Pfizer Ltd

Vs

Mazdoor Congress and Others

Civil Appeals Nos. 3969-70 of 1990

(J. S. Verma, B. N. Kirpal JJ)

16.08.1996

JUDGMENT

KIRPAL, J. -

1. These are appeals by special leave from the judgment of the Bombay High Court whereby the petition under Article 227 of the Constitution, filed by Respondents 2 and 3 herein, was allowed and the orders of the Labour Court and the Industrial Court which had upheld the termination of their services was quashed with a direction to the appellant to give all consequential benefits to the said respondents.

2. The appellant is, inter alia, engaged in the manufacture of pharmaceutical products. At the material time Waman S. Surve and R. B. Sail, Respondents 2 and 3, were engaged as security staff (watchman and havaldar respectively) at the factory of the appellant situated at Thane, Bombay. It appears that on 7-8-1975 one temporary workman named Parkar employed by the appellant at its aforesaid factory was caught by the appellant's security staff while he was trying to take away certain products of the appellant. Parkar was handed over to the police authorities and during the course of investigation he is stated to have disclosed to the police that besides himself two other workmen of the appellant employed in watch and ward section, namely, Respondents 2 and 3 herein were involved in a conspiracy to commit theft of the products of the appellant.

3. On 8-8-1975 the said Respondents 2 and 3 were arrested by the police. It is the case of the appellant that during the course of interrogation both the said respondents confessed that they were involved in the theft of the appellant's products and their statements were recorded on 9-8-1975 and 10-8-1975 by the police in the presence of two panchas. Based on the said information the police is stated to have raided the houses of Respondents 2 and 3 and recovered stolen property therefrom, which consisted of medicines manufactured by the appellant-Company.

4. After the arrest on 8-8-1975, the said Respondents 2 and 3 were absent from duty. On 14-8-1975 a letter was written by the appellant to Respondent 2 herein to the effect that he had been absent from duty with effect from 8-8-1975 without intimation or permission. It was also stated therein that the company understood that Respondent 2 had been arrested by the police in connection with the material which was stolen from the appellant's Company. The letter further stated that while the company did not wish to sit in judgment on whether Respondent 2 was in fact involved in any criminal action or not, it was perturbed that a member of its watch and ward staff should even be suspected of involvement by the police. The Company further stated that it had lost confidence in his suitability as a member of its watch and ward staff and had come to the conclusion that it was not in the interest of the Company to continue him in service. Accordingly, the Company terminated

the services of Respondent 2 in accordance with the Company's certified Standing Order No. 25(4). A formal letter of termination was also sent along with this communication. An identical letter of termination was written by the appellant to Respondent 3 except that the absence of Respondent 3 from duty was with effect from 9-8-1975.

5. After the aforesaid recoveries were made the police filed charge-sheets against Respondents 2 and 3 and a criminal complaint for offence punishable under Section 381 read with Section 34 of the Indian Penal Code.

6. Respondents 2 and 3 filed identical complaints on 13-11-1975 before the Labour Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (1 of 1972) (hereinafter referred to as 'the said Act') challenging their termination of services by alleging that the appellant herein had committed unfair labour practice under Items 1(a) to (f) of Schedule IV of the said Act. The appellant filed its written statement stating the full facts and contended that it had not committed any unfair labour practice.

7. About one year after the filing of the complaints, Respondents 2 and 3 filed an application dated 19-10-1976 for permission to amend the original complaint with a view to introduce an allegation that they had been falsely implicated in the criminal case by the appellant-Company because of union rivalry. The appellant resisted this application by contending that the allegations were totally misconceived and a new case was sought to be made out. By order dated 10-1-1977 the Labour Court rejected the said application, inter alia, observing that if the amendments were allowed then the subject-matter of the complaint would fall within the jurisdiction of the Industrial Court and not the Labour Court. Against the said order of the Labour Court, refusing to allow the amendments, a writ petition was filed by the said respondents in the Bombay High Court but the same was withdrawn on 4-4-1978.

8. The Labour Court by an order dated 21-9-1978 dismissed the complaints filed by the respondents under Section 28 of the said Act by holding that they had failed to make out any case of unfair labour practice. A revision petition was filed by the said respondents before the Industrial Court which was allowed on 21-7-1979 and the applications filed by Respondents 2 and 3 under Section 28 of the said Act were remanded to the Labour Court for being decided as per the directions given by the Industrial Court in its said order of 21-7-1979. The Labour Court was specifically directed to consider the allegations of Respondents 2 and 3 that they were falsely implicated in the criminal case. The Labour Court was directed to allow the said respondents to lead evidence in order to show whether the appellant herein had committed any unfair labour practice as had been alleged.

9. Before the order dated 21-7-1979 was passed by the Industrial Court, remanding the matter back to the Labour Court, the criminal trial of, Respondents 2 and 3 was completed and by order dated 29-7-1978 Respondent 2 was acquitted on account of lack of adequate evidence but Respondent 3 was convicted. Thereafter the said Respondent 3 filed an appeal before the Court of Additional Sessions Judge at Thane. By order dated 4-12-1979 the said appeal was allowed and the conviction was set aside. A perusal of the judgment of the Additional Sessions Judge shows that the conviction of Respondent 3 was set aside because of lack of adequate and reliable evidence.

10. When the Labour Court was seized of the matter, pursuant to their order of remand dated 21-7-1979, Respondents 2 and 3 filed three different applications. In the first application they sought permission to amend their complaint so that they could insert a paragraph to the effect that termination or discharge for loss of confidence amounted to retrenchment within the meaning of

Section 2(oo) of the Industrial Disputes Act, 1947 and the condition precedent to such termination had not been fulfilled and, therefore, the order of termination was void and inoperative. The second application was for a direction to the appellant herein to produce their records and proceedings together with the findings given by the members of the enquiry committee which had been set up to enquire into certain instances of assault on a trade union leader. The third application was for issue of summons to the members of the said enquiry committee to give evidence in respect of the enquiry held by them. The Labour Court by its order dated 4-3-1980 rejected all the three applications. Revision applications filed before the Industrial Court by Respondents 2 and 3 were summarily rejected on 17-7-1980. Thereafter writ petition being No. 2599 of 1980 was filed and admitted by the Bombay High Court on 15-9-1980.

11. Pursuant to the order of remand dated 21-7-1979 the Labour Court, as directed by the Industrial Court, received evidence from the parties. Respondents 2 and 3 filed their affidavits which were treated as their examination-in-chief and they were cross-examined on behalf of the appellant herein. As against this on behalf of the appellant, its security officer and one S. K. Akolkar, Senior Police Sub-Inspector of Thane Police Station who had investigated the criminal case, were examined as witnesses. During the course of hearing before the Labour Court the papers and proceedings of the criminal court were produced including the judgment of the Judicial Magistrate who had acquitted Respondent 2 but convicted Respondent 3 and also the judgment of the Additional Sessions Judge, Thane who had allowed the appeal of Respondent 3. Before the Labour Court, as is evident from its order dated 28-12-1981 only two points were agitated on behalf of the respondents and they were : firstly as to whether Respondents 2 and 3 had been falsely implicated in a criminal case on a false and concocted evidence and; secondly whether the victimisation alleged by them falls under Item 1 Schedule IV of the said Act. The victimisation which was alleged by Respondents 2 and 3 was that Dr. Datta Samant, a labour leader was assaulted outside the appellant's factory gate on 18-3-1975. A committee was set up by the company consisting of Mr. V. R. Kale and Mr. M. S. Datta and Respondents 2 and 3 were alleged to have been pressurised by Mr. Data to falsely implicate the office-bearers of Respondent 1 as being responsible for the said assault. It was further alleged that when Respondents 2 and 3 refused to cooperate with the appellant-Company, the Company's management was displeased and, with a view to victimise the respondents, it took recourse to the action of terminating their services which amount to unfair labour practice under Item 1(a) of Schedule IV. The Labour Court noticed that discharge or punishing an employee or office-bearer or acting union member on account of his trade union activity is an unfair labour practice falling under Items 4(a) and (f) of Schedule II. The Labour Court, however, came to the conclusion that Respondents 2 and 3 had neither been falsely implicated in the criminal case as mentioned in Item 1(c) of Schedule IV nor was there any unfair labour practice carried out by the appellant-Company qua the said respondents in the manner as specified in Items 4(a) and (f) of Schedule II of the said Act.

12. Against the dismissal of the complains by the Labour Court the said respondents filed two revision applications before the Industrial Court. Before the Industrial Court also it is only this contention of unfair labour practice falling under Item 1(a) or (c) of Schedule IV which was agitate. By a reasoned order dated 10-2-1984 the Industrial Court dismissed both the revision applications and upheld the findings of fact recorded by the Labour Court.

13. Respondents 2 and 3 then filed a petition under Article 227 of the Constitution being Writ Petition No. 2844 of 1984 before the Bombay High Court challenging the aforesaid order dated 10-2-1984 of the Industrial Court.

14. By judgment dated 22-2-1990/26-2-1990 a Single Judge of the Bombay High Court disposed of both the Writ Petitions No. 2599 of 1980, whereby the order of the Labour Court disallowing the three applications was challenged, as well as the main Writ Petition No. 2844 of 1984 whereby the complaints under Section 28 of the said Act were rejected by the Labour Court and which decision was upheld by the Industrial Court. By the impugned judgment the High Court quashed and set aside the main orders of the Labour Court and the Industrial Court and declared that the appellant's Company had indulged in unfair labour practice covered by Item 1(f) of Schedule IV of the said Act. It further directed that the appellant shall cease and desist from indulging in unfair labour practice and reinstate the workmen in their original position with all consequential benefits, full back wages and continuity of service.

15. While allowing the writ petition the High Court held that it was difficult to conclude that the appellant-Company had acted in a mala fide manner and had victimised the workmen on account of their trade union activities, as had been alleged by them. The reason for the High Court allowing the writ petition was that the said workmen had made out a case of unfair labour practice inasmuch as action had been taken by the appellant with undue haste. In this connection the High Court observed as follows :

> "Assuming for the sake of argument that the respondent-Company thought it proper to terminate the services of the workmen for loss of confidence as they were arrested by the police in an alleged case of theft, it should not be forgotten that the action taken by them was with undue haste because the workmen were arrested by the police on a certain statement made by an accused person by name Parkar who was earlier arrested and for all that we know that the said Parkar had given false or wrong information to the police while in custody of the police or he did it under pressure of the police or perhaps the present workmen were really involved in a case of theft. The respondent-Company should have at least waited for a reasonable time and enquired into the allegations of theft made against the workmen who were members of the staff of watch and ward department and who were responsible for detection of many thefts in the past. Merely because they remained absent from duty for a couple of days and afterwards it came to the notice of the respondent-Company that they were suspected by the police for committing theft, the respondent-Company should not have in an ugly haste terminated their services so fast as they did which certainly would amount to discharge or dismissal of a workman with undue haste, an act of unfair labour practice covered by Item 1(f) of Schedule IV of the MRTU & PULP Act. It may be incidentally mentioned here that both the workmen were acquitted of the charge of theft levelled against them, one at the trial stage and the other at the appellate stage."

16. Challenging the correctness of the said decision Mr. R. F. Nariman, the learned Senior Counsel for the appellant, submitted that the concurrent finding of fact arrived at by the Labour Court and the Industrial Court, to the effect that the appellant had committed no unfair labour practice, ought not to have been set aside by the High Court exercising limited jurisdiction under Article 227 of the Constitution. He further submitted that if the facts of the case are examined the only conclusion which could be arrived at was that the appellant-Company had acted bona fide and the action of terminating the services of Respondents 2 and 3 was in accordance with its standing orders and did not amount to any unfair labour practice as contemplated by the said Act.

17. Dr. R. S. Kulkarni, the learned Senior Counsel for the respondents, on the other hand while

supporting the judgment of the High Court submitted that the decision of the Labour Court and the Industrial Court was perverse and, therefore, the High Court was justified in granting relief to Respondents 2 and 3.

18. Under Section 28 of the said Act complaints can be filed relating to unfair labour practices. Section 26 of the said Act states that unfair labour practices are those which are listed in Schedules II, III and IV of the said Act. Schedule II enumerates unfair labour practices on the part of the employers, inter alia, in relation to trade union activities. Schedule IV lists the general unfair labour practices which may be alleged against the employers. Item 1 clause (f) of Schedule IV is as under :

> "1.(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;"

19. There was no justification whatsoever for the High Court to have allowed Respondents 2 and 3, while hearing a petition under Article 227 of the Constitution to raise a new contention that there had been an unfair labour practice as contemplated by Item 1(f) and the appellant had acted with undue haste. No such contention was urged before the Labour Court or in revision before the Industrial Court. Even in the writ petition filed in the High Court under Article 227 of the Constitution, challenging the order of the Labour Court and the Industrial Court dismissing the complaints under Section 28 of the said Act, no specific contention had been raised to the effect that there was any undue haste on the part of the appellant in issuing the termination order and which could be regarded as an unfair labour practice. Merely because in an affidavit filed before the Labour Court there was a general statement of unfair labour practice covered by Items 1(a) to (f) could be no ground for the High Court to come to the conclusion that a case under Item 1(f) had been made out because Respondents 2 and 3 had not led any evidence in this behalf and nor was this contention specifically raised and argued, as already noticed, before the Labour Court and the Industrial Court or even in the writ petition filed before the High Court.

20. Whether there was any undue haste on the part of the employer white discharging or dismissing an employee is a question of fact which has to be determined on the basis of evidence on record. The complaint under Section 28 of the said Act was filed by Respondents 2 and 3. If it was their case that there was an unfair labour practice on the part of the appellant herein as contemplated by Item 1(f), then it was incumbent upon the said respondents to state facts on the basis of which the Labour Court could come to the conclusion that there was an undue haste as contemplated by Item 1(f). The complaints filed by the said respondents do not contain any particulars of undue haste and nor was there any evidence led on the part of the said respondents. The High Court clearly erred in making out a new case and in setting aside the concurrent findings of the Labour Court and the Industrial Court.

21. It is not in dispute that on account of loss of confidence and because of the absence of Respondents 2 and 3 from work without leave the standing orders of the Company did empower it to discharge the said respondents on that ground. This being so, even if the High Court could have gone into the question as to whether there was any undue haste on the part of the appellant, in our opinion the conclusion arrived at by the High Court against the appellant herein is without any evidence or basis.

22. It would depend upon the facts of each case whether an employer has acted with undue haste while discharging or dismissing an employee. It is neither possible nor desirable to lay down or spell out any general principles in this regard. Each case will have to be judged on its own facts.

Keeping in mind the undisputed facts of the present case the only question is whether or when the termination letters were issued could it be said that the appellant had acted in undue haste. To recapitulate on 7-8-1975 the Company's employee Parkar had disclosed that Respondents 2 and 3 were involved in the conspiracy of theft of the Company's medicines. The said respondents were arrested on 9-8-1975 and they were absent from duty as from that date. On 10-8-1975 the statements of the said respondents are stated to have been recorded pursuant to which recovery was stated to have been made of the stolen property. Charge-sheet against the said respondents was filed alleging offence having been committed under Section 381 read with Section 34 of the Indian Penal Code. The said respondents were not ordinary clerks in the office of the appellant but they were part and parcel of the watch and ward section, Respondent 2 being the watchman and Respondent 3 the havaldar. These two respondents were supposed to protect the property of the appellant-Company and on 14-8-1975 the appellant-Company had before it information regarding the alleged involvement of these two persons in the theft of its property. It is difficult for us to appreciate how, under these circumstances, the High Court could possibly have come to the conclusion that there was any undue haste on the part of the appellant-Company in removing these respondents from service. The order terminating the services of Respondents 2 and 3 was passed nearly 5/6 days after the arrest of Respondents 2 and 3 and during which period they had been absent without leave. It cannot be said that there was any undue haste on the part of the appellant-Company which could possibly lead to the conclusion that it was guilty of unfair labour practice. The High Court clearly erred in allowing Respondents 2 and 3 to make out a new case and then in coming to a conclusion which is clearly untenable. The orders of the Labour and Industrial Courts did not call for any interference.

23. For the aforesaid reasons, these appeals are allowed. The impugned judgment of the High Court dated 22-2-1990/26-2-1990 is set aside and the judgments and orders of the Labour Court and the Industrial Court are restored. There will be no order as to costs.