in view of the admitted facts that the employer themselves have admitted that they have not terminated the services of the concerned workman and his name is still continuing on the rolls of the employer, in my opinion, the labour court has travelled beyond the pleadings of the parties and arrived at the conclusion referred to above. Once the employer have admitted that they have not terminated the services of the concerned workman, the labour court should have stopped there and answered the reference that since, it is the employers' own case that they have not terminated the services of the concerned workman, therefore, there is no necessity of adjudicating whether his services were terminated or not and whether the termination is legal and justified or not?"

17. Complaints of termination, discharge, dismissal, retrenchment including forcible resignation and otherwise termination, would fall under Item 1 of Schedule IV of the 1971 Act. A complaint would be maintainable even against a proposed termination in view of the Hon'ble Supreme Court's judgment in the matter of Hindustan Lever V/s Ashok Vishnu Kate, (1995) 6 SCC 326.

18. Item 1 of Schedule IV reads as under :-

"1. To discharge or dismiss employees -

(a) by way of victimisation ;

(b) not in good faith, but in colourable exercise of

employer's rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegation of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

19. Section 7 of the Act of 1971 empowers the Labour Court to deal with complaints falling under Item 1 and Section 30 of the Act empowers it to pass consequential orders. Section 8 and 9 pertain to appointment of Investigation Officer and his duties. Section 7, 8 and 9 read as under :-

"7. Duties of Labour Court : *It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.*

8. Investigating Officers : *The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary,*

to assist the Industrial Courts and Labour Courts in the discharge of their duties.

9. Duties of Investigating Officers :

(1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

(2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court."

20. As such, the grievance voiced by a worker should amount to a discharge or dismissal which would include termination of any kind as well as forcible resignation and the said Act should amount to ULP under any of the 7 sub clauses set out below Item 1. The oral termination of the respondent is necessarily required to fall under any of these 7 clauses. Therefore, the effect of a complete denial of

an oral termination on oath, would not attract any of the clauses U/Item 1 and that would preclude the Labour Court from concluding that the act of oral termination would amount to an unfair labour practice.

21. In fact, once the employer has taken a stand before the Labour Court that there is no termination at all and there is no cause of action, the Labour Court could have disposed of the complaint for lack of cause of action. Even otherwise, it could have referred to Order VII Rule 11(a) of the CPC by passing an order for disposing of the said complaint.

22. Under the MRTU and PULP Act, 1971, it has been consistently held that a declaration of ULP can be made, not on apprehension or speculation, but only after the Court concludes that the act has been committed by the employer and it amounts to an unfair labour practice. Upon such declaration, the employer is liable for punishment under Section 25-U of the Industrial Disputes Act. Neither the Labour Court nor the Industrial Court could arrive at such a conclusion without the cause of action being established.

23. Therefore, in my view, after taking on record the affidavit dated

25/08/2003 filed by the petitioner declaring that there is no termination and that there is no cause of action, the Labour Court should have disposed of the complaint by concluding that there is no termination and no cause of action. After passing such an order, the respondent could have then proceeded to report for duties unless there was any other legal impediment. As such, the Industrial Court could not have allowed the revision petition.

24. There is another option for the Labour or Industrial Court to deal with such types of cases of alleged oral termination. Before the employer entered its SAY or WRITTEN STATEMENT, or even after it was entered denying oral termination, it can exercise its powers u/s 28(3) to 28(6) of the MRTU and PULP Act, 1971, which read as under :-

“28(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.

28(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

28(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

28(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.”

25. As such, by issuing appropriate direction to the Investigating Officer and after receiving the report from the Investigating Officer, if it is convinced that there was no oral termination and there is no cause of action, it can pass an order u/s 28(6) thereby disposing of the complaint. Any aggrieved party thereafter could seek remedy against the said order u/s 44 of the Act of 1971.

26. I am equally surprised by the stand of the respondent/workman of not promptly filing an application in the Labour Court pursuant to the affidavit of the petitioner dated 25/08/2003, praying for liberty to join duties. It is vehemently contended by the learned

Advocates for the respondent that the petitioner/Management had taken a false plea of “no termination” and in fact intended to keep the respondent out of employment. This contention could have been proved, had the respondent filed the application for reporting for duties and thereafter if the petitioner would have restrained the respondent, it would have been evident before the Labour Court that a false stand is taken and the intention to keep the respondent out of employment would then have become visible and apparent. Even after the interim direction dated 02/09/2003 was issued by the Labour Court thereby directing the petitioner to deposit 3 months' wages of the complainant in the Court, the respondent accepted the said order and did not express any desire that he would prefer to join duties.

27. Considering the effect of the above fact situation, I find that the Labour Court has rightly dismissed the complaint on the ground that there is no cause of action. Moreover, when the petitioner filed its written statement on 18/12/2007 which is 3 years prior to the judgment of the Labour Court declaring that the respondent has been subsequently dismissed by order of punishment dated 18/12/2007, the respondent should have at least filed a notice for production of documents under Order 11 Rule 14 of the CPC

demanding the production of the said document. So also, the respondent could have amended his complaint and after seeking production of the entire R & P of the domestic enquiry, could have raised a challenge to the domestic enquiry and his dismissal. This was not done by the respondent. Even this Court had granted the respondent the liberty to challenge his purported dismissal dated 18/12/2007 by its order dated 01/10/2014. Even then, the respondent has not chosen to do so.

28. The Industrial Court, after considering the above facts, should have realized that there was no cause of action and the subsequent aspect of dismissal had been brought on record. There was no reason to conclude that the findings of the Labour Court are perverse. It is settled law that one who alleges has to prove. If the respondent / original complainant insisted that he was orally terminated, the onus and burden lay on him to prove oral termination. His case was demolished when the petitioner Management filed an affidavit supporting its written say that there is no termination at all. The Industrial Court, therefore, could not have allowed the revision petition by concluding that the subsequent dismissal is not proved, when it was never challenged before the Labour Court.

29. It emerges from the record that in so far as the disengagement of the respondent is concerned, the petitioner has adopted a stand that firstly, there was no oral termination and secondly, that the respondent was dismissed by way of punishment on 18/12/2007. No stand of abandonment of service has been taken by the petitioner. I find it surprising that despite the above fact situation, the Industrial Court delved upon the aspect of abandonment of service and concluded that it was not proved.

30. In the light of the above, I therefore conclude that when the petitioner/Management had filed its specific affidavit under the signature of the Director of the Establishment stating that there is no oral termination, the Labour Court had lost jurisdiction as there was no cause of action and the complaint should therefore have been dismissed forthwith. Nevertheless, the impugned judgment of the Industrial Court is therefore rendered perverse and erroneous. The same is quashed and set aside and this petition is accordingly allowed. Revision (ULP) No.38/2011, filed by the respondent, stands dismissed. Rule is made absolute accordingly.

31. While parting with this judgment, I must ensure that the doors of the Court should not be closed for the respondent. He would

therefore be at liberty to assail his entire domestic enquiry and the dismissal order dated 18/12/2007 either under the Act of 1971 or under the I.D.Act, 1947. The time spent by him in the Labour Court from 18/12/2007, the Industrial Court and upto this Court till the date of passing of this order, shall be considered as a good ground for condonation of delay, provided such proceedings are initiated within a period of 1 (one) month from today.

32. So also, since the Labour Court had directed the petitioner to deposit 3 months wages in the Labour Court, in the event the said amount is not deposited, the petitioner shall pay the said amount directly to the respondent within 4 (four) weeks from today. In the event, the amount is deposited in the Labour Court and not withdrawn by the respondent / employee, he would be at liberty to withdraw the said amount alongwith accrued interest and without any conditions by submitting self attested tangible evidence of his identity proof in the nature of an election ID card or the Aadhar card and identified by the learned Advocate.

(RAVINDRA V. GHUGE, J.)