SUPREME COURT OF INDIA

CEAT Limited

Vs

Anand Abasaheb Hawaldar and Others

Appeal (Civil) 9442 of 2003

(Arijit Pasayat and R.V. Raveendran, JJ)

16.02.2006

JUDGMENT

ARIJIT PASAYAT, J.

Challenge in this appeal is to legality of the judgment rendered by a Division Bench of the Bombay High Court in a Letters Patent Appeal affirming judgment of a learned Single Judge. By the said judgment learned Single Judge had confirmed the order passed by the Industrial Court, Thane Maharashtra (in short 'Industrial Court').

The controversy involved in the present appeal arises in the following background:

By Circular dated 30th June, 1992 the appellant - a public limited company incorporated under the Companies Act, 1956 declared a Voluntary Retirement Scheme (hereinafter referred to as the 'VRS-I') for its employees which was accepted by the 337 employees. On 16th March, 1994 the appellant entered into a Memorandum of Understanding with the employees' Union containing another Voluntary Retirement Scheme (hereinafter referred to as the 'VRS-II'). The same was accepted by 179 employees. Respondents 1 to 6 who had earlier accepted VRS-I filed a complaint before the Industrial Court, Thane on 20th July, 1994 alleging that the appellant-company had committed an unfair labour practice in terms of item nos.5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (in short the 'Act').

It was contended that one of the benefits which was given to the employees who had accepted VRS-II, namely payment of a sum of Rs.90, 000/- ex-gratia, had not been extended to the complainants who had retired pursuant to VRS-I in 1992. This according to them was illegal, unlawful and amounted to unfair labour practice. The Industrial Court after considering the materials placed before it came to hold that the grievances of the complainants were well founded. Accordingly, by award dated 24.10.1996, it directed the appellant to pay Rs.90, 000/- to each of the employees who had retired under VRS-I, as similar sum had been paid to 179 employees who had accepted VRS-II in 1994. The order passed by the Industrial Court was challenged by the appellant by filing a writ petition in the Bombay High Court. A learned Single Judge dismissed the writ petition by judgment dated 11.7.2001. In fact the learned Single Judge, modified the award by granting additionally, interest at 6% P.A. from 15.4.1994 till date of payment. A Letters Patent Appeal was filed before the Division Bench which was also dismissed by the impugned judgment dated 12/13-6-2003.

It is to be noted that before the High Court the following grievances were made by the employer:-

(i) A complaint of unfair labour practice could be filed only by a recognized union and not by an individual workman or some of them. Therefore, in a complaint filed by 6 employees, relief could not be granted to 337 employees.

(ii) In order to sustain the grievance under Item (5) of Schedule IV to the Act, something more than mere differential treatment was necessary to be established. It was incumbent upon the claimants to show that there was any favouritism or partiality shown to one set of workers regardless of merits.

(iii) In order to sustain the grievance under Item (9) of Schedule IV to the Act, it was to be established that there was failure to implement any award, settlement, agreement,

(iv) In order to sustain the grievance under Item (10) of Schedule IV to the Act, it was to be established that the employer had indulged in act of force or violence.

The High Court found that the plea regarding maintainability of the complaint by individual workman was not correct. Further it held that in view of the clear statement in the letter dated 11.7.1992 made by Sri P. Krishnamurthy, Vice-President of the Company, there was an assurance that all the employees who would accept the VRS-I would be entitled to all benefits which would be given to other employees and that those who would not accept VRS-I would not be paid anything more. Therefore, the High Court held that the fact that Rs.90, 000/- was paid to those who accepted VRS-II clearly indicated discrimination. Accordingly, the orders of the Tribunal and learned Single Judge were confirmed by the Division Bench.

In support of the appeal Mr. T.R. Andhyarujina, learned senior counsel submitted that the approach of the High Court is clearly erroneous. Firstly, it was submitted that the complaint itself was not maintainable before the Industrial Court as the complainants, at the relevant point of time, were not workmen. Additionally, Items 5, 9 and 10 of the Schedule IV had no application to the facts of the

case. There was no discrimination, favouritism or partiality whatsoever in any manner. Those who are covered by VRS-II stood at a different footing from those who accepted VRS-I and, therefore, the complaint should not have been entertained. It was further submitted that mere fact that subsequently some more amount had been paid does not per se establish favouritism or partiality. The Industrial Court and the High Court did not consider the distinguishing features. Unnecessary emphasis was laid on the letter written by the Vice-President referred to above. There was no award or agreement, or settlement which as alleged was not implemented. No evidence was led to show that there was any award or agreement or settlement which was to be enforced. Similarly, there was no evidence led to show that the appellant had indulged in any act of force or violence.

Learned counsel for the respondents on the other hand submitted that factual findings have been recorded by the Tribunal which have been endorsed by learned Single Judge and the Division Bench that the act of paying an amount higher than what was paid to those who had accepted VRS-I itself showed favouritism and partisan approach. VRS-I which was accepted by 337 employees was not voluntary and was on account of the threat perceptions.

In order to appreciate rival submission the entries in Schedule IV of the Act need to be noted. They read as follows:-

SCHEDULE IV

General Unfair Labour Practices on the part of Employers

1. To discharge or dismiss employees –

(a) by way of victimization;

(b) not in good faith, but in colourable

exercise of employer's rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegation of absence without leave;

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

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.

3. To transfer an employee mala fide from one place to another, under the guise of following management policy.

4. To insist upon individual employees, who were on legal strike, to sign a good conduct-bond, as a pre-condition to allowing them to resume work.

5. To show favouritism or partiality to one set of workers, regardless of merits.

6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

8. To recruit employees during a strike which is not an illegal strike.

9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence."

It will be appropriate to first deal with Item (5) which relates to the act of favouritism or partiality by the employer to one set of workers regardless of merit.

The factual background which is virtually undisputed is that the appellant-company took over

Murphy India Ltd. (hereinafter referred to as the 'Murphy'). Murphy had merged with the appellant-company pursuant to the order of Board of Industrial & Financial Reconstruction (in short 'BIFR'). Due to recession in the consumer electronic industry, the undertaking became unviable. Before the VRS I and II the appellant-company had introduced VRS Schemes in October, 1983 and February, 1988. All the employees who were covered by the VRS I and II were ex-Murphy employees.

According to learned counsel for the appellant, a complaint of unfair labour practice can be made only by the existing employees. Under clause (5) of Section 3 of the Act the expression "employee" only covers those who are workmen under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (in short the 'ID Act'). The expression "workman" as defined in clause (s) of Section 2 of the ID Act relates to those who are existing employees. The only addition to existing employees, statutorily provided under Section 2(s) refers to dismissed, discharged and retrenched employees and their grievances can be looked into by the forums created under the Act. In the instant case, the complainants had resigned from service by voluntary retirement and, therefore, their cases are not covered by the expression 'workman'. On the factual scenario, it is submitted that after the 337 employees had accepted VRS-I, others had raised disputes and had gone to Court. Order was passed for paying them the existing salary and other emoluments. This went on nearly two years and, therefore, with a view to curtail litigation a Memorandum of Understanding was arrived at in 1994. This basic difference in the factual background was not noticed by either the Industrial Court or the High Court.

In Item (5) of Schedule IV to the Act, the Legislature has consciously used the words 'favouritism or partiality to one set of workers' and not differential treatment. Thus, the mental element of bias was necessary to be established by cogent evidence. No evidence in that regard was led. On the contrary the approach of the Industrial Court and the High Court was different. One proceeded on the basis of breach of assurance and the other on the ground of discrimination. There was no evidence brought on as regards the pre-requisite i.e. favouritism or partiality. Favouritism means showing favour in the matter of selection on circumstances other than merit. (per Advanced Law Lexicon by P.Ramanatha Aiyar, 3rd Edition, 2005). The expression 'favouritism' means partiality, bias. Partiality means inclination to favour a particular person or thing. Similarly, it has been sometimes equated with capricious, not guided by steady judgment, intent or purpose. Favouritism as per the Websters' Encyclopedic Unabridged Dictionary means the favouring of one person or group over others having equal claims. Partiality is the state or character being a partial, favourable, bias or prejudice. According to Oxford English Dictionary "favouritism" means - a deposition to show, or the practice of showing favour or partiality to an individual or class, to the neglect of others having equal or superior claims; under preference. Similarly, "partiality" means the quality or character of being partial, unequal state of judgment and favour of one above the other, without just reason. Prejudicial or undue favouring of one person or party: or one side of a question; prejudice, unfairness, bias. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially. *"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices."* (per Frank, J. in Linahan, Re, (1943) 138 F 2d 650, 652).

It is not every kind of differential treatment which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest - whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. The above position was highlighted in G.N. Nayak v. Goa University and Ors. The factual scenario does not establish any favouritism or partiality. When VRS-I Scheme was introduced same was offered to every employee. It is nobody's case that there was any hidden intent and/or that the employer had any previous knowledge at the time of introducing the scheme that some of the employees would not accept it. It is not the case of the complainants that the employer had at that point of time intended to pay something more to those who did not accept VRS-I. The Memorandum of Understanding which was the foundation for the VRS-II, of course gives a different package, but on the clear understanding that litigations of all types were to be withdrawn.

In order to bring in application of Item 9, it was submitted by the respondents that there was an agreement/assurance which was not implemented. It has been urged that a letter can also be construed as an agreement. But that logic is not applicable in all cases. It will depend upon the nature of the letter/communication. As a matter of fact, there is no dispute that there was no Memorandum of Understanding or agreement in writing. The letter of Vice- President on which the Industrial Court and the High Court have placed reliance does not anywhere indicate that even if the fact situation was different the same amount would be paid at all future times. Mere breach of assurance is not favouritism or partisan approach. It has to be definitely pleaded and proved to show that Item 9 of Schedule IV was attracted. As noted above, the Memorandum of Understanding in 1994 came to arrive at because some of the employees went to Court after not accepting VRS-I. The background facts do not establish that the appellant-company was guilty of favouritism or partiality. There is also no plea or proof that the employer indulged in any violence or force to coerce 337 employees to accept VRS-I. Therefore, the complaint of unfair labour practice is not established under Items 5, or 9 or 10 of Schedule IV to the Act.

That being the factual position the relief granted by the Industrial Court to the complainants cannot be maintained. The judgment of the High Court upholding the view of the learned Single Judge and the Industrial Court stands set aside. In view of this finding of fact it is not necessary to go into the question of maintainability of the proceedings before the Industrial Court, by employees who retired voluntarily from service.

The appeal is allowed but in the circumstances without any order as to costs.