

M/S. S.V. TANK & VESSEL PVT. LTD.
v.
ENGINEERING WORKERS ASSOCIATION

APRIL 18, 2005

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Interim Order—Bank guarantee for payment of dues of workers—Retrenchment of workers—Challenged before Industrial Court—Jurisdiction of Industrial Court questioned—It was pleaded that instead, the labour court had jurisdiction—Industrial court set aside order of retrenchment and directed the employer to pay wages of all retrenched employees as also of striking employees—Writ petition before High Court—Interim order by High Court staying operation of the order—Division Bench of High Court directing employer to furnish bank guarantee to the extent of 50% of wages due—Held, employer would pay two years' wages to each employee concerned—High Court to dispose of expeditiously the writ petition involving the issues relating to jurisdiction of Industrial Court and justifiability of retrenchment order—Labour Law—Retrenchment.

Appellant-employer retrenched some of its employees. A large number of employees went on strike. Employer did not allow some of the striking employees to resume their work. Later, the respondent-Association filed a complaint in the Industrial Court challenging the retrenchment. The appellant contended that the Industrial Court had no jurisdiction and the matter could be dealt with only by the labour court. The Industrial Court set aside the retrenchment order and gave direction for payment of back wages of the retrenched employees and the dues of striking employees with effect from 1991. The employer filed a writ petition before the High Court and the single Judge, by an interim order, partly stayed operation of the order of the Industrial Court. On appeal by the respondent-Association, the Division Bench of the High Court directed the employer to furnish security/bank guarantee to the extent of 50% of the amount of wages payable to the employees as per order of Industrial Court. Aggrieved, the employer filed the present appeal.

Disposing of the appeal, the Court

HELD : Basic issue relates to jurisdiction of the Industrial Court.

- A** Additionally, the justifiability of the order of retrenchment has to be gone into. Taking the peculiar facts into account, interest of justice would be best served if the appellant pays each of the employees concerned an amount equivalent to two years' wages on the basis of the last wages drawn without prejudice to the claims involved in the writ petition. Considering the limited nature of the controversy, the High Court would explore the possibility of early disposal of the writ petition. [654-C-E]
- B**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2657-2658 of 2005.

- C** From the Judgment and Order dated 5.1.2004 of the Bombay High Court in L.P.A. No. 143/2003 with C. Application No. 261/2003 against W.P. No. 6229 of 2003.

Bim Rao Naik, Sishil Karanjkar and V.R. Anumolu with him for the Appellant.

- D** Ajay Majithia, Mahesh Jain and Dr. Kailash Chand for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

- E** The appellant (hereinafter referred to as the 'Employer') calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court directing it to furnish security/bank guarantee of a Nationalised Bank to the extent of 50% of the amount of wages as per the calculation to be made on the basis of the order passed by the Industrial Court, Maharashtra at Thane.
- F**

The background facts as projected by the appellant are as follows :-

- G** The employer retrenched 33 employees after giving notice of retrenchment alongwith cheques covering the notice pay and retrenchment compensation. Some of the workers refused to accept the same. On account of financial stringency and reduction of work force, Voluntary Retirement Scheme was announced which was availed by 72 employees. The respondent-Association, however, instigated some of the employees not to opt for the scheme. Some of the employees took law into their own hands and tried to destroy the appellant's properties and this created chaotic conditions for which
- H** the appellant was forced to lodge complaint in the Industrial Court and orders

were passed prohibiting some workmen from coming within a radius of 100 meters of the appellant's establishment. With a view to be charitable to the employees, letters were addressed to workers to join work, who refused to work and continued with the strike. Complaint was filed by the respondent-Association in the Industrial Court questioning retrenchment. Appellant filed a Written Statement and claimed that the relief claimed could not be adjudicated by the Industrial Court and it has no jurisdiction to deal with the matter. According to the appellant, it was only the Labour Court which could deal with the matter. The Industrial Court passed an order holding that the retrenchment of the concerned workers to be illegal. The Industrial Court, *inter alia*, gave the following directions :

“(a).....Reinstate 33 workmen in Annexure-C with full back wages. Their retrenchment order is set aside.

(b) They are directed to pay bonus at the rate of 22% for the year 1990-91 to the workmen except the persons who are not collected including 33 retrenched workmen.

(c) Respondent to provide as per the terms of settlement pair of safty shoes and uniforms.

(d) Allow other non-retrenched employees on duty and to pay them the dues from the days when they are not allowed to do the work i.e. from 24.10.1991.

(e) They are directed to pay salary and wages of the workmen on the due dates i.e. 7th of every month.”

The stand of the appellant is that in terms of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short the 'Act') the proceedings before the Industrial Court were clearly not maintainable and order passed by the Industrial Court is without jurisdiction.

A Writ Petition was filed by the employer before the Bombay High Court. A learned Single Judge passed an interim order, and stayed operation of directions 3(c) to 3(e).

The interim order was challenged in a writ appeal before the Division Bench by the respondent-Association and the direction for furnishing security/ bank guarantee as noted above was given.

A In support of the appeal learned counsel for the appellant submitted that without indicating as to how learned Single Judge's interim order was in any way illegal or deficient, a Division Bench should not have directed furnishing of security/bank guarantee. The proceedings before the Industrial Court were clearly without jurisdiction and this aspect has not been considered by the Division Bench.

B In response, learned counsel for the respondent-Association submitted that blanket order of stay was passed by learned Single Judge. Division Bench was justified in protecting the interest of the workman in whose favour the Industrial Court had decided. Therefore, this is not a fit case which calls
C any interference as dispute revolves round interim protection given to the successful employees.

Division Bench has thought it proper to make the interim order conditional. Basic issue relates to jurisdiction of the Industrial Court. Additionally, the justifiability of the orders of retrenchment has to be gone
D into. It is pointed out by the learned counsel for the appellant that the back wages on the basis of the Industrial Court's order have to be paid from 1991 and if the impugned order is maintained, the appellant who is not in good financial state would be required to provide nearly rupees 40 lakhs for the purpose of obtaining bank guarantee. Taking peculiar facts into account we feel interest of justice would be best served if the appellant pays each of the
E concerned employees an amount equivalent to two years' wages on the basis of the last wages drawn within eight weeks from today, without prejudice to the claims involved in the Writ Petition. Considering the limited nature of the controversy, the High Court is requested to explore the possibility of early disposal of the writ petition.

F The appeals are accordingly disposed of. No costs.

R.P.

Appeals disposed of.