

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.3611 OF 2016**

Kalyani Forge Limited

...Petitioner

V/s.

Subhash Sopan Waghmode

...Respondent

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Mr. R.J. Pai, a/w. Mr. Anand Pai and Mr. A.K. Gopalan, i/b. Haresh Mehta & Co., for the Petitioner.

Mr. Nitin Kulkarni, a/w. Mr. Avinash Ram Belge, for Respondent No.1.

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**CORAM : S.C. GUPTE, J.****JUNE 23, 2016****P.C. :**

. The petition challenges an order passed by the Industrial Court at Pune allowing a revision application of the Respondent workman against an order of the Labour Court at Pune in a complaint filed by the Respondent under Section 28 read with item nos. 1(a), (b), (c) and (d) of Schedule IV of the MRTU & PULP Act. By the impugned order, the Revisional Court allowed the Respondent's complaint and directed the Petitioner to reinstate the Respondent in its service as a permanent workman with continuity of service and full back wages from the date of the complaint, i.e. 17 January 2000.

2. The Respondent claims to be working as a machine operator with the Petitioner, appointed with effect from 19 January 1998. It is

alleged by the Respondent that, though he was working as a machine operator in the employment of the company, he was shown as a trainee in the wage slip record. It is alleged that, during the course of his employment on 10 June 1998, the Respondent met with an accident and suffered permanent disability to the extent of 8% and requested the Petitioner, in the premises, to give him light work. It is the grievance of the Respondent that, just before 19 January 2000, when he was about to complete two years of service, after having completed 240 days of service continuously in a year, the Petitioner intended to terminate his services by appointing another employee in his place. In the premises, on the apprehension that he was likely to be wrongly terminated from the service by the Petitioner, the Respondent filed a complaint of unfair labour practice under items 1(a), (b), (c) and (d) of Schedule IV of the MRTU & PULP Act. The Petitioner appeared in the complaint, claiming in its written statement that the Respondent was appointed as a trainee with effect from 19 January 1998, the contract of training being for two years; and that upon completion of the training, the employment would automatically come to an end. The Petitioner also submitted that the Respondent's training was not satisfactory and, in the premises, and even otherwise, he was not entitled to be continued as a permanent employee of the Petitioner. During the pendency of his complaint before the Labour Court, the Respondent also approached the Industrial Court at Pune with a complaint under items 6 and 9 of Schedule IV of the Act, claiming benefits of permanency from the date of his complaint. That complaint was allowed by the Industrial Court at Pune on 6 August 2004, directing the Petitioner to give the benefit of permanency to the Respondent from the date of the complaint. The judgment of the Industrial Court was carried by the Petitioner in a writ petition before this Court. There was an interim stay of

the order by this Court, when the Labour Court considered the present complaint and passed its order, dismissing the complaint. The complaint was dismissed *inter alia* on the ground that the Respondent's appointment with the Petitioner was as a trainee for a specified period, and that after expiry of such specified period, the Respondent had no right to be absorbed in the service of the Petitioner as a permanent employee. The order of the Labour Court was carried in revision before the Industrial Court at Pune. By its impugned order, the Industrial Court allowed the revision application and set aside the order of dismissal of the complaint by the Labour Court. The Industrial Court allowed the complaint and directed the Petitioner to desist from indulging in the unfair labour practice complained of and to reinstate the Respondent, as a permanent workman with continuity of service and full back wages. That is how the present challenge is laid before this Court.

3. It is submitted by Mr. Pai, learned Counsel for the Petitioner, that the Industrial Court, whilst deciding the revision application, has indulged in re-appreciation of evidence, as though it were an appeal court. Relying on the judgment of a Division Bench of our Court in the case of **Vithal Gatlu Marathe vs. Maharashtra State Road Transport Corporation**<sup>1</sup>, it is submitted by Mr. Pai that the provisions of Section 44 of the Act, which provide for the revisional powers of the Industrial Court, are in *pari materia* with Article 227 of the Constitution of India and that, whilst exercising such jurisdiction, the Industrial Court cannot appreciate or re-appreciate the materials on record and, on that basis, overturn the findings of the Labour Court. Learned Counsel also submits that the Labour Court was approached by the Respondent employee on the basis of an

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<sup>1</sup> 1995 I CLR 854

apprehension that his services were likely to be terminated, seeking an injunction against such termination. It is submitted that the Labour Court, having found the apprehension to be unjustified, dismissed the Respondent's complaint. It is submitted that the Industrial Court in revision could not have, in the premises, ordered reinstatement of the Respondent, since such reinstatement could only be on the footing that the services of the Respondent were terminated by the Petitioner. It is submitted, in the first place, that the Respondent's services were not terminated by the Petitioner and, secondly, and in any event, the Petitioner had no opportunity to show cause against setting aside of the termination and direction of reinstatement. Learned Counsel further submits that the Industrial Court had no jurisdiction to order reinstatement of the Respondent employee. It is submitted that assuming without admitting that there was termination of service in the interregnum, it was for the Labour Court to go into such complaint under item 1 of Schedule IV to the Act and not for the Industrial Court to grant any redressal.

4. In the first place, it is pertinent to note that by the time the complaint under item nos. 1(a), (b), (c) and (d) of Schedule IV came before the Industrial Court in revision, in a companion complaint under item nos. 6 and 9 (Complaint (ULP) No.218 of 2000), the Industrial Court had already held the Respondent to be a permanent employee entitled to all benefits of permanency with effect from the date of the complaint. That order was confirmed by this Court in a writ petition, whilst dismissing the Petitioner's challenge to that order. This Court upheld the conclusion of the Industrial Court that the Respondent was not appointed as a trainee, but as a regular employee, as a conclusion within jurisdiction and not liable to be interfered with in the writ jurisdiction of this Court. This Court came to

such finding on the basis of the material available on record implying that the Respondent could not be deprived of the benefits of permanency. This Court, in the premises, granted three months time from 14 August 2014 to implement the order of permanency. When the Industrial Court considered the revision, this order had come into effect and had attained finality. The determination of the Industrial Court, in the premises, that the Respondent was not a trainee of the Petitioner and was entitled to be treated as a permanent employee, cannot, in the premises, be faulted.

5. In so far as the contention of the Petitioner, namely, that the Respondent's services had not been terminated, is concerned, it is pertinent to note that it is the Petitioner's own case that the contract of service with the Respondent was merely a traineeship contract and that at the date of expiry of the training period, i.e. on 19 January 2000, the contract came to an end and he was no longer entitled to continue in service. In the face of this specific plea, the Petitioner's contention that the Respondent was not terminated and was, accordingly, not entitled to an order of reinstatement, cannot be countenanced. Admittedly, the continuation of the Respondent in the Petitioner's service was in pursuance of the interim order of the Court, which has since been continued by this Court and not on the footing that the Respondent was entitled to be continued in service by virtue of the employment contract. In fact, the Petitioner's letter dated 19 February 2005, which is placed on record, makes it clear that after admission of the Petitioner's writ petition by this Court challenging the order of permanency granted by the Industrial Court at Pune, and stay of that order, the Petitioner took a position that it did not have any meaningful work of the Respondent and that the Respondent's work was dispensed with, with immediate effect from 19 January 2005 and that he did not need to report

on duty. In the premises, the impugned order of the Industrial Court, directing reinstatement, cannot be faulted.

6. It cannot possibly be suggested that the impugned order is passed by the Industrial Court in its original jurisdiction. It is passed on a revision application from the Labour Court. It could, in that case, do whatever the Labour Court could have done under Item 1 of Schedule IV.

7. There is no merit in the contention that the original complaint, out of which the present petition arises, was in respect of an apprehension of termination and does not, in particular, challenge any termination already effected. The matter in challenge before the Labour Court in the original complaint is the Petitioner's right to treat the Respondent as a trainee and its refusal to continue him in service after the expiry of the training period. It is on the footing that the Respondent was not a trainee of the Petitioner but a regular employee that the relief has been granted to the Petitioner on this complaint. The Petitioner cannot be said to have had no opportunity to show cause against the case of termination. In the premises, whether before or after termination, the case of the Respondent was of entitlement to permanent service with the Petitioner as opposed to traineeship, whilst the Petitioner's case was of traineeship for a specified period and want of entitlement on the part of the Respondent to be continued in service after the expiry of the training period. The Petitioner has had an ample opportunity to deal with such case and cannot be heard to complain of denial of opportunity to show cause.

8. Mr. Pai also relies on the case of **Punjab Beverages Pvt. Ltd. vs. Suresh Chand & Anr.**<sup>2</sup> That was a case, where the Supreme Court

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<sup>2</sup> Labour Law Journal Vol. II-1978, Supreme Court.

considered whether a workman could maintain an application under Section 33(2) of the Industrial Disputes Act for determination and payment of wages on the basis of his continuation in service, when the employer had actually discharged or dismissed the workman. The Court came to the conclusion that the workman could proceed under Section 33(2) only after a tribunal had adjudicated, on a complaint under Section 33A or a reference under Section 10 of the Industrial Disputes Act, 1947 that the order of discharge or dismissal passed by the employer was not justified and had set aside that order and reinstated the workman. The facts of that case and the conclusion of the Supreme Court drawn on the basis thereof have no bearing on the facts of our case.

9. In the premises, there is no merit in the petition and the same is dismissed. There shall, however, be no order as to costs.

( S.C.GUPTE, J. )