

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4633 OF 1994

Rangnath Jagannath Dushing,
Age 27 years, Occ. Nil,
R/o Rotegaon Railway Station,
Tq. Vaijapur, Dist. Aurangabad.

..Petitioner

Versus

1. The Executive Engineer,
EGS Public Works Division,
Aurangabad.

2. The Sub-Divisional Engineer,
EGS Public Works Sub-Divn.,
Vaijapur, Dist. Aurangabad.

3. The Member,
Industrial Court, Aurangabad.

..Respondents

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AGP for Respondents 1 & 2 : Shri Borade P.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 03, 2015

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ORAL JUDGMENT :-

1. This petition was admitted on 9.6.1995. Interim relief was granted earlier on 23.12.1994 in terms of prayer clause (D) and (E) which read as under:-

“(D) Pending the hearing and final disposal of this writ petition execution and operation of order dated 17.8.1994 passed in Complaint (ULP) No. 179/91 by the Member Industrial Court Aurangabad be stayed;

(E) Pending the hearing and final disposal of this writ petition the respondent No.1 and 2 may be restrained from terminating the services of the petitioner. ”

2. The above said interim relief was continued while admitting this matter on 9.6.1995.

3. On 16.11.2015, none appeared for the petitioner. The learned AGP appeared on behalf of respondent Nos.1 and 2. The matter, therefore, stood over to this date and the petitioner was made aware that if he does not remain present on the said date, the petition would be dismissed in default.

4. I have considered the petition paper book with the assistance of the learned AGP since none appeared for the petitioner. Rather than dismissing the matter in default, I am deciding the same on its merits without the assistance of the petitioner.

5. Respondent No.3 is the learned Member of the Industrial Court, Aurangabad, which is not a necessary party. I, therefore, direct the deletion of respondent No.3 from this petition

6. The petitioner preferred Complaint (ULP) No. 179 of 1991 before the Industrial Court invoking items 5, and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”). Unfortunately, the cause of action was

retrenchment from 1.9.1986 and the complaint was filed before the Industrial Court on 21.9.1991 praying for setting aside the order of retrenchment under items 5 and 9 of Schedule IV and praying for reinstatement with continuity and full backwages from 1.9.1986.

7. An affidavit was also filed on these lines by the petitioner.

8. By the impugned judgment and order dated 17.8.1994, the Industrial Court concluded that the cause of action of retrenchment of the petitioner from 1.9.1986 could be raised / assailed only before the Labour Court under item 1 of Schedule IV and not before the Industrial Court under items 5 and 9 of Schedule IV.

9. I find that Sections 4 and 5 of the 1971 Act define the "Industrial Court" and its "Duties" as under:-

"Section 4 - Industrial Court.

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.

(2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.

(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be

connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court:

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

Section 5 - Duties of Industrial Court.

It shall be the duty of the Industrial Court,-

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court; and

(g) to decide appeals under section 42.”

10. Section 6 and 7 of the 1971 Act define the "Labour Court" and its "Duties" as under:-

“Section 6 - Labour Court.

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts:

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

” Section 7 - Duties of Labour Court

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.”

11. Considering the above the Industrial Court has rightly dismissed the

complaint granting liberty to the petitioner to assail his termination before an appropriate forum.

12. This petition is devoid of merits and is, therefore, dismissed.

13. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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