

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.711 OF 2020**

Nandkumar Gavade

...Petitioner

vs

M/s. Dhvani Enterprise And Anr.

...Respondents

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Mr. Prashant C. Kamble, for the Petitioner.

Ms. Anjali Purav, a/w. Ms. Swati Sharma, for the Respondents.

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CORAM : S.C. GUPTE, J.**DATED: 12 FEBRUARY, 2020****P.C. :**

. Heard learned Counsel for the parties.

2. This writ petition challenges concurrent orders passed by the Labour Court at Mumbai on a complaint of unfair labour practice and by the Industrial Court at Mumbai on a revision application from that order. The subject matter of controversy concerns the retrenchment of the Petitioner herein (original complainant) by Respondent No.1 herein. The retrenchment was on the ground that the complainant's services had become surplus and were no longer required. It was submitted that the complainant was engaged for physical dispatch of cash between Mumbai Office and Kalamboli Office of the Respondent establishment. It was submitted that on opening of a separate bank account of the firm in Kalamboli, the work of physical dispatch of daily cash ceased to exist and there was no possibility of providing any work

to the complainant. Vide letter dated 21 May 2015, his services were, accordingly, terminated on payment of one month's salary in lieu of notice pay as also retrenchment compensation. It was submitted that whilst retrenching the complainant, the employer establishment even followed the seniority list maintained by it. Both courts did not find any infirmity in the impugned retrenchment of the complainant.

3. The Labour Court, in its original order (order dated 12 February 2018), found that the cause of retrenchment of the complainant was reduction in the work and that the factum of such reduction was admitted by the complainant. The court also noted the complainant's admission in his cross-examination that he had received compensation pursuant to his termination and that the cheque representing such compensation was encashed by him. The court noted that though the complainant had claimed that the cheque was received under protest, no such letter was placed on record; on the other hand, there was an admission that he had not returned the amount paid to him. The court, in the premises, observed that the complainant could not raise any grievance about the termination on account of non-compliance with applicable provisions of law. The court, in the premises, did not find any merit in the complaint. The revisional court agreed with the trial court.

4. The revisional court considered two submissions made by the complainant. The first submission was that though the complainant was employed by Respondent No.1 herein with effect from 1 December 1999, he was, in fact, working since earlier with the group companies of Respondent No.1; he claimed appointment with effect from 1992. The

second contention was that Chapter V-B of the Industrial Disputes Act was applicable to the Respondent company. Both contentions were negatived by the Industrial Court. The Industrial Court observed that the companies (in which the complainant claimed to have worked) were separate, though they belonged to one and the same group, namely, Damani group. The court observed that he was working with the Respondent company of the group; the engagement was by such company; and he was not compelled by anyone to work for Respondent No.1 or, for that matter, other group companies. The Industrial Court observed that at the time of termination, the complainant was employed by Respondent No.1, and so far as Respondent No.1 was concerned, it had maintained a seniority list and his retrenchment was in accordance with such seniority list. The Industrial Court also went through the circumstances in which the complainant came to be retrenched. The court held that the retrenchment was made after following due procedure prescribed by the Industrial Disputes Act and there was no occasion for any complaint of unfair labour practice. On the question of applicability of Chapter V-B, the court held that the responsibility to show that the case was covered by Chapter V-B was on the complainant, who had failed to discharge the burden; no material was placed before the trial court in that behalf, when the complaint was heard on merits. (The ground of applicability of Chapter V-B was raised in revision on the basis of documents or material obtained in pursuance of Right to Information Act, after the complaint was dismissed by the first court.) The court also noted that the list produced by the complainant did not indicate that in the preceding twelve months, the undertaking had engaged 100 or more employees.

5. Learned Counsel for the Petitioner submits that contrary to the assertions made before the courts below, the letter of 21 May 2015 talked about adverse market conditions and reduction of business and not the surplus character of the Petitioner's engagement. The termination letter may have referred to market conditions or reduction of business, but it also asserts that for the past 12 months, there was no work for the complainant and his services had become surplus. There is, accordingly, no merit even in this contention.

6. The assessment of the controversy by the courts below and the concurrent findings of fact arrived at by them do not suffer from any unreasonableness or perversity. As noted above, all relevant and germane circumstances have been duly considered and no irrelevant or non-germane material or circumstance has been taken into account whilst arriving at any conclusion. The orders are supported by some evidence and cannot be described as orders based on no evidence or containing an impossible conclusion.

7. There is, accordingly, no merit in the writ petition. The writ petition is dismissed.

Smita
Gonsalves

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Smita Gonsalves
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(S.C. GUPTE, J.)