IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1477 OF 2015

1. Maharashtra Gramin Bank,
Through its Chairman,
Head Office, CIDCO, Aurangabad.

2. The Branch Manager,
Maharashtra Gramin Bank,
Branch Gola Pangari,
Tq. and Dist. Jalna. ..Petitioners

Versus

Santosh Limbaji Dhande,
Age 34 years, Occ. Service,
R/o Daithana, Tq. Ghansawangi,
District Jalna. ..Respondent

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Advocate for Petitioners : Shri Pradeep L. Shahane
Advocate for Respondent : Smt. Ashwini S. Hoge Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners in this petition have raised a jurisdictional issue as regards the applicability of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“ the Act of 1971”).

5. While issuing notice for final disposal on 17.2.2015, this Court had recorded the submissions of the learned Advocates as under:-

> *“1. The petitioner has raised an issue as regards appropriate Government in relation to the services of the respondent under Section 2(a) of the Industrial Disputes Act, 1947. Contention is that if the appropriate Government for the petitioner and the respondent employee is the Central Government, then the provisions of the MRTU & PULP Act, 1971 would not be applicable to the case of the respondent and as such his complaint (ULP) No. 139 of 2011 for permanency which has been allowed by the Industrial Court, Jalna by the impugned judgment 31-10-2014, would be rendered untenable in law.*
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> *2. Learned Advocate appearing on behalf of the sole respondent submits that this ground was never raised by the petitioner either in complaint (ULP) No. 139 of 2011, or in the earlier proceedings before the Labour Court wherein the respondent had challenged his termination which was eventually set aside in Revision and the Writ Petition No. 3167 of 2010 filed by the petitioner was rejected by this Court. She, therefore, submits that consistently the petitioners have never taken up this ground and as such, cannot be permitted to raise this ground at this stage.*

3. The petitioner is said to have appointed the respondent on 12-04-1999 as a messenger. He was terminated on 01-02- 2004. His complaint (ULP) before the Labour Court was dismissed. His revision (ULP) No. 139 of 2011 was allowed by the Industrial Court. Writ Petition No. 3167 of 2010 filed by the petitioner was rejected on 06-05-2011.

4. The respondent is said to be in employment with the petitioner today and is drawing his salary ever since his reinstatement in July-2011.

5. In the light of the above, issue notice for final disposal at admission stage to the respondent, returnable on 26-02-2015. Learned Advocate Ms. A.S. Hoge Patil, waives service for the sole respondent. Till the hearing of this petition, the petitioner shall not dispense with the service of the respondent merely on the grounds raised in this petition. Respondent is permitted to file his affidavit in reply."

6. During the course of hearing in this petition on 21.8.2015, it was noticed that the relevant documents pertaining to the establishment of the petitioner - Bank were not placed on record. Consequentially, this Court had passed the following order on 21.8.2015:-

"1. Learned Advocate for the petitioners, during the hearing of this petition, has referred to the contentions set out in paragraph No.2 and ground Nos. 2 and 3 r/w Section 3 of the Regional Rural Banks Act, 1976.

2. It is canvassed that the petitioner Bank, which was earlier

Aurangabad- Jalna Gramin Bank, subsequently Maharashtra Godavari Gramin Bank and presently the Maharashtra Gramin Bank, is established under this Act of 1976.

3. Reliance is also placed upon Section 9 and 29 of the said Act to contend that the Industrial Court, under the M.R.T.U. and P.U.L.P. Act, 1971 had no jurisdiction to entertain the complaint since the appropriate Government for the petitioner / Bank is the Central Government prescribed u/s 2(a) of the I.D.Act, 1947.

4. Mr.Shahane, learned Advocate seeks leave to file an additional affidavit along with certain documents to bring on record the establishment of the petitioner Bank and the participation of the Central Government in the said Bank.

5. Leave granted. The petitioner shall file an additional affidavit with documents on or before 04/09/2015. The respondent is at liberty to file a counter affidavit on or before 16/09/2015.

6. After the affidavit and counter affidavits are filed, this matter shall stand over to 22/09/2015, to appear in the supplementary board. Interim relief, granted earlier, to continue.

7. The respondent is not inclined to concede for a remand of his complaint back to the Industrial Court even if the petitioner is imposed with costs of Rs.1,00,000/. The respondent, who is present in the Court today, has instructed the learned Advocate Mrs.A.S.Hoge Patil to contest the claim of the petitioners on merits."

7. The petitioners have placed on record the additional affidavit dated 2.9.2015 and have also placed on record the notification dated 20.7.2009,

which has been published in the Gazette of India on 20.7.2009. The opening two paragraphs of the notification are pointed out to indicate that the petitioner - Bank has assumed the role of a sponsor Bank for the amalgamation of the Marathwada Gramin Bank and Maharashtra Godavari Gramin Bank, both regional rural banks.

8. The Ministry of Finance, Department of Financial Services, Government of India has exercised its powers under Section 23-A (1) of the Regional Rural Banks Act, 1976 ("the 1976 Act") and has directed the amalgamation of the said Regional Rural Banks into a Single Regional Rural Bank. Clause Nos. 1 to 9 have been pointed out to indicate that the Central Government has contributed Rs.1.50 Crores as a part of the authorized capital, with the participation of the State Government to the extent of 0.45 lakhs only, the participation of the petitioner bank at Rs.1.05 Crores and share capital deposit to the tune of Rs.102,34,62,000 only. Clause 9 indicates that the provisions of the said Act shall have the same effect on the transferee Regional Rural Bank as if it has been established under sub-section (1) of Section 3 of the Act.

9. The petitioners submit that by notification dated 31.3.2011, the Reserve Bank of India has directed the inclusion of the petitioner Bank in the II Schedule to the Reserve Bank of India Act, 1934 under Section 42(6) (a).

10. The petitioners submit that the appropriate Government is defined by Section 2(a)(i) of the Industrial Disputes Act, 1947. It is specifically provided that the Central Government shall be the appropriate Government for a Regional Rural Bank established under Section 3 of the 1976 Act. The petitioners, therefore, submits that taking into account the notification dated 20.7.2009, the Industrial Court or the Labour Court, as the case may be, would not be competent to hold jurisdiction over matters preferred by the employees of the petitioner Bank under the Act of 1971.

11. It is pointed out that Complaint (ULP) No.139 of 2011 filed by the respondent / complainant on 23.11.2011, is rendered untenable under the Act of 1971 before the Industrial Court. It is further submitted that this objection was not specifically raised before the Industrial Court which decided the complaint by its impugned judgment dated 31.10.2014. Nevertheless, since the issue raised in this petition is with regard to the jurisdiction of the Industrial Court, it would not be too late to raise the said issue, even at this stage. It is, therefore, prayed that the petitioners be permitted to raise the said issue before the Industrial Court by remanding Complaint (ULP) No. 139 of 2011.

12. The respondent has preferred a counter affidavit, dated 15.9.2015. It is submitted that since the Regional Rural Banks have been amalgamated with the petitioner Bank, the jurisdiction of the Industrial Court would continue to cover the Complaint filed by the respondent since the

petitioner earlier was amenable to the jurisdiction of the Industrial Court under the Act of 1971.

13. The respondent has relied upon the judgment of this Court in the matter of MSRTC Vs. Yadav [1985 LIC 1012], to contend that the State Government, which was earlier the appropriate Government would continue to govern the petitioner as an appropriate Government notwithstanding the issuance of the notification dated 20.7.2009.

14. It is further canvassed that since the State Government also has a contribution to the share capital, the Act of 1971 would continue to apply to the petitioner Bank.

15. The respondent has placed reliance upon the judgment of the Apex Court in the case of Tata Memorial Hospital Workers' Union Vs. Tata Memorial Center and another [AIR 2010 SC 2943]. It is further canvassed that the ratio laid down by the Punjab and Harayana High Court in the case of Kulwinder Singh Vs. Smt. Lachhmi Devi - Criminal Misc. No. M-12094 of 2009, dated 4.5.2009, would also apply to the instant case. Several other judgments have been cited by the respondent in support of his contention that since the objection was not raised before the Industrial Court by the petitioners, this objection in the Writ Petition should not be entertained.

16. I have considered the submissions of the learned Advocates, which

have been recorded as above.

17. Section 2(a)(i) of the Industrial Disputes Act, 1947 defines the "appropriate Government" as under:-

"Section 2 - Definitions

In this Act, unless there is anything repugnant in the subject or context,--

(a) "appropriate Government" means--

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation

of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or *controlled by the Central Government, the Central Government, and*

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment."

18. A Regional Rural Bank established under Section 3 of the 1976 Act has been set out in the said definition. Consequentially, the Central Government is held to be the appropriate Government in the case of such a Bank. Clause 9 of the notification dated 20.7.2009 reads as under:-

"9. Unless otherwise expressly provided in this notification, the provisions of the Act shall have the same effect on the transferee Regional Rural Bank as if it has been established under sub-section (1) of Section 3 of the Act."

19. The petitioners have relied upon the judgment of the Apex Court in the case of <u>Prathama Bank Vs. Vijaykumar Goyal [AIR 1989 SC 1977],</u> in

support of the contention that once a Bank, like the petitioner herein, has been established under Section 3 of the 1976 Act, the Central Government would be the appropriate Government.

20. It is undisputed that the objection with regard to the jurisdiction of the Industrial Court under the 1971 Act had not been raised by the petitioners before the Industrial Court. After the petitioners suffered the impugned judgment, these objections have been raised for the first time in this petition. Had the said objection been diligently raised when the complaint was instituted in November 2011, and had the Industrial Court concluded that it had no jurisdiction, the respondent / employee would have resorted to available legal remedies for the redressal of his grievances. The petitioners permitted the Industrial Court to proceed with the complaint without raising an objection even in a single sentence that the Industrial Court had no jurisdiction. After about four years, the petitioner is raising this issue which is a mixed question of law and facts.

21. Notwithstanding the above, it would be hazardous to ignore the objection of the petitioners since any order delivered by any Court without jurisdiction would be non-est. It is in this backdrop, that I find it appropriate to remit the Complaint to the Industrial Court for enabling the Court to decide this issue. The rigours of litigation and the hardships that the respondent would have to suffer on account of a remand of the Complaint, deserve to be softened / reduced by directing the petitioners to

pay costs to the respondent.

22. The respondent had refused to concede for a remand of the complaint, even if the petitioners were imposed with costs of Rs.1,00,000/-. He has specifically instructed his Advocate to contest the claim of the petitioners on its merits. It cannot be overlooked that the respondent is a messenger who falls in the Class IV / Group "D" category. It was his legal right to oppose this petition. He cannot be faulted for having legally opposed this petition and having canvassed his case on its merits. As such, despite the above, I am of the view that costs deserve to be imposed on the petitioners in the fact situation as recorded above.

23. As such, this petition is partly allowed. The impugned judgment and order dated 31.10.2014 is set aside and Complaint (ULP) No. 139 of 2011 is remitted to the Industrial Court, Jalna with the following directions:-

(A) The litigating sides shall appear before the Industrial Court on 9.10.2015 at 11.00 AM. Formal notices need not be issued to the litigating sides.

(B) The petitioner - Bank shall deposit an amount of Rs.1,00,000/- (Rs.One Lakh only/-) before the Industrial Court on 9.10.2015 by way of costs, which shall be withdrawn by the respondent employee without any conditions, by producing valid identity proof like PAN / Aadhar or Election I.D.Card.

(C) The petitioners shall move an application for addition of

grounds / raising objections and seek an amendment to the written statement, to be filed on 9.10.2015.

(D) The Industrial Court after hearing the sides, shall permit the petitioners to carry out necessary amendments to the Written Statement.

(E) The respondent / original complainant is at liberty to file a detailed reply with documents for opposing the objection of the petitioners.

(F) The Industrial Court shall, accordingly, frame an issue with regard to whether the Central Government would be the appropriate Government for the petitioner Bank under Section 2(a)(i) of the Industrial Disputes Act, 1947 and whether the jurisdiction of the Industrial Court would be ousted on account of the same.

(G) The Industrial Court shall permit the litigating sides to lead evidence only to the extent of the jurisdiction issue. They shall be precluded from leading any evidence on other issues already cast.

(H) In the event, the Industrial Court concludes that it has jurisdiction to deal with the said complaint under the 1971 Act, it shall accordingly drawn its conclusions. Consequentially, the Industrial Court shall decide the complaint on the basis of the oral and documentary evidence recorded earlier and keeping in view that the employee has been working since 1999 for the last 16 years.

(I) Considering that the complaint is being remitted to the Industrial Court, the services of the respondent / employees shall stand protected and the petitioners shall not dispense with his services only on account of the pendency of the complaint and the

claims of the employee in the complaint.

(J) Needless to state, disciplinary action / proceedings, if any, shall be an exception to this protection, which shall continue to cover the respondent till the disposal of the complaint.

(K) In the event the respondent / employee suffers an adverse order on the issue of jurisdiction, he shall be at liberty to resort to available remedy under the Industrial Disputes Act, 1947 or under any legislation.

24. Rule is, therefore, made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)

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