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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6231 OF 2019

M/s. Wartsila India Pvt. Ltd.	..Petitioner.
V/s.	
Sambhaji Rajaram Dholam	..Respondent.

AND

WRIT PETITION NO.6406 OF 2019

M/s. Wartsila India Pvt. Ltd.	..Petitioner.
V/s.	
Kishore Janardhan Jadhav	..Respondent.

Mr.Shailesh S.Pathak wiuth T.R.Yadav for the petitioner in both petitions.

Mr.Ravindra B.Nair for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 10, 2019

P.C.:-

Heard respective parties.

2. The respondent-employee had taken out ULP (Complaint) alleging unfair labour practices under section 28 (1) read with 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act' for short).

3. The respondent-employee, as such questioned his termination which is effected with effect June 28, 2016 and sought reinstatement with back-wages.

4. In defence, the petitioner-employer has come out with a case, since the situation as was existing has prompted not to conduct domestic inquiry. According to him, an order of termination came to be passed which can be justified before the Tribunal.

5. Based on the above, the following issues were framed by learned Court which reads thus :-

- “1. Whether the Complainant prove that Respondent has engaged in unfair labour practice u/s.28 read with items 1(a), (b), (d) and (f) Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ?*
- 2. Whether the Complainant prove that Respondent has illegally terminated his services on 28/06/2016 ?*
- 3. Whether the Respondent proved that Complainant has created the situation in the establishment because it was not possible to conduct the enquiry ?*
- 4. Whether the Respondent has proved that the termination is legal, justified and property before the Court ?*
- 5. To what relief or reliefs, if any, is / are the Complainant entitled for ?*
- 6. What order ? ”*

6. Having regard to the issues framed and relying upon the judgment of the Apex Court in *Amar Chakravarty and others V/s. Maruti Suzuki India Limited*¹, Labour Court has directed the petitioner to lead evidence vide order dated April 3, 2018 which is confirmed in revision before the Industrial Court vide order dated October 3, 2018. As such, these petitions.

7. The submissions are, the judgments cited before the Court below are not considered and the burden lies on the respondent-employee to prove unfair labour practices and issue of illegal termination. According to him, since the complaint is based on assertion of respondents, non applicability of Evidence Act *prima facie* prompts that the burden is on the respondents to prove these issues. The petitioner has relied upon the judgment of the Apex Court in the matter of *The Rajabadur Motilal Poona Mills V/s. Girni Kamgar Sanghatana*² 1985 particularly paragraph 7, which reads thus :-

“7. Section 3(16) of the PULP Act defines “unfair labour practice” to mean the unfair labour practices as defined in Section 26 of the said Act. Section 26 says that “unfair labour practices” means any of the practices listed in

1 (2010) 14 Supreme Court Cases 471

2 (1985) 1 CLR 188 page 894

Schedules II,. III and IV. We are here concerned with item (10) of Schedule IV, which says: "To indulge in act of force or violence" is to indulge in an unfair labour practice. Therefore, the question is whether by declaring a lay off in contravention of the provisions contained in Section 25M of the Industrial Disputes Act an employer can be said to indulge in an act of force or violence. Merely, because an employer contravenes a provision of some Act or even indulges in an illegal act it cannot be said that he is indulging in an unfair labour practice. In General Workers' Union v. Municipal Council, Sangli ,1984 (48) F.L.R. 411, this Court has pointed out that there is a difference between an illegal act and an unfair labour practice. A complainant under the P.U.L.P. Act has to prove that there is an unfair labour practice on the part of the employer and not merely that the act is illegal. It has also been pointed out that the remedy for challenging an act which is illegal but does not amount to an unfair labour practice is different and not by way of a complaint under the PULP Act. On the facts of Sangli Municipal Council's case, what was found by this Court was that the employer was, if at all, guilty of an illegal act which did not amount to an unfair labour practice within the meaning of the PULP Act. "

8. He would further urge that in view of the aforesaid judgment, it is to be inferred that the burden is on the respondents-employee who have preferred a complaint under PULP Act of unfair labour practice. Learned counsel then would invite attention of this

Court to the pleadings of the parties so as to satisfy the Court that the factum of burden has to be shifted on the respondent-employee and as such, he was entitled to the relief.

9. *Per contra*, learned counsel for the respondent supports the impugned order. According to him, based on the issues referred *supra* and the judgment of the Apex Court in the matter of *Amar Chakravarty and others (supra)*, both the Courts below have rightly directed the petitioner to enter first in the witness box.

10. Apart from the concurrent findings recorded by both the Courts below, considering the restricted scope of interference in the supervisory jurisdiction what is required to be appreciated is, certain issues are framed at the behest of the present petition having regard to the respective pleadings. Para 12 of the judgment of the Apex Court in *Amar Chakravarty and others (supra)* reads thus:-

“12. In our opinion, in light of the settled legal position on the point, the judgment of the High Court is clearly indefensible. Whilst it is true that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication, it is trite that its general principles do apply in proceedings before the Industrial Tribunal or the Labour Court, as the case may be. (See: Municipal Corporation, Faridabad Vs. Siri Niwas). In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not

on the party who denies it. (See: Anil Rishi Vs. Gurbaksh Singh SCC P.561 para 9) Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.”

11. The Apex Court has gone to the extent of observing that in any proceedings the burden of proving the fact lies on the party that substantially asserts the formulation of the issues. In the case in hand, issues framed demonstrate that issues are asserted by the petitioner and that being so, the order impugned *prima facie*, appears to be just and reasoned. Support is drawn from the judgment of *Rajabadur Motilal Poona Mills (supra)*, which *prima facie* appears to be in the context raised in the petition and as such, the same has hardly any application to the issues raised. That being so, no case for interference is made out. The petition fails and is dismissed.

(NITIN W.SAMBRE, J.)