Bombay High Court
Chandulal Chunilal And Co., A ... vs Bhupendra D. Maniar Of Mumbai, ... on 19 April, 2007
Equivalent citations: 2007 (4) BomCR 688
Author: V Kanade
Bench: V Kanade
JUDGMENT V.M. Kanade, J.

1. Rule. Rule made returnable forthwith by consent of the parties. Respondent waives service. Heard the learned Counsel for the parties.

2. Both these petitions can be disposed of by a common order. The petitioners in both these petitions are challenging same order in their respective petitions.

3. The petitioner in Writ Petition No. 194/2007 is a partnership firm which is registered under the Partnership Act and petitioner Nos. 2 and 3 are partners of the said firm. For the sake of convenience, the said petitioner shall be referred to as "the firm". The respondent in this petition was working with the firm as a clerk. The respondent for the sake of convenience shall be referred to as "the employee".

Brief facts are as under:

4. The firm was carrying on business in the Bombay Stock Exchange and was a broker dealing with shares and certificates, It is the case of the firm that the said firm ran into losses and therefore, it had decided to close down its business with effect from 1.5.96. It had also decided to terminate the services of all the employees in their service with effect from 15.4.96. Accordingly, they terminated the services of employees from the said date. It is the case of the firm that the first respondent refused to accept the letter of termination and raised an industrial dispute which was referred to the Labour Court. The said reference was numbered as Reference IDA No. 205/98. The employee in the meanwhile also filed a complaint ULP No. 605/98 of unfair labour practice under Item 9 of Schedule IV of MRTU and PULP Act, 1971. It was contended that the firm had decided to transfer its membership rights with the Bombay Stock Exchange to one M/s. K.J.S. Securities Pvt. Ltd. and the membership was transferred in favour of the said company, his right of employment is lost and the reference which was pending before the Labour Court would, therefore, become infructuous.

5. Industrial Court by its Judgment and Order dated 29.11.2003 dismissed the complaint ULP No. 605/98. It is an admitted position that this order was not challenged by the employee and the said order became final.

6. In the reference which was pending in the Labour Court vide IDA 205/98, employee filed his statement of claim on 31.7.98. In the said statement of claim, he alleged that he had worked upto 15.4.96 and at 2.00 p.m. on the said date, his services were orally terminated. It was alleged in the statement of claim that no notice was given to him and retrenchment compensation also was not paid. He also stated that seniority list was not displayed by the firm. He, therefore, prayed for re-instatement with full backwages.

7. The firm filed its written statement in which it is contended that the company was closed in June 1996 and due notice was given to all the employees and therefore, the employee was not entitled to claim reinstatement with backwages. It was contended that since the firm had incurred loss in the Stock Exchange business, it had decided to close down the business activities. It is also stated in the written statement that they were willing to pay all legal dues to the employee as were paid to the other employees. The employee, however, did not accept this proposal and demanded a sum of Rs. 18,30,000/- towards settlement of the claim. In the meantime, an exparte award was passed against the firm since the firm did not attend the court on 21st April, 2004. Therefore, an application was made for restoration by the firm and the exparte award was restored on the condition of the firm depositing an amount of Rs. 1,00,000/- towards legal dues in the court alongwith costs of Rs. 5000/- till 15th June, 2006. After both the parties led their oral and documentary evidence, the Labour Court vide award dated 18.10.2006 was pleased to direct the firm to pay Rs. 5,00,000/ towards compensation of the employee and the amount of Rs. 1,41,304/- which was already withdrawn by the first respondent was directed to be adjusted towards the said amount of compensation. The firm being aggrieved by the said order has filed Writ Petition No. 194/2007. The employee has filed Writ Petition No. 602/2007. The petitioner has not made a specific prayer in his prayer clause for reinstatement. In the interim relief which he has claimed, he sought an order of reinstatement with full back wages.

8. The learned Counsel for the firm has submitted that the Tribunal has erred in directing the firm to pay an amount of Rs. 5,00,000/-. He submitted that during the pendency of the complaint which was filed by the employee in the Labour Court, the Bombay Stock Exchange had directed the firm to deposit an amount of Rs. 5,00,000/- as a condition precedent for transferring the membership of the firm before closing down the business of buying and selling the shares. The learned Counsel further submitted that the Labour Court clearly erred in directing that the compensation which was payable to the employee was Rs. 5,00,000/-. He submitted that the Labour Court has not stated how the Court has arrived at the figure of Rs. 5,00,000/-.

9. The learned Counsel on behalf of the firm submitted that on the other hand, on the dismissal of the complaint filed by the employee, issue regarding the closure of the business of the firm was finally concluded and therefore, it was not open for the employee to agitate the same in the second complaint before the Labour Court. He submitted that the employee has in his evidence admitted that he had refused to accept the legal dues which were offered by the firm. He invited my attention to the various admissions which are given by the employee in his evidence. He submitted that therefore, the Labour Court clearly erred in giving the said direction and therefore, award was liable to be set aside.

10. The learned Counsel on behalf of the firm relied on the judgment of the Apex Court in the case of U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey reported in 2006 I LLJ Page 496. He submitted that on account of closure of the firm, there was no question of illegal termination of the employee. He submitted that the finding of the Labour Court that the services of the employee were illegally terminated, therefore, were perverse finding, were liable to be set aside.

11. The learned Counsel for the employee, on the other hand, vehemently urged that the Labour Court ought to have directed that the employee should be reinstated with full backwages. He submitted that the fact that the notice was issued by the firm in 1998 clearly indicated that the firm had not closed down its business since the address which was shown on the said letterhead was that of the Bombay Stock Exchange. He submitted that the order of termination of the closure could not be produced by the firm and therefore, adverse inference was liable to be drawn.

12. I have heard both the learned Counsel at length. It is an admitted position that the employee initially had filed a complaint of unfair labour practice under Item 9 of Schedule IV of MRTU and PULP Act. This complaint was dismissed by the Industrial Court on 29th November, 2003. During the pendency of this complaint, the Stock Exchange had directed them to deposit an amount of Rs. 5,00,000/- as and by way of security and as a condition precedent for surrendering its membership. While dismissing the complaint filed by the employee, the Tribunal observed that the firm had transferred its membership rights to M/s. K.J.S. Securities Pvt. Ltd. and as such had closed its business. He further observed that the complainant had examined himself and had admitted the fact of membership by transfer of company. Thus, this issue has attained finality and it was not open for the employee to reagitate the said issue in the dispute which was raised by him regarding his termination. The employee already had withdrawn the provident fund amount of Rs. 1,41,304/- from the amount which was deposited with the Bombay Stock Exchange in the said complaint. It is pertinent to note that the Industrial Court had clearly observed that amount of Rs. 5,00,000/- was deposited by the firm with the Bombay Stock Exchange not towards compensation, gratuity, etc.

13. Perusal of the order passed by the Presiding Officer, Labour Court, Mumbai, clearly discloses that it was impressed by the amount of Rs. 5,00,000/- which was deposited before the Stock Exchange by the firm. The Labour Court clearly erred in holding that the employee was entitled to the legal dues amounting to Rs. 5,00,000/-which was deposited with the Stock Exchange. This finding recorded by the Labour Court is perverse and Labour Court has committed an error of law which is apparent on the face of record by treating this sum which was deposited by the firm to the Bombay Stock Exchange as an amount deposited towards legal dues of the employee. The Labour Court also has erred in holding that the termination of the employee by the firm was illegal and was without following due process of law. It has to be noted here that the employee has admitted in his first complaint that the membership of the Stock Exchange in favour of the firm was transferred in the name of M/s. K.J.S. Securities Pvt. Ltd. The employee has also admitted in his cross-examination that the firm had offered the dues to him after the closure of its business. In the present case, the number of employees which were engaged by the firm was less than 100 and therefore, the provisions of Section 25(o) are not applicable. It cannot be said that therefore, no procedure had been followed by the firm for closing down its business. In view of the admission given by the employee, it is clear that though he was offered the terminal dues, he had refused to accept the same. The Labour Court has also recorded that the firm had offered to pay dues of Rs. 2,68,972/- before the Arbitrator Committee. The finding, therefore, of the Labour court on the amount of compensation which was payable to the employee, therefore, will have to be quashed and set aside. In the present z, an amount of Rs. 1,41,304/- has already been paid towards provident fund dues. The firm in its written statement in paragraph 8 has stated that the total amount payable Rs. 2,68,972/- including the amount of Rs. 1,41,304/-. Since the amount of Rs. 1,41,304/- is

deducted from this amount, the balance amount would come to Rs. 1,27,668/-. Thus, it was according to the respondent, an amount of Rs. 1,27,668/ was due and payable as on date of closure on 15th April, 1996.

14. It is an admitted position that on account of Bomb blast, the employee had suffered injuries to the eyes and as a result was not in a position to work from 1993 to 1996. In my view, therefore, an additional amount of Rs. 1,23,000/- ought to have been paid to the employee. Since the amount of Rs. 1,27,668/- was due and payable to the employee in 1996 taking into consideration the interest on the said amount which would have accrued on the said sum at the rate of 10% p.a., it would be appropriate if the firm is directed to pay the total compensation of Rs. 2,50,000/- which would include the interest as also other compensation.

15. In the result, the order passed by the Labour Court is partly modified. The submission made by the Counsel appearing on behalf of the employee regarding reinstatement with full backwages is not accepted. The submission made by the firm is partly accepted and the order passed by the Labour Court is modified.

16. The respondent is directed to pay an amount of Rs. 2,50,000/- towards compensation. The amount which is deposited by the firm in the Labour Court may be adjusted towards the payment of Rs. 2,50,000/-. It is clarified that the amount of interest, if any, accrued on the said amount of Rs. 1,00,000/- may be adjusted towards the total amount of Rs. 2,50,000/- which is payable by the firm. The firm petitioner in Writ Petition No. 194/07 to deposit the balance amount with the Labour Court within eight weeks. Writ Petition No. 194/07 is partly allowed in the above terms. Accordingly, Rule is made absolute in in the above terms.

Writ Petition No. 602/07 filed by the employee is dismissed. Rule is discharged.