

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Letters Patent Appeal No.212 of 2010
in
Writ Petition No.2563 of 2005 (D)

(The General Manager [Estt.] Maharashtra State Electricity Distribution Co. Ltd., Mumbai and another
vs.
Pramod Singh Hanuman Singh and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri R.E. Moharir, Advocate for the Appellants.
Shri P.D. Meghe, Advocate for Respondent No.1.
Shri V.A. Thakre, A.G.P. for Respondent No.2.
Shri A.D. Mohgaonkar, Advocate for Respondent Nos.3 and 4.

CORAM : B.R. GAVAI & SWAPNA S. JOSHI, JJ.

DATE : 1st APRIL, 2016.

The appeal takes exception to the judgment and order passed by the learned Single Judge of this Court, dated 12/01/2010 in Writ petition No.2563/2005 thereby allowing the writ petition filed by respondent No.1 herein and setting aside the order passed by the learned Industrial Court and allowing the complaint filed by respondent No.1 herein.

The facts, in brief, giving rise to the present appeal are as under :

The parties herein will be referred to as they are referred in the original complaint.

Undisputedly, the complainant is an employee of the original respondents-employer. The employer had invited

application vide Circular dated 29/07/1987 for filling in some posts in the newly started computer section known as EDP Sections at Aurangabad, Poona, Bombay and Nagpur. Undisputedly, the complainant had applied in response thereto for the post of Assistant Computer Operator/Assistant Programmer. Prior to the selection of the complainant, he had also appeared for aptitude test conducted by the employer. After he was successful in the test, on 05/03/1988, he was called at Bombay for training and after completing the training for 45 days, he joined as Assistant Computer Operator/Assistant Programmer at Nagpur with effect from 28/07/1988 in pursuant to the posting order dated 04/06/1998.

It is the case of the complainant, though it is strongly denied by the employer, that since the complainant was not getting the facility of charge allowance and holidays in EDP Section, he along with others had filed some court proceedings and Complaint (ULP) No.324/1990 on 23/04/1990. It is further the case of the complainant that on 23/04/1990, the learned Industrial Court, Nagpur granted an order whereby the complainant and other similarly circumstanced employees were allowed to enjoy the holidays. It is also the case of the complainant, which is again strongly

disputed by the employer, that in view of the order passed by the learned Industrial Court dated 24/05/1990, he was sought to be relieved from the EDP Section showing it to be his repatriation at generation site at Khaparkheda. Being aggrieved by this, Complaint (ULP) No.469/1990 came to be filed by the complainant. Along with the said complaint, an application for interim stay was also filed. The learned Industrial Court vide order dated 02/07/1998 had granted the stay. The same continued to operate till the decision of the complaint, which was decided on 02/02/2005.

Being aggrieved thereby, the complainant had approached this Court. However, while granting rule on 29/06/2005, this Court refused to grant any interim relief to the petitioner-complainant.

At the stage of final hearing, the learned Single Judge has reversed the order passed by the learned Industrial Court and allowed the complaint of the complainant. Being aggrieved thereby, the employer has approached this Court by way of present appeal.

During the pendency of the present appeal, there has been trifurcation of the original Maharashtra State Electricity Board and as such now the General Manager (Establishment), Maharashtra State Electricity Distribution Co.

Ltd., Mumbai and the General Manager (IT), Nagpur have been impleaded as the appellants.

Shri Moharil, learned Counsel appearing on behalf of the appellants submits that the learned Industrial Judge has grossly erred in allowing the petition. He submits that the learned Single Judge has come to the conclusion that the appellants had committed unfair labour practice under Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The learned Counsel also submits that the complainant was already permanent in his original cadre and was only transferred to the EDP cadre as a temporary measure since the said cadre has newly come into existence. He submits that the permanent employee in the original cadre, by no stretch of imagination, when temporarily brought in a different cadre can be made permanent in that cadre. The learned Counsel further submits that the learned Single Judge has also erred to take into consideration that in 1992 itself, the options were sought from the employees, who wanted to continue in the EDP cadre and admittedly the complainant, though was asked, had not given such option. He, therefore, submits that the contention of the complainant that he has been discriminated is *de hors* any merit.

Shri Meghe, learned Counsel for the complainant, on the contrary, submits that the complainant was never asked about the option. On account of the complainant along with the other employees taking recourse to the legal remedies, the employer was irked and as such, as a outcome of the order passed by the learned Industrial Court on 23/04/1990, the complainant was sought to be relieved from the EDP cadre on 24/05/1990 without even three years period being permitted to be completed from 28/07/1988.

While sitting in an appeal against the order passed by the learned Single Judge, the scope for interference by this Court is limited, only the interference would be warranted, if it is found that the view taken by the learned Single Judge is either perverse or impossible. Equally, it will not be possible for this Court to interfere, if two views are possible and merely because this Court even finds the other view to be more probable. That can not be a ground of upsetting the decision of the learned Single Judge.

The main thought of the employer is that though the complainant was called upon to give his option with regard to be retained in the EDP Section, since he did not exercise his option, he was not continued in the EDP

Department. In this respect, a reliance is sought to be placed on the Circular dated 14/07/1992.

It is pertinent to note that the complaint filed by the complainant is filed on 08/06/1990. It is the specific case of the complainant that after completing the probation period in the EDP cadre, he was entitled to be made permanent in the said cadre. It is also the specific case of the complainant that under the leadership of the complainant, various representations were made for payment of charge allowance for the additional work for computer operators etc. It is also the case of the complainant that filing of the complaint by various employees including the complainant was not liked by the employer. It is further the case of the complainant that the learned Industrial Court had passed the order on 23/04/1990 granting stay in favour of the employees. Immediately after a period of one month from the date on which aforesaid order is passed, order dated 24/05/1990 is passed by the employer, which was impugned in the complaint.

It is a specific case of the respondents-employer that though an option was given to the complainant to retain him in the EDP Department, he has not exercised the option. There is no whisper to that effect in the written statement.

Not only that, though the complainant has been put to rigorous cross examination, not even a suggestion to that effect has been put to him in the cross examination.

No doubt that Shri Moharir, learned Counsel for the appellants submits that the Circular dated 14/07/1992 was in the public domain and since the complainant was aware about the Circular, he could have exercised the option. The said contention deserves to be rejected outrightly. It is to be noted that the complaint of the complainant was filed on 08/06/1990. The learned Industrial Court had granted interim relief in favour of the complainant immediately on 26/06/1990, as such when the impugned Circular was issued almost after a period of more than two years thereafter i.e. on 14/07/1992, the complainant was very much in the service of the EDP Department.

It is to be noted that the said Circular provides that the option has to be exercised prior to 31/07/1992. The perusal of the document i.e. Annexure Z-8 at Page No.243, placed on record by the complainant would reveal that employer has accepted the offer given by one Mr. V.R. Dupalliwar as late as on 07/10/1997.

As observed by the learned Single Judge that when the Circular was issued, the employer was very much within

the knowledge of option of the complainant inasmuch as from the prayer made in the complaint, it was clear that the relief claimed by the complainant was for retaining him in the EDP Department. The learned Single Judge has found that if the conduct of the appellants was fair, then since the Circular dated 14/07/1992 was issued during pendency of the complaint, they should have asked the option in the complaint proceedings and the complaint could have itself been disposed of on the basis of the option given by the complainant.

The learned Single Judge while allowing the petition has clearly observed that it was not even the case of the appellants that the work and conduct of the complainant in EDP Section was unsatisfactory.

The learned Single Judge has given sound and elaborate reasons justifying the order passed by him. We are in total agreement with the view taken by the learned Single Judge. In any case, we find that the approach of the appellants has not been fair. On one hand, the appellants are saying that since an option was not given by the complainant, he was not retained in the EDP Department and on the other hand, when the complainant himself had filed a complaint praying for retaining him in the EDP Department, they had not even cared to ask him as to why whether the complainant

was willing to give an option to retain him in the EDP Section. If such an option would have been given, the matter could have been settled way back in the 1992 and this long round of litigation could have been avoided. However, it appears that merely because the Officers of the appellants-employer do not have to pay the legal fees from their own pocket, they have continued with this unwarranted litigation.

We see no reason to interfere with the order passed by the learned Single Judge. The appeal is, therefore, found to be *de hors* any merit, as such is dismissed.

JUDGE

JUDGE

At this stage, Shri Moharil, learned Counsel for the appellants prays for stay to the effect and operation of the order for a period of eight weeks.

Taking into consideration the specific observation regarding the conduct of the employer being unfair, the prayer is rejected.

JUDGE

JUDGE

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