IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2789 OF 2003

Hindustan Coca-Cola Beverages Pvt. Ltd. …. Petitioner

Versus

Shri.Shivram Bhalekar & Others …. Respondents

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Ms. Yasmeen Mohamed Sabir i/b. M/s.D.H. Law Associates for the Petitioner
Mr. Ramesh Dinkar Bhat for Respondent Nos.1,2,4,7,8 & 10 to 14.
Mr. Kiran Bapat, Mr. Netaji Gawade i/b Sanjay Udeshi & Co. for Respondent Nos.34 & 35.

CORAM : S.C. GUPTE, J.
DATE : 23 JANUARY 2020

P.C. :

1. This writ petition challenges an order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice. The complaint was by 33 workmen of Hindustan Coca-Cola Beverages Pvt. Ltd. The Petitioner herein was Respondent No.1 to the complaint ("Hindustan Coca-Cola"), whereas Parle Beverages Ltd. was Respondent No.2 to the complaint ("Parle"). The complaint was under Items 5 and 9 of Schedule IV of MRTU and PULP Act, 1971.

2. The Complainants' case before the Industrial Court was that they were originally working as casual workmen with Parle. By an asset purchase agreement dated 23 February 1999, the assets of Parle were

taken over by Hindustan Coca-Cola. The agreement provided for transfer to Hindustan Coca-Cola of all employees of Parle listed in the schedules appended to the agreement, who were dedicated employees of Parle. Pursuant to this transfer of assets agreement, meetings were held between Parle, Hindustan Coca-Cola and the representative union and various benefits to the permanent workmen were agreed upon. Since these benefits were not extended to the casual workmen of Parle, the matter was carried by these workmen to the Industrial Court in complaints of unfair labour practice. During the pendency of these complaints, a tripartite meeting was held between Parle, Hindustan Coca-Cola and the representative Union, where important decisions were taken concerning absorption of 34 casual workmen on the books of Parle. It was agreed that these workmen would be transferred to Hindustan Coca-Cola upon reaching of a court settlement between casual workmen on the one hand and Parle on the other. It was agreed that such settlement would be made within 20 days, i.e. by 15 March 1999, and till that date, the casual workmen would continue to be on the rolls of, and paid by, Parle. Subject to satisfactory conclusion of the Court settlement, these workmen would then be transferred to Hindustan Coca-Cola. A copy of the settlement was to be forwarded to Hindustan Coca-Cola prior to transfer of the concerned workmen. It is not in dispute that around that time there were two pending complaints on behalf of the casual workmen against Parle, namely, Complaint (ULP) No. 566 of 1997 and Complaint (ULP) No. 1252 of 1998, to which Hindustan Coca-Cola was sought to be joined; applications for such impleadment were pending before the court, where Hindustan Coca-Cola was represented by advocates. Consent terms were arrived at between the parties in these complaints. These consent terms *inter alia* contemplated absorption of casual workmen by Hindustan Coca-Cola with effect from 1 March 1999 and extension of benefits similar to the permanent workmen of Parle to the casuals. The consent terms also provided that in consideration, the complainants would withdraw their complaints against all respondents, including the proposed respondents, Hindustan Coca-Cola, and applications to that effect would be filed before the Industrial Court praying for disposal of the complaints, as settled out of the Court. It is not in dispute that such application was made before the Industrial Court and the complaints were disposed of as settled out of the Court. It is also apparent from record of the case that these 33 casuals, accordingly, continued to work with Hindustan Coca-Cola between the period 15 March 1999 till 24 June 1999. Salaries paid to these workmen by Parle during this period were admittedly reimbursed by Hindustan Coca-Cola. Despite this settlement, the casual workmen were not accorded permanency or granted suitable benefits. Refusal of Hindustan Coca-Cola to extend the benefits of permanency to these casual workmen was challenged by the 33 complainants by alleging unfair labour practices under items 5 and 9 of Schedule IV of the Act. By its impugned order, the Industrial Court allowed the complaint and directed Hindustan Coca-Cola to make the casual workmen permanent. This order is challenged in the present petition.

3. Learned Counsel for Hindustan Coca-Cola, while assailing the impugned order of the Industrial Court, submits that Hindustan Coca-Cola was not a party to the consent terms. In the light of what is noted above, this contention has no substance. Hindustan Coca-Cola may not be a party to the original complaints. By the time the consent terms of 13 March 1999 were arrived at, Hindustan Coca-Cola, however, were proposed to be impleaded to the complaints and were represented by advocate. The consent terms themselves were preceded by a tripartite agreement between Parle, Hindustan Coca-Cola and the representative union that the casuals on the role of Parle would be absorbed into the services of Hindustan Coca-Cola and a settlement would be arrived at in the then pending complaints filed by the casual workmen. The settlement was duly arrived at. The settlement was signed on behalf of the Hindustan Coca-Cola by one Mr. Bhave, who was originally working with Parle and who became an employee of Hindustan Coca-Cola a day prior to the settlement. That settlement envisaged absorption of these casuals as workmen of Hindustan Coca-Cola and withdrawal of the complaints on that basis. Hindustan Coca-Cola not only stood by this arrangement, assuming without admitting that the signatory of these consent terms was not an employee of Hindustan Coca-Cola, but even proceeded to accept the services of these casuals and even paid their salaries till 24 June 1999. The casual workmen, for their part, withdrew their complaints. If that is so, it is impermissible to now claim that Hindustan Coca-Cola was not a party to this settlement.

4. Accordingly, there is no merit in the challenge to the impugned order, which correctly proceeds on the footing that by a settlement duly arrived at in pending complaints, to which Hindustan Coca-Cola was proposed to be joined as party Respondent, the concerned workmen on the roll of Parle were to be absorbed as permanent employees of Hindustan Coca-Cola and not so absorbing them or extending benefits of permanency to them amounted to an unfair labour practice.

5. It is agreed between learned Counsel for the parties that out of original 33 casuals, Hindustan Coca-Cola have settled the controversy with 23; out of the balance workmen, about 10 of them, one (Respondent No.11 herein) has expired, whereas two (Respondent Nos.1 and 8) have superannuated during the pendency of the present petition.

6. Accordingly, the writ petition is dismissed. It is, however, made clear that the impugned order passed by the Industrial Court on 29 January 2003 shall apply only to 10 Respondents herein, namely, Respondent Nos.1, 2, 3, 7, 8, 10, 11, 12, 13 and 14. In so far as Respondent Nos. 1 and 8 are concerned, the benefits shall be extended to them upto the date of their respective superannuations together with all retirement benefits, and so far as Respondent No.11 is concerned, upto the date of his death, i.e. upto 15 June 2018.

(S. C. GUPTE, J.)