

CASE NO.:
Appeal (civil) 5358 of 2002

PETITIONER:
Chief Engineer, M.S.E.B & Anr.

RESPONDENT:
Suresh Raghunath Bhokare

DATE OF JUDGMENT: 17/12/2004

BENCH:
S.B.Sinha, N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Being aggrieved by the order of the High Court of Judicature at Bombay made in W.P. No.5836 of 2001 confirming the order of the Industrial Court, Pune made in Revision Application No. 12 of 2001 the appellant-Chief Engineer, Maharashtra State Electricity Board and another are in appeal before us. The facts necessary for disposal of this appeal are as follows :

The respondent herein and some others on being recommended by the District Social Welfare Department were selected as line-helpers in the appellant Board. On coming to know that the said recommendation was allegedly made fraudulently the respondent was dismissed from service by a letter dated 26.9.2000. Being aggrieved by the said order of dismissal the respondent herein filed a complaint alleging unfair labour practices under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act before the I Labour Court, Pune, in Com.ULP No.145/99. The Labour Court framed the following 3 issues :

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i) Does the respondent prove that the misconduct alleged against the complainant is proved on the basis of evidence before the Court ?

ii) Whether the complainant proves that the respondent has terminated the services of the complainant by issuing the termination order dated 26/9/2000 by indulging into unfair labour practices under item No.1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act 1971 ?

iii) Whether the complainant is entitled to the relief of reinstatement with continuity of service and with full back wages as prayed for ?"

The Labour Court found all the issues against the respondent, hence dismissed the complaint. Being aggrieved by the said order of dismissal of the complaint the respondent preferred a revision before the Industrial Court at Pune under section 44 of the said Act. The Industrial Court after considering the material on record disagreed with the finding of the Labour Court and reversing the said order quashed the termination of services of the respondent and directed the appellant to reinstate the respondent with continuity of service.

It however did not grant back wages.

As stated above a writ petition filed against the said order of the Industrial Court came to be dismissed by the impugned order of the High Court hence this appeal.

Mr. A.S. Bhasme, learned counsel for the appellants addressed lengthy arguments in support of the appeal and has also filed written submissions. He has contended that the respondent has played a fraud probably in collusion with the District Social Welfare Officer and has obtained an appointment through back door entry hence the respondent is not entitled to reinstatement. He also relied upon the judgment of this Court in the case of Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. vs. Girdharilal Yadav (2004 6 SCC 325), Ram Chandra Singh vs. Savitri Devi & Ors. (2003 8 SCC 319) and Secretary, A.P. SWRE I Society vs. J.Prathap & Ors. (2002 10 SCC 430) to contend that misrepresentation by itself would amount to fraud therefore an appointment based on misrepresentation gets vitiated because of such fraud. On the contrary Mr. M.D. Adkar, contended that the act of the appellant in terminating the services of the respondent clearly amounted to unfair labour practice as contemplated under the MRTU & PULP Act, 1971. He submitted though the Labour Court erroneously rejected the complaint of the respondent the revisional court had properly taken into consideration all material facts and given relief to the petitioner which has been affirmed by the High Court hence this Court should not interfere with the said orders of the authorities below. The entire basis of the dismissal of the appellant depends upon the factum of the alleged misrepresentation attributed to the respondent. The Industrial Court in its impugned order has noticed the fact that the respondent was appointed in April, 1994 pursuant to the selection procedure followed by the competent authority and that he was selected by the panel of Selection Committee consisting of 6 members which included the very same Social Welfare Officer who had sent the proposal including the name of the respondent for appointment. It also noticed the fact that the selection in question was made after an oral interview and the required test as also the medical examination. The Industrial Court also noticed the fact that the appointment of the respondent was confirmed after 1 year period and thereafter the respondent has been working without any complaint. Said Industrial Court also noticed the fact that the termination of the respondent was based on a show-cause notice issued on 5.7.1999 which was replied to by the respondent on 17.7.1999 and the termination was made in a summary procedure permissible under Rule 90(b) of the Service Regulations. The Industrial Court after perusing the pleadings and the notice issued to the respondent came to the conclusion that the alleged misrepresentation which is now said to be a fraud was not specifically pleaded or proved. In the show cause notice no basis was laid to show what is the nature of fraud that was being attributed to the appellant. No particulars of the alleged fraud were given and the said pleadings did not even contain any allegation as to how the appellant was responsible for sending the so called fraudulent proposal or what role he had to play in such proposal being sent. It also noticed from the evidence of Mr. Waghmare, Social Welfare Officer who sent the proposal before the Labour Court that he did not utter a single word as to whether the said supplementary list was ever called for by the Department concerned or not. Thus applying the basic principle of rule of evidence which requires a party alleging fraud to give particulars of the fraud and having found no such particulars the Industrial Court came to the conclusion that the respondent could not be held guilty of fraud. Said finding of the Industrial

Court has been accepted by the High Court. Mr. Bhasme though contended that the fraud in question was played in collusion with the Social Welfare Officer and 2 other employees of the Board and action against said 2 employees of the Board has been taken, but by that itself we are unable to accept the argument of Mr. Bhasme that there is material to support the contention of the Board that the appellant had also contributed to making the misrepresentation at the time of applying for the job with the Board. In the absence of any such particulars being mentioned in the show cause notice or at the trial, attributing some overt act to the respondent, we do not think the Board can infer that the respondent had a role to play in sending a fraudulent list solely on the basis of the presumption that since respondent got a job by the said proposal, said list is a fraudulent one. It was the duty of the Board to have specifically produced the material to prove that the respondent himself had the knowledge of such a fraud and he knowingly or in collusion with other officials indulged in this fraud. Since there is no such material on record, on the facts of the instant case, the Industrial Court and the High Court have come to the right conclusion that the alleged fraud has not been established by the appellants, hence, this is not a fit case in which interference is called for. This appeal, therefore, fails and the same is dismissed.