

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO.5452 OF 2001

Shahaji Hindurao Shinde

.. Petitioner

vs

1. Dudhganga Vedganga Sahakari Sakhar
Karkhana Ltd

2. Shri C.A.Jadhav

Member, Industrial Court, Kolhapur

.. Respondents

Mr.M.S.Topkar for Petitioner

None for Respondents.

Coram : S.C.GUPTA, J

Date : 7th JUNE 2018

P.C

1. Heard learned counsel for the petitioner. The respondent is absent. Since this is a matter pertaining to 2001, I am not inclined to adjourn the matter.

2. I have accordingly heard learned counsel for the petitioner and considered the papers and proceedings in the petition which *inter alia* reflect the respondent's answer to the case and proceeded to decide the petition.

3. The subject matter of the present petition discloses a narrow controversy. The petitioner who was working with the respondent-undertaking was orally terminated on 16.1.2000. Despite

his request for a written order in this behalf, the respondent-society refused to issue any order or allow the petitioner to resume duties. In the premises, approach notice dated 13.6.2000 was issued by the petitioner under section 42 (4) of the Bombay Industrial Relations Act, 1946 ("B.I.R. Act") and rules framed thereunder contending *inter alia* that the termination was abrupt, illegal, improper and bad-in-law for reasons mentioned in the notice and demanding reinstatement with continuity in service and full back wages. Since the approach notice was not replied to by the respondent-undertaking, an industrial dispute arose. The petitioner filed proceedings under section 78 read with section 79 of the Bombay Industrial Relations Act, 1946 before the Labour Court, Kolhapur. Proceedings were filed on or around 1.8.2000. The application was registered as Application (BIRA) No.187 of 2000. The respondent-undertaking raised the defence of bar of limitation. The respondent contended that since the termination was on the petitioner's own showing on 16.1.2000 and the approach notice was issued on 13.6.2000, i.e. beyond the statutory period of 90 days, the application was not maintainable. The Labour Court rejected this contention and held the application to be maintainable and within time. The Labour Court *inter alia* held that the oral termination of the nature as in the present case was not the act of employer under the Standing orders or even purporting to act under Standing orders. The Court held that the dispute regarding such oral termination is covered under section

78 (1) A (a) (iii) and not by section 78 (1)(A) (a) (i) of the BIR Act, 1946. The Court held the application to be within limitation.

4. Being aggrieved, the respondent-undertaking carried the matter in revision before the Industrial Court under section 85 of the BIR Act. The Industrial Court allowed the revision application on the ground that in a recent judgement delivered by the learned single Judge of this Court in **NATIONAL TEXTILE CORPORATION (South Maharashtra) Ltd vs MOHD. UMAR MOHD HANIF AND ANR, 2001 II CLR PAGE 145** it was held that the order of oral termination notwithstanding its being in violation of the Standing orders would not cease to be an order under the Standing orders and that any order of illegal termination must be challenged within a period of three months. The petitioner has come in challenge from the revisional order.

5. Since the passing of the judgement in the case of **NATIONAL TEXTILE CORPORATION (South Maharashtra Ltd) vs MOHD.UMAR MOHD HANIF** by the learned single Judge, there have been many decisions of this Court holding the law to be otherwise. In **JAYWANT YESHWANT RAUT VS SIMPLEX MILLS LTD, 1996 III L.L.J.598** a Division Bench of this Court has held that in order that a dispute should fall under the provisions of section 78 (1) (a), it must be shown to have arisen out of an order passed by the employer under applicable Act and in fact, passed by the employer under the relevant Standing orders or at least purported to have been passed

under the Standing orders. If no order is communicated or disclosed to the employee for termination of his contract of employment or refusal to allow him to resume duties, the employee is expected to make a grievance that he be taken back and kept in employment. Such dispute necessarily is a dispute within the meaning of section 78 (1)A (a) (iii) and not a dispute under section 78 (1) A (a) (i) so as to attract the rigors of Rule 53 (2) of Bombay Industrial Relations Rules. A dispute of such nature would be a change sought by the employee in respect of Item 6 of Schedule III of the Act which would, properly fall within clause (iii) of section 78 (1) A (a); and any application filed in this behalf after such approach notice would not accordingly, be hit by the bar of limitation prescribed in Rule 53 (2) of the Bombay Industrial Rules.

6. This position has been reiterated in a number of judgments of this Court even thereafter. One such judgment is the case of **PEDRU MOZES FERNANDES VS NATIONAL TEXTILE CORPORATION (S.M) Ltd.** 2005 (4) Mh.L.J.199. In this case, this Court has noted that in terms of this issue, the view taken in the judgement of **NATIONAL TEXTILE CORPORATION (South Maharashtra) Ltd vs MOHAMMED HANIF supra** was overruled and no longer a good law. In the premises, the whole basis of the impugned revisional judgement of the Industrial Court is undermined and the judgement is unsustainable.

7. Accordingly, Rule is made absolute by allowing the

petition, and quashing and setting aside the impugned revisional order of the Industrial Court and confirming the order passed by the Labour Court at Kolhapur on 25.1.2001. No order as to costs.

(S.C.GUPTE, J)