

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2196 OF 1994

Mrs. Sayyad Zebunnisa,
Aged 27 years, Occ. Nil,
R/o C/o Zabbar Khan,
Waheed Colony, Roshan Gate,
Aurangabad.

..Petitioner

Versus

M/S T.T.K.Biomade Ltd.
(Formerly Lorcom Protectives Ltd.,)
1-B/2, MIDC Area, Chikalthana,
Aurangabad.

..Respondent

...
Advocate for Petitioner : Shri P.V.Barde a/w Shri T.K.Prabhakaran
Advocate for Respondent : Shri B.B.Yenge
...

CORAM : RAVINDRA V. GHUGE, J.

Dated: June 25, 2015
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ORAL JUDGMENT :-

1. Shri Yenge and Shri Barde a/w Shri Prabhakaran have no objection if this Court hears this matter.

2. By order dated 18.6.2015, this Court had observed as under:-

“ 1. Mr. Barde and Mr. Prabhakaran, learned Advocates have no objection if this Court hears this matter.

2. None for the respondent, even today,

3. Stand over to 25.6.2015 for final hearing. ”

3. This petition was admitted by order dated 4.8.1994.
4. I have heard Shri Barde with Shri Prabhakaran for the petitioner and Shri Yenge on behalf of the respondent.
5. The issue to be decided is very short. The petitioner had approached the Industrial Court by filing Complaint (ULP) No.483 of 1990, alleging that she had received a letter from the employer, vide which, her name was struck off the rolls on 19.6.1990. The action of the respondent - management of striking off her name amounts to retrenchment in violation of the provisions of the Industrial Disputes Act.
6. The Industrial Court has framed four issues, which are as follows:-

Sr	Issues	Findings
1	Whether the Complaint is tenable?	.. No.
2	Does Complainant prove unfair labour practices as alleged(ly) committed by the Respondent?	.. Yes. But under Item 1(f).
3	Whether the Complainant is entitled to the declaration sought?	.. No.
4	Whether the Complainant is entitled to the reliefs sought?	.. No.

7. The complaint was held to be untenable and the complainant was held to be dis-entitled for any relief, while answering issue Nos.1, 3 and 4. However, the Industrial Court has ventured into deciding issue No.2, which was not within its jurisdiction.

8. It concluded that the petitioner - workman had proved unfair labour practice against the management under item 1(f) of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the said Act") Item 1(f) reads as under:-

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

9. The grievance of the petitioner is that once the Industrial Court concluded unfair labour practice, though under item 1(f) of Schedule IV of the said Act, it should have granted the relief of reinstatement to the petitioner. The petitioner has, therefore, specifically prayed in prayer clauses (B), (C), (E) and (F) as under:-

" (B) Quash and set aside the impugned order;

(C) Declare that the Respondent in striking off the name of the Petitioner with effect from 19.6.90 without following the retrenchment procedure as laid down in the ID Act as (has) committed in (an) unfair labour practice under Item 9 of Schedule IV of the Act;

(E) Direct the Respondent to reinstate the Petitioner in service with immediate effect; and

(F) Direct the Respondent to pay full back wages and other service benefits and to give her continuity of service.....”

10. Shri Yenge, learned Advocate submits that once the complaint was held untenable in law, the petitioner has no option but to approach the Labour Court, either under item 1 of Schedule IV or the said Act or by raising an industrial dispute under Section 2A of the Industrial Disputes Act, 1947.

11. I have considered the rival contentions and the petition paper book. The Industrial Court was right in concluding that the Complaint was not tenable in the light of Sections 4 to 7 of the said Act. The Industrial Court did not have jurisdiction to deal with a complaint of termination / retrenchment under item 1(f) of Schedule IV of the said Act. The complaint was, therefore, rightly held untenable. In my view, the Industrial Court should have refrained from dealing with issue No.2 as it was not within its jurisdiction.

12. The petition is, therefore, without any merit. However, I cannot be oblivious to the fact that the petitioner cannot be rendered remediless. The dismissal of her complaint by the impugned judgment of the Industrial Court ought not to create an obstacle in her path. In the event she desires to

question her termination, dated 19.6.1990, liberty ought to be granted so as to enable her to raise a proper challenge to the said issue before a proper forum. Shri Yenge informs that the respondent factory has been closed down on 30.11.2003.

13. In the light of the above, this petition is disposed off with liberty to the petitioner to institute proper proceedings before the competent Court under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 or the Industrial Disputes Act, 1947, if she so desires. The pendency of this petition from 29.6.1994 till this date and the pendency of her claim before the Industrial Court from 18.9.1990 till its decision on 6.4.1994 shall be a good ground for condonation of delay if the petitioner chooses to approach the appropriate forum.

14. By granting this liberty in order to ensure that the petitioner is not rendered remediless, this petition is disposed off.

15. Rule, accordingly, stands discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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