

MANU/MH/0149/2002

Equivalent Citation: 2002(2)BomCR506, 2002(104(3))BOMLR214, [2002(93)FLR956],
2002(2)MhLj378

IN THE HIGH COURT OF BOMBAY

W.P. No. 695 of 1999

Decided On: 28.11.2001

Appellants: **Vimal S. Roy (Captain)**
Vs.

Respondent: **N.E.P.C. Airlines, Chennai and Ors.**

Hon'ble Judges/Coram:

N.N. Mhatre, J.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu and Manish Disai, Advs., i/b., C.R. Naidu & Co.

For Respondents/Defendant: Kiran Bapat and Samir Samant, Advs.

Case Note:

[A] Industrial Disputes Act, 1947 - Sections 33-C(2) and 25M - Lay off - Industrial establishment having more than 100 workmen - It was incumbent on the establishment to have sought prior permission of the appropriate Government before laying off the employees - No such permission sought for - Lay off illegal - Petitioner has existing right to get compensation.

Held:

As there were more than 100 workmen in the establishment of the respondents, prior permission of the appropriate Government ought to have been sought for before laying off the employees. Admittedly, no such permission has been sought for. The lay-off is, therefore, deemed to be illegal under Section 25M(8) and the compensation payable under that section has to be awarded to the petitioner as it is an existing right.

[B] Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 - Section 59 - Bar of proceedings under Bombay and Central Acts - Bar operates when proceedings are instituted under either one of the Acts.

The provisions of Section 59 presupposes that the establishment is governed by both the M.R.T.U. and P.U.L.P. Act as well as the Industrial Disputes Act and only then the bar would operate if the proceedings have been instituted under either one of the Acts.

JUDGMENT

N.N. Mhatre, J.

1. The petitioner joined the respondents as a 'Senior Co-Pilot' in January 1995 and

was confirmed as 'Captain' in March, 1996. The petitioner was not paid earned wages and several other amounts and, therefore, he filed a complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU and PULP Act) on 3-6-1997, claiming an amount of Rs. 8,43,200/- as remuneration for the period from 1-1-1997 to 3-5-1997 and an amount of Rs. 6,800/- as lay off compensation. The petitioner further sought a direction against the respondents for detailing the petitioner on any scheduled flight for a mandatory route check.

2. An ad-interim order was passed by the Industrial Court in complaint (ULP) No. 474 of 1997 by which the respondents herein were directed to deposit a sum of Rs. 10 lacs in Court or to furnish a solvent security for the same amount and a further direction was given to the respondents to detail the petitioner on scheduled flight for a mandatory route check. Being aggrieved by this order, the respondents filed a revision application under Section 44 of the MRTU and PULP Act and submitted that the appropriate government being the Central Government, the provisions of the MRTU and PULP Act would not be available to the petitioner. It was further contended that by an ordinance of 11-10-1995, the appropriate government for airlines industry is the Central Government and not the State Government and, therefore, the order passed by the Industrial Court was without jurisdiction. The petitioner on realising this, withdrew the complaint and filed an application under Section 33-C(2) of the Industrial Disputes Act on 19-6-1997. The petitioner claimed an amount of Rs. 8 lacs as salary and benefits for the period of 1-1-1997 to 4-5-1997, lay-off compensation from 5-5-1997 to 18-6-1997 @ Rs. 6,800/- p.m. amounting to Rs. 3,06,000/-. In all, the petitioner claimed an amount of Rs. 11,49,200/-.

3. A written statement was filed by the respondents raising a plea that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and that the Labour Court at Mumbai could not decide the issue as the employment of the petitioner was at Chennai and, therefore, the question of the Labour Court at Mumbai exercising the jurisdiction did not arise. The respondents, however, admit that the petitioner was laid-off from the duty from 5-5-1997 on account of the fact that the customs authorities did not release the aircraft but since the petitioner had resigned from the service, he was not entitled to his claim as set out in his application.

4. The Labour Court concluded that the petitioner was a workman and was covered by the definition contained in Section 2(s) of the Industrial Disputes Act. However, as regards lay-off compensation, the Labour Court held that it has no jurisdiction to determine the amount as it could not decide whether the lay-off was legal and justified.

5. Mr. Naidu, learned Advocate for the petitioner, submits that the Labour Court has misdirected itself and has, therefore, erred in not awarding lay-off compensation to the petitioner. He submits that the fact that the petitioner was laid-off has been admitted by the respondents and the Labour Court was fully empowered to decide the compensation payable to the petitioner. He further submits that the number of employees in the establishment being more than 100, it was necessary for the respondents to seek permission from the appropriate government prior to laying-off the workman. As this was not done, the Labour Court ought to have considered the provisions of Section 25-M wherein lay-off would be deemed to be illegal and the Labour Court would have the jurisdiction to grant wages payable under Section 25-M(8) of the Industrial Disputes Act.

6. Mr. Bapat, learned counsel for the respondents, raised the contention that the Labour Court had no jurisdiction at all to decide the application under Section 33-C(2) as bar of Section 59 of MRTU and PULP Act would come into play. He submits that the petitioner having chosen to seek redressal of his grievance under the MRTU and PULP Act, he could not thereafter approach the Labour Court under Section 33-C(2). He further submits that although the complaint has been withdrawn by the petitioner, effective steps had been taken in the matter by the Industrial Court while passing an ad-interim order and therefore, the provisions of Section 59 were attracted. He placed reliance on the Full Bench Judgment of this Court in the case of C.S. Dixit v. Bajaj Tempo Ltd., Pane, reported in MANU/MH/0745/2000 : 2000 (4) Mh.LJ. 261. He, therefore, submits that the entire application of the petitioner is not maintainable and the writ petition ought to be dismissed.

7. Section 59 of the MRTU and PULP Act reads as under :--

"Bar of proceedings under Bombay or Central Act: If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."

The provisions of this section pre-supposes that the establishment is governed by both the MRTU and PULP Act as well as the Industrial Disputes Act and only then the bar would operate if the proceedings have been instituted under either one of the Acts. In the present case, admittedly, the MRTU and PULP Act is not applicable to the establishment as the appropriate government is the Central Government from 11-10-1995 after which date Section 2(a) of the Industrial Disputes Act was amended to bring within its purview the air transport service. The Industrial Court, therefore, had no jurisdiction to pass ad-interim order in the complaint, It could not therefore be said that it had taken any effective steps in the matter.

8. The bar of Section 59 will operate only if the MRTU and PULP Act is applicable to the establishment. The judgment of the Full Bench in the case of C. S. Dixit (supra) cited by Mr. Bapat dealt with the cases wherein the establishments were covered both by the MRTU and PULP Act as well as Industrial Disputes Act as the State Government was not the appropriate government. This judgment would, therefore, in my opinion, be of no assistance in the present case. Mr. Bapat's contention that the jurisdiction of the Labour Court under Section 33-C(2) of the Industrial Disputes Act is ousted cannot be accepted.

9. Mr. Naidu's contention that the Labour Court had jurisdiction to award lay-off compensation must be accepted. The respondents had admittedly laid-off the petitioner. The only question was whether the Labour Court would compute the amount payable to the petitioner on account of the lay-off. As there were more than 100 workmen in the establishment of the respondents, prior permission of the appropriate government ought to have been sought for before laying off the employees. Admittedly, .no such permission has been sought for. The lay-off is, therefore, deemed to be illegal under Section 25-M(8) and the compensation payable under that Section has to be awarded to the petitioner as it is an existing right.

10. The order of the Labour Court insofar as disallows the claim of the petitioner for lay-off compensation is set aside. The respondents shall pay to the petitioner the lay-off compensation as claimed, that is, an amount of Rs. 3,06,0007-.

11. The respondents at the time of admission of the petition were directed to deposit the entire amount of Rs. 8,43,322/- which is the amount awarded by the Labour Court. The Respondents have not complied with this order. The respondents are directed to pay the petitioner the entire amount of Rs. 8,43,322/-plus Rs. 3,06,000/- by 31-1-2002 failing which interest @ 12% p.a. shall be payable to the petitioner from today till realisation of the amount.

12. Rule is, accordingly, made absolute with costs.

Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.

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