

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

WRIT PETITION NO. 11628 OF 2019

The Director, Federation of Indian
Export Organisation

..... Petitioner

Vs.

Sheetal Chandel

..... Respondent

.....
Neeta Karnik for the Petitioner.
Aniketh Poojari for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: FEBRUARY 14, 2020

ORAL JUDGMENT:

This Writ Petition, filed by the Petitioner-establishment, seeks to challenge an award passed by the Central Government Industrial Tribunal at Mumbai ('CGIT') in a reference made to it at the instance to the Respondent-workman. The reference concerned the action of the Petitioner-management in terminating the Respondent's services as senior record keeper with effect from 1 March, 2013 without issuing any charge-sheet or conducting any departmental inquiry.

2. It is the case of the Respondent that she had joined the services of the Petitioner in May 1999 as a senior record keeper and was later promoted to the post of clerk. Her services came to be

confirmed with effect from 14 February, 2003, though she claimed to have been working continuously without any break from May, 1999 and until her services were terminated with effect from 1 March, 2013. It was her case that she was working on a permanent post and was a permanent employee of the Petitioner. It was submitted that her services were terminated on account of an alleged misconduct but without issuing any charge-sheet or conducting any departmental inquiry against her. It was submitted that such termination amounted to retrenchment and was null and void for non compliance with the mandatory provisions of Section 25F of the Industrial Disputes Act.

3. CGIT, in its impugned award, has considered whether the Respondent's termination vide office order dated 1 March, 2013 amounted to retrenchment and was accordingly null and void for non-compliance with the provisions of Section 25F of the Industrial Disputes Act, and whether the Respondent was entitled to the relief of reinstatement with full back wages and continuity of service and attendant benefits. On both issues CGIT held in favour of the Respondent workman.

4. It is not in dispute that before terminating the Respondent's services, the Petitioner did not issue any charge-sheet or conduct any departmental inquiry. Learned Counsel for the Petitioner, however, submits that considering the fact that the Respondent in the present case has admitted her misconduct, that is

to say, habitual absenteeism, there was no need for any departmental inquiry and on the basis of the Respondent's admissions, she could well be terminated from service. Learned Counsel, in the alternative, submits that the Petitioner is a society registered under the Societies Registration Act 1860; its activities include co-ordinating the work of various export organizations and undertaking common functions and services in relation to them; the related agencies were the Petitioner's members and paid membership fees; and the Petitioner-society does not earn any profit or get any grant for its expenses. It is submitted that the Petitioner's functioning is akin to that of a co-operative society and it is not an industry within the meaning of the Industrial Disputes Act. Learned Counsel lastly submits that even if this Court were to come to a conclusion that the Respondent's services could not have been terminated except after a departmental inquiry, it was imperative for CGIT to itself allow the Petitioner-establishment to lead evidence and make out a case before it in support of the Respondent's misconduct. It is submitted that this Court may, in the premises, remand the reference to CGIT for affording such opportunity to the Petitioner. Learned Counsel relies on the Judgment of the Supreme Court in the case of **Workmen of Motipur Sugar Factory Pvt. Ltd. Vs. Motipur Sugar Factory**¹ in support of this contention.

5. So far as the Petitioner's contention that it was not an industry within the meaning of clause (j) of section 2 of the

¹ 1965(3) SCR 588: AIR 1965 SC 1803

Industrial Disputes Act is concerned, it is pertinent to note that no such plea was advanced by the Petitioner before the CGIT. Learned Counsel submits that the plea was but a question of law. Learned Counsel is not right there. Any plea based on the nature of activities carried on by an establishment was essentially a mixed question of law and facts. Foundational facts for establishing such plea must find place in pleadings and the Court must be called upon to decide such plea on the basis of those facts. Admittedly, these were absent in the present case. It is impermissible, in the premises, for this Court to remand the matter to the Court below for a finding on this new issue.

6. Coming now to the Petitioner's submission that in the face of the admissions of the Respondent, there was no need for a departmental inquiry, it is, in the first place, pertinent to note that the so-called admissions do not pertain to the alleged misconduct of absenteeism on the part of the Respondent. The admissions concern the fact that the Respondent was in fact absent on the occasions referred to by the Petitioner. In case of some of these occasions, explanations were furnished by the Respondent, whilst in case of a few others, apologies were tendered and these were said to be accepted by the Petitioner. Secondly, and at any rate, even in the face of admissions of absenteeism, a departmental inquiry was certainly called for. Only in an inquiry the Respondent may have had an opportunity to show cause why her admitted absenteeism

did not amount to a misconduct, having regard to the circumstances on each day on which she was so absent.

7. In the absence of any such inquiry, the termination of the Respondent-employee was rightly held by CGIT as a case of retrenchment and, accordingly, null and void for non-compliance with mandatory provisions of Section 25F of the Industrial Disputes Act. Such retrenchment did not come within any of the exceptions and was not accompanied by notice pay or compensation. The order of the Industrial Court is clearly a possible order; it cannot be termed either as perverse or unreasonable. It does not merit any interference in the writ jurisdiction of this Court.

8. In the case of **Workmen of Motipur Sugar Factory** (supra), what the Supreme Court observed was that since the employer had failed to make an inquiry before dismissing or discharging workman concerned in that matter, it was open to him to justify his action before the tribunal by leading evidence and that, in cases where the employer dismisses an employee and such dismissal is challenged as bad in law for being without holding any inquiry, setting aside of such dismissal only on that ground would not be in the interest of justice; despite such dismissal, the employer would still be able to immediately proceed to hold an inquiry and pass an order dismissing the employee once again and a new industrial dispute would thereupon arise, where the employer

would be entitled to rely upon the inquiry conducted in the meantime; this would entail nothing but delay; it would instead be in the interest of justice to allow the employer's request to lead evidence in support of the employee's misconduct. There is no quarrel with the proposition. The fact of the matter, however, is that there was no such request made by the Petitioner-establishment in the present case. CGIT, on its own, is not expected to pass such order and afford such opportunity to the employer. It is for the employer to apply for such opportunity and since that was not done, no remand can now be sought on the basis of the law laid down by the Supreme Court in the case of **Workmen of Motipur Sugar Factory** (supra).

9. None of the three contentions urged by learned Counsel for the Petitioner accordingly merits acceptance. Learned Counsel, however, is right in her submission that in the present case, the order of back wages, particularly, wages relating to the period before the Respondent made her demand before the conciliation officer is not justified. The Respondent was terminated with effect from 1 March, 2013. She applied for the first time to the conciliation officer on 22 July, 2015. The fact that she applied to the conciliation officer with her demand after a delay may not have any implication from the point of view of limitation, but, surely, it would have an impact from the point of view of relief of back-wages claimed by the workman. If the workman did not seek redressal of his or her

grievance by invoking the machinery provided under the Industrial Disputes Act or any other appropriate labour law legislation, he or she cannot make a virtue of it and seek back-wages during the period of his or her delay. There is no explanation whatsoever why the Respondent did not invoke the machinery under the Industrial Disputes Act at any time earlier. The order of full back-wages thus deserves to be varied so as to exclude the period between 1 March, 2013 to 22 July, 2015.

10. The Writ Petition is, accordingly, disposed of by excluding back-wages for the period between 1 March, 2013 to 22 July, 2015 from the order of payment of back-wages. Rest of the order is sustained and the Petitioner's contentions in its respect are rejected.

11. It is made clear that the issue whether or not the Petitioner is a industry within the meaning of clause (j) of Section 2 of the Industrial Disputes Act has not been decided in the present reference either by this Court or by the Industrial Tribunal. It will be open to the Petitioner-establishment to agitate this issue before any appropriate forum in future in any other matter.

12. Learned Counsel for the Petitioner seeks a stay of this order. The application is rejected.

(S.C. GUPTE, J.)