

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1018 OF 2018

Petroleum Workmen's Union	... Petitioner
V/s	
Bharat Petroleum Corporation Ltd.	... Respondent

Mr. Sanjay Singhvi, Senior Advocate i/by Mr.Rahul Kamerkar for the Petitioner.

Mr.R.S.Pai with Mr.Anand R.Pai, Mr.Aditya S. Bhat and Mr. Shabbir Jariwla i/by M/s Sanjay Udeshi & Co. for the Respondent.

CORAM : S.C.GUPTE, J.

DATE : AUGUST 07, 2018.

P.C. :

1. Heard learned counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of the parties.
2. This Petition challenges an award passed by the Central Government Industrial Tribunal ("CGIT") in a reference made to it under Section 10 of the Industrial Disputes Act, 1947. The reference was at the instance of one Kranti Waradkar, who was employed as a Female Nurse at the Medical Centre at Mumbai Refinery run by the respondent-company.

3. The concerned workman, Kranti Waradkar, was working with the respondent-company, confirmed in the post of Assistant-I Medical Services. Workmen of the respondent-company were originally getting house rent allowance (“HRA”) under the applicable rules of the company as also in terms of the settlement between the parties, i.e. the company and the representative union. In 1995, the company introduced a scheme termed as “Self Lease Scheme”, whereunder workmen of the respondent could lease their homes to the respondent in consideration of a lease rent payable by the latter. This lease rent would be in lieu of HRA to which the workmen were otherwise entitled. Under a Lease Agreement dated 10th May 1996, the concerned workman was receiving such lease rent from the respondent with effect from 1st October 1995 for a flat owned, and resided in, by her (“the subject premises”). She continued to receive such rent till about August 2001. It is her grievance that on 7th August 2001, without any inquiry whatsoever, the respondent issued an order withdrawing the Self Lease Scheme offered to her, disqualifying her from the scheme in future, ordering refund of the entire amount paid to her since the inception of the scheme and also

denying her HRA for the relevant period, which she would have been otherwise entitled to in lieu of lease rent under the Self Lease Scheme. This order was purportedly passed on the basis of a spot inspection conducted at the subject premises on the previous day, i.e. on 6th August 2001. It appears that whilst the workman was on duty, two staff members of the respondent visited the subject premises and found the same to be locked. It is claimed that at the time of this inspection, upon inquiries with next door neighbours, it was found that the flat had been locked for quite some time and only on rare occasions the workman or her family members came to the flat. The workman took strong exception to the order of the respondent withdrawing the benefit of the Self Lease Scheme. Immediately after receipt of the order, on 16th August 2001, she wrote to the respondent disputing that she was not residing in the subject premises. She produced several documents including the society's letter, cooking gas book, pass-book, letter from the Registrar's office, society maintenance receipts, electricity bills and documents regarding maintenance and upgradation of the subject premises in order to prove her continuous residence therein. The

respondent nevertheless refused to withdraw its earlier order, stating that her explanation had been examined, but not found satisfactory. Pursuant to the order, the respondent even proceeded to recover a sum of Rs.2,13,549/- from arrears due to her, covering the entire lease rent paid to her from 1st October 1995 to 31st July 2001. The workman thereupon filed a recovery application under Section 33-C(2) of the Industrial Disputes Act, 1947. That application was rejected by the Court, since the demand for return of the amount recovered was a matter of dispute, on which there was no adjudication. The union thereafter raised the present industrial dispute and on failure of conciliation, the same was referred by the Central Government to the CGIT for adjudication.

4. By its impugned award, the CGIT rejected the reference. The CGIT held that the record of the case showed that the workman's husband used to stay with his mother at their residence at Siwri and considering that her daughter was also admitted to a nearby school, it seemed improbable that the concerned workman was alone occupying the subject premises. The tribunal relied on the company's case of inquiry with the

occupants of the neighbouring flat. It believed the evidence of the company's witness, who had testified about the inquiry made with the neighbours. As for the documents produced by the workman, the CGIT held that these documents pertained to the ownership of the subject premises and did not show that she with her family members was occupying the same. The Tribunal also held that the order of the management withdrawing the Self Lease Scheme offered to the workman, was not challenged. On this reasoning, the CGIT held the management action in depriving the workman of the benefit of lease rent and maintenance charges as legal and justified. The CGIT also refused to consider the union's alternative claim in respect of HRA payable to the workman. Accordingly, the Tribunal rejected the reference. Being aggrieved, the union has approached this Court by the present writ petition.

5. Apart from the testimony of the workman and her husband concerning the residence of the latter with his mother at Siwri, which we shall presently consider, the only material that is practically relied upon by the CGIT for arriving at its finding that the workman was not residing at the subject premises, is the so

called information given by occupants of a neighbouring flat that the subject premises had been locked for some time and the family came to it on rare occasions. As far as the information provided by the neighbours is concerned, apart from fact that there are no particulars of any such information including the identity of the neighbours who are claimed to have given such information, the evidence is pure and simple hearsay material. The Manager of the respondent-corporation stepping into the box and deposing to the information given by someone else, is no evidence of the fact which he was purportedly informed about. The workman herself as well as her husband had deposed about the circumstances of their family due to which he had to reside with his mother at Siwri. Both had deposed that the workman was residing at the subject premises through the week and her husband would come over the weekends to the subject premises. Even a fellow resident of the society where the subject premises are situated had given evidence before the CGIT in support of this case of the workman. In the face of all this positive evidence, the conclusion of the CGIT that the workman could not be residing alone in the flat is nothing but a matter of speculation.

On such hearsay and speculative matter, the CGIT's order upholding the company's action of withdrawal of the Self Lease Scheme to the concerned workman as also denial of HRA in lieu thereof, is clearly unsustainable.

6. Mr.Pai, learned counsel appearing for the respondent, submits that there is no industrial dispute raised in this matter within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. Learned counsel submits that the order of the respondent-company dated 7th August 2001, by which the self lease facility offered to the concerned workman was withdrawn, has not been in terms challenged as part of the reference. Learned counsel relies on the decision of the Supreme Court in case of **Tata Iron and Steel Company Limited Vs. State of Jharkhand and ors.**¹ in support.

7. The record of the case bears out that immediately after the self lease facility was withdrawn by the respondent on 7th August 2001, the concerned workman protested, claiming that the facility could not have been withdrawn and she was not liable to refund the lease rent/ maintenance charges paid to her between

1 (2014)1 Supreme Court Cases 536

1st October 1995 to 31st July 2001. Despite this protest, by their letter/communication dated 14th December 2001, the company called upon the workman to refund the entire amount of Rs.2,13,549/- paid to her towards lease rent and maintenance charges for the entire period. Immediately thereafter, the action of the management was challenged by the workman in an application under Section 33-C(2) of the Industrial Disputes Act, 1947. In that application, she claimed recovery of the whole amount of Rs.2,13,549/- wrongfully recovered from her. Since the application was rejected on the ground that there existed a dispute concerning the recovery, the union raised the present demand challenging the action of the management in depriving the benefit of lease rent and maintenance charges or HRA in lieu thereof to the concerned workman and it was this dispute which was referred by the appropriate government to CGIT for adjudication. In the face of these facts, it is impossible to say that there was no industrial dispute raised in respect of the recovery of Rs.2,13,549/- made by the respondent-employer. Merely because the letter of the management proposing withdrawal of the Self Lease Scheme is not in terms challenged, it cannot be said that

there is no industrial dispute raised in respect of it. After all what the letter of the management did was to deprive the concerned workman of the benefit of lease rent and maintenance charges or HRA in lieu thereof. If this action is challenged and a dispute raised in respect of it is referred to adjudication, it would be too hypertechnical to say that there is no industrial dispute, because the letter by which the management proposed this action was not in terms challenged.

8. Mr.Pai relies on the case of **Tata Iron and Steel Company Limited** (supra) and particularly stresses the observations of the Court in **Sindhu Resettlement Corporation Limited Vs. Industrial Tribunal of Gujrat**², which are quoted therein. Tata iron and Steel Company's case has no bearing on the facts of our case. That was a case where the appellant before the Court had transferred one of its undertakings, the cement division, to another company inter alia on a condition of maintenance of the service conditions of the employees of the cement division by the transferee company. It was the claim of the appellant that these employees were taken over the other company, whereas the

2 AIR 1968 SC 529:(1968)1 LLJ 834

employees claimed that they continued to be the employees of the appellant and what was done was to simply transfer their services to the transferee company. That was the real dispute between the parties. The terms of reference of the dispute, however, raised a question as to whether the appellant's action in not taking back the employees in their own service after the transfer of the cement division was justified. The term of reference was challenged by the appellant, who claimed that it did not bring out the real dispute between the parties. Their case was that since the workmen concerned were no longer in their employment, they could not have raised the grievance or any dispute against the appellant; if the transferee company did not provide them assured service terms, the workmen could raise a dispute only against the transferee company, who was their real employer. (The transferee company was not even a party to the reference.) A writ petition was filed by the appellant, in the premises, challenging the reference. The Supreme Court agreed with the appellant and quashed the reference. The Court's observations about the tribunal's duty to confine itself to the terms of reference are in this context. It is in this context that

Supreme Court quoted the observations in **Sindhu Resettlement Corporation Limited** (supra) where the Court had held that if the reference was confined to retrenchment compensation alone and there was no demand for reinstatement, the reference concerning reinstatement was not valid. These cases have no relevance to the facts of our case. Here the reference correctly reflected the dispute between the parties and the tribunal could not be said to have travelled beyond it.

9. Mr.Pai also relies on a judgment of the Supreme Court in the case of **R.Thiruvirkolam Vs. The Presiding Officer and anr.**³ Relying on this judgment, learned counsel submits that without the management's order being set aside, no relief of recovery could have been granted. This argument is but a facet of the same contention which is dealt with above. In **R.Thiruvirkolam's** case, the Supreme Court was concerned with an order of dismissal of an employee. The Labour Court in that case found the domestic inquiry, which preceded the dismissal, to be defective and permitted the management to justify the dismissal by adducing evidence before the Court. Upon such evidence being

3 C.A.No.54/1993 dated November 18, 1996 SCC

adduced, the Labour Court found the misconduct to be proved and the punishment justified. The workman thereafter unsuccessfully filed a writ petition and a writ appeal and thereafter, presented an appeal by special leave before the Supreme Court. The leave was confined to the question whether the dismissal was to take effect from the date of the award of the Labour Court or would relate back to the date of the order of dismissal passed by the employer. The Supreme Court, relying on its earlier decisions, held that the defect found in the domestic inquiry was nullified by the proof of misconduct offered by evidence adduced before the Labour Court so that there was no ground available to the Labour Court to set aside the order of punishment. The question before the Labour Court was whether the order of punishment should be set aside on any ground. When the Court ultimately reached its conclusion that even though the inquiry was defective, there was material to justify the punishment awarded, and on this basis, rejected the challenge to the order of dismissal, the order was effective and continued to operate throughout; it was not as if the order of punishment would be effective only after rejection of the

challenge to it. The punishment by the employer was valid and continued to operate ever since it was awarded. These observations have no bearing whatsoever on the facts of our case or the issue which we are concerned with in the present case.

10. In the premises, the impugned order of the CGIT cannot pass muster. The tribunal has misdirected itself in law and passed an order which has resulted into miscarriage of justice. In the premises, Rule is made absolute and the petition is allowed by quashing the impugned order of the tribunal dated 19th April 2017. The respondent-corporation is directed to refund the entire amount of Rs.2,13,549/- with interest at the rate of 8% p.a. from the date of recovery till payment or realization. The respondent-corporation shall also pay costs quantified at Rs.50,000/- to the petitioner-union. The refund as well as the costs ordered herein shall be paid by the respondent to the petitioner within a period of eight weeks from today.

(S.C.GUPTE, J.)

Priya
Rajesh
Soparkar