

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6162 OF 2016

Thane Municipal Transport Undertaking
And Anr.

...Petitioners

Versus

Waman Shidva Dhinda

...Respondent

....

Mr.N.R. Bubna, Advocate for the Petitioners.

Mr.Pankaj D. Purway, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 10th JULY, 2017

P.C.

1. Heard Mr.N.R. Bubna, learned counsel for the petitioners and Mr.Pankaj Purway, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, have challenged the judgment and order dated 22.5.2015 passed by the learned Presiding Officer, Second Labour Court, Thane in complaint (U.L.P.) No.42/1010 as also the judgment and order dated 12.1.2016 passed by the learned Member, Industrial Court, Thane (for short, 'Tribunal') in Revision Application (U.L.P.) No.55/2015 and Revision

Application (U.L.P.) No.16/2015. By order dated 22.5.2015, the Labour Court partly allowed the complaint instituted by the respondent, hereinafter referred to as the 'complainant', against the petitioners, hereinafter referred to as the 'respondents', under Section 28 read with Items 1(a)(b)(d)(e)(f)(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short,'Act') and declared that the respondents have engaged in unfair labour practices under Items 1(g) of Schedule IV of the Act. The Labour Court directed reinstatement of the complainant with continuity of service w.e.f. 1.9.2010 with 40% back wages from 4.2.2008. The respondents are given liberty to impose punishment of withholding one annual increment of the complainant. Aggrieved by this decision, the complainant preferred Revision Application (U.L.P.) No.55/2015. The respondents preferred Revision Application (U.L.P.) No.61/2015. By order dated 12.1.2016, the Tribunal dismissed both the Revision Applications. It is against these orders, the respondents have instituted present petition.

3. In support of this Petition Mr. Bubna strenuously contended that the Courts below committed serious error in

allowing the complaint. He submitted that the Courts below held that the respondents did not hold enquiry into the misconduct of habitual absence of the complainant. He submitted that before the Labour Court on behalf of the respondents Shri Maruti Tatoba Kamble, Office Superintendent was examined at Exhibit C-7. He submitted that apart from the complainant, several other employees of the respondents were remaining habitually absent. The respondents, therefore, issued public notice dated 27.8.2010 in 'Thane Vaibhav' and 'Samana' calling upon the employees to join duties within three days. Said notice was published on 28.8.2010. Despite this the complainant did not resume duties. He submitted that from the material on record, the misconduct of the complainant is duly established. He has taken me through paragraphs-11, 12 and 13 of the Labour Court's judgment. He further submitted that the Courts below were not justified in ordering 40% back-wages as the complainant admitted that he was gainfully employed.

4. On the other hand, Mr. Purway supported the impugned orders.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material

on record. It is not in dispute that the respondents did not hold enquiry against the complainant in respect of the misconduct. Before the Labour Court, the complainant examined himself at Exhibit U-9 and produced documents, such as, applications dated 7.2.2008 (Exhibit U-11), 4.2.2008 (Exhibit U-12), 31.8.2008 (Exhibit U-21), leave applications dated 11.10.2007 (Exhibit U-13) and 11.6.2007 (Exhibit U-14). Medical certificate dated 24.2.2007 (Exhibit U-18), fitness certificate (Exhibit U-19), medical certificate for extension of leave (Exhibit U-20) and letter dated 14.6.2007 issued by the respondent (Exhibit U-23).

6. The respondents examined Shri Maruti Tatoba Kamble, Office Superintendent at Exhibit C-7. In paragraph-6, the Labour Court noted that except their oral evidence, the respondents have not produced any documentary evidence on record.

7. In paragraph-8, the Labour Court observed that on the application dated 7.2.2008 (Exhibit U-11) the officer of the respondent has made endorsement regarding the sickness of T.B. and it is occupational disease. Though the respondents claimed that public notice was issued in 'Thane Vaibhav' and 'Samana', they did not produce these notices on record to show

that the employees were asked to resume the duties. The Labour Court noted that the complainant was absent from 31.1.2007 till 31.2.2008.

8. In paragraph-12, the Labour Court considered the nature of leave whether it was authorized or unauthorized. Application dated 7.2.2008 (Exhibit U-11) shows that from 31.1.2007 till 7.2.2008 the complainant was absent for sickness of T.B. Intimation was given on 11.6.2007 (Exhibit U-14) and 11.10.2007 (Exhibit U-13).

9. In paragraph-14, the Labour Court referred to the fitness certificate (Exhibit U-19) which noted that the complainant was suffering from T.B. from 31.7.2007 to 3.2.2008. Medical certificate for extension of leave (Exhibit U-20) shows that the complainant was suffering from T.B. from 5.2.2007 to 31.5.2007. Exhibit U-20 is for extension of leave from 5.2.2007 to 31.5.2007 and further on the fitness certificate continuation of leave for the period from 31.7.2007 to 31.2.2008 is mentioned. The Labour Court concluded that the complainant was suffering from T.B. from 5.2.2007 and it continued till 31.2.2008 and that it do not find any reason to disbelieve the testimony of the complainant that he was suffering from T.B.

10. In paragraph-17, the Labour Court noted that the respondents were aware of the permanent address of the complainant. However, they do not issue any letter on the residential address of the complainant. The complainant was dismissed without holding any enquiry as also without any intimation and the proper correspondence which amounts to violation of principals of natural justice.

11. In paragraph-20, the Labour Court noted the contention advanced on behalf of the complainant that he had put in total 19 years of service and had shown his excellence in performing his duties.

12. Aggrieved by this decision, revision applications were preferred by the complainant as also by the respondents. In paragraph-6, the Tribunal considered the documentary evidence on record. In paragraph-8, the Tribunal observed that the Labour Court has appreciated the evidence on record. The Tribunal also observed that the respondents were aware of the residential address of the complainant. They have not issued any notice. They did not produce any documentary evidence on record including paper publication.

13. In paragraph-8, the Labour Court observed that the applications dated 7.2.2008 (at Exhibit U-11), 4.2.2008 (at Exhibit U-12) and 31.8.2010 (at Exhibit U-21) clearly show that the complainant was ready to resume duties but he was not allowed. In paragraph-15 Labour Court observed that application dated 4.2.2008 (at Exhibit U-12) and application dated 31.8.2010 (at Exhibit U-21) do not bear endorsement of the respondents. The complainant also did not produce original or office copy of these applications but asserted that said applications were submitted to the respondents. The Labour Court, therefore, held that the argument of the respondents appealed to him that no such applications were given and, therefore, there is no endorsement of the respondents. At the same time, as far as application dated 7.2.2008 (at Exhibit U-11) is concerned, it shows that it bears endorsement of the respondents regarding sickness of tuberculosis and that it is occupational disease. Thus at least by letter dated 7.2.2008 (at Exhibit U-11) the complainant showed his readiness and willingness to resume duties. However, the respondents did not give any response to this letter. It is, therefore, inconceivable that despite issuing public notice dated 27.8.2010 in 'Thane

Vaibhav' and 'Samana' calling upon the employees to resume duties, the complainant will not resume duties.

14. In view thereof, I do not find that the Courts below have committed any error in ordering reinstatement of the complainant.

15. Insofar as the question of payment of back-wages of 40% is concerned, the Courts below have considered the admission of the complainant in his cross-examination that he was doing the job of rickshaw driver and was getting Rs.150/- to Rs.200/- per day. Considering this aspect, 40% back-wages were awarded to the complainant.

16. The respondents were not in a position to demonstrate that the findings recorded by the Courts below are based upon no evidence or that they are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible, that itself is no ground for invocation of powers under Article 227 of the Constitution of India. The respondents were not in a position to show that the findings recorded by the Courts below are perverse. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of

India more particularly when the Labour Court gave liberty to the respondents to impose punishment of withholding of one annual increment of the complainant. Subject to this, the Petition fails and the same is dismissed.

17. At this stage, Mr. Bubna orally applies for continuation of ad-interim order dated 13.6.2016 for a period of eight weeks from today. He assures that the respondents (petitioners herein) will not apply for further extension of ad-interim order. Having regarding to the fact that ad-interim order is operating since 13.6.2016 and the respondents (petitioners herein) wish to challenge this order before the higher Court, I find that the request made by Mr. Bubna is reasonable. Hence, notwithstanding dismissal of the Petition, ad-interim order dated 13.6.2016 shall remain in force for a period of eight weeks from today with express understanding that no further extension for continuation of ad-interim order shall be sought and granted by this Court. Order accordingly.

(R. G. KETKAR, J.)