

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1227 OF 2015

1. Maharashtra State Road Transport
Corporation, Mumbai through its
General Manager (P & I.R.),
S.T. Central Office, Vahatuk Bhawan,
Dr. Anandrao Nair Marg,
Mumbai 08.

2. Maharashtra State Road Transport
Corporation, Mumbai (Camp Nasik),
Through its Executive Engineer,
S.t. Regional Office, Mumbai.

..Petitioners

Versus

Iqbal Khan,
Age 57 years, Occ. Sectional Engineer,
Divisional Office, MSRTC, Parbhani.

..Respondent

...
Advocates appearing for -
Petitioners : Shri D.S.Bagul
Respondent : S/Shri K.K.Naik & M.P.Ambekar
...

CORAM : RAVINDRA V. GHUGE, J.
Dated : February 26, 2015

ORAL JUDGMENT :-

1. I have heard the learned Advocate for the petitioners and the learned Advocates for the respondent at length.

2. The order of the Labour Court, dated 1.10.2014, passed in Complaint (ULP) No.28 of 2014 is challenged to the extent of the Labour Court holding that it has jurisdiction to entertain the complaint. Judgement of the Industrial Court, dated 15.12.2014, dismissing Revision (ULP) No. 79 of 2014 is also under challenge.

3. The respondent was the Sectional Engineer prior to his temporary promotion as a Divisional Engineer on 22.7.2014. The salary of the respondent is at the rate of Rs.50,000/- per month. Allegations of misappropriation were levelled upon the respondent. A departmental enquiry was conducted against him and finally, a show cause notice, dated 28.7.2014, was issued to him, thereby proposing the punishment of dismissal from service. The notice dated 28.7.2014, proposing punishment to the respondent was issued after the Enquiry Officer concluded that the charges of mis-appropriation levelled upon the respondent are proved.

4. The respondent preferred Complaint (ULP) No.28 of 2014, under the MRTU & PULP Act, 1971 ("State Act"). By an order dated 1.10.2014, the Labour Court has decided the preliminary issue as to whether the respondent is a "workman". The material conclusions of the Labour Court, in paragraph No.8 (*in verbatim*) are as under:-

"8. Having considered the evidence produced on record by the respondents coupled with the settled position of law as discussed in the case laws cited by both the parties, prima facie I am of the view that complainant is not coming under the definition of workman as per Sec.2(s) of the Industrial Disputes Act. Because the complainant though temporarily promoted as Divisional Engineer but having power to grant leave and also having administrative powers and supervisory powers."

5. In paragraph No.9 of the impugned order, dated 1.10.2014, the Labour Court has held (*in verbatim*) as under:-

“ 9. However, as per the judgment of Hon'ble Bombay High Court in Kashmira Leo Riberao Vs. Himalaya Drug Company reported in 2004 I CLR 637 wherein the Hon'ble Bombay High Court held that "the Labour Court should not have decided the contention as to workman as a preliminary issue and that in any event the evidence on record, as it stands, is inadequate to properly and fairly decide the question whether the petitioner is workman hence matter remanded for fresh decision on all issues." Having considered the ratio laid down by the Hon'ble Bombay High Court in this judgment though prima facie I have come to conclusion that the complainant is not a workman as per definition U/S 2(s) of the Industrial Disputes Act however, as per the above said judgment of Hon'ble Bombay High Court, I cannot decide this point while deciding the preliminary issue. Therefore, in view of the above ratio, at this stage, I have to held that this court is having jurisdiction The issue of jurisdiction will be considered and decided along with all other issues. Accordingly, I answer the point and proceed to pass the following order."

6. The petitioners challenged the said conclusion in paragraph No.9 before the Industrial Court in Revision (ULP) No.79 of 2014. Instead of scrutinizing as to whether the findings of the Labour Court are perverse or

not, the Industrial Court granted interim protection to the respondent and directed the Labour Court to decide the Complaint within three months.

7. Grievance of the petitioners is that, when sufficient evidence was brought on record before the Labour Court and the Labour Court having concluded that the respondent was not a workman in paragraph No.8 of the order, it could not have concluded that it had jurisdiction to entertain the complaint and therefore, pass an order that, *“This Court is having jurisdiction to try and entertain this matter.”*

8. The petitioners submit that the conclusions of the Labour Court, in paragraph No.8 of the order dated 1.10.2014, have not been challenged by the respondent before any superior Court. It, therefore, needs to be assessed as to whether the Labour Court, after having come to a conclusion that the respondent was not a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 (“Central Act”), could have held that it had jurisdiction to entertain the matter and then observe in the order that the issue of jurisdiction would be considered finally. The petitioners, therefore, pray for quashing the impugned order of the Labour Court and the judgment of the Industrial Court.

9. Learned Advocate for the respondent has vehemently submitted that the respondent is a “workman” and the complaint before the Labour Court was maintainable. It is further canvassed that the issue whether the respondent is a workman, can be gone into by the Labour Court while

deciding the main complaint. Till then, the services of the respondent need to be protected. It is, however, admitted that the respondent would be retiring from service in March 2015 after reaching the age of superannuation.

10. Having considered the submissions of the learned Advocates, I find that the issue is, whether the Labour Court, after concluding on the basis of oral and documentary evidence that the respondent is not a “workman”, could have held that it had jurisdiction to entertain the complaint. It is not in dispute that the respondent has not challenged the order dated 1.10.2014 to the extent of the conclusion that the respondent is not a “workman” under Section 2(s) of the Central Act. The issue, therefore, is as regards the sustainability of the conclusion of the Labour Court in paragraph No.9, on the basis of the view taken by this Court in the case of Himalaya Drug (supra).

11. While hearing the learned Advocate for the respondent, I had called upon him to elucidate on the nature of duties of the respondent. It was submitted that;

- (a) there are Clerks working under him.
- (b) The employees concerned with his Section apply for leave and the respondent sanctions their leave applications.
- (c) He has been provided with a Cabin.
- (d) He signs letters on behalf of the Divisional Engineer.
- (e) He has signed upon the complaint by stating his designation as

Divisional Office, MSRTC, Parbhani.

12. It was pointed out by the petitioners as follows:-

- (a) The salary of the respondent is at the rate of Rs.50,000/- per month.
- (b) He was a Sectional Engineer and recently temporarily promoted as a Divisional Engineer on 22.7.2014.
- (c) He filed his complaint before the Labour Court on 5.8.2014, when he was the in-charge Divisional Engineer.
- (d) He is empowered to sanction works up to Rs.5,00,000/- (Rs. Five Lakhs).
- (e) On 12.1.2009, by Circular No. 1 of 2009, the limit of the financial powers of the Divisional Engineer have been enhanced to Rs.10,00,000/- (Rs.Ten Lakhs).
- (f) The charges levelled against him were as regards sanctioning excess amounts and misappropriating funds.
- (g) The Junior Engineer, Sub-Engineer, Tracer, Junior Assistant and Peon, work under him.

13. The Labour Court itself has come to a conclusion on the basis of the oral and documentary evidence that the respondent is not a workman. The evidence of the Divisional Controller was also considered and the fact that there were eight persons working under him, he had the power to write confidential reports of the staff members and he had the power to grant leave, was also considered. The gross-salary of the respondent, as on date

of the filing of the complaint, was shown to be Rs. 66,901/- per month.

14. The Labour Court considered the judgments cited by the respondent on the issue that the designation or the salary was not as important, while deciding whether a person is a “workman” or not, as important is the nature of his duties, which would indicate whether he is a “workman”. Court's need to look beyond glorified designations assigned by managements and should consider the nature of the duties performed by the complainant. The Labour Court has also considered the judgments cited by the petitioners that the main issue is as regards the nature of duties performed by a person and on the appreciation of which, the Labour Court can conclude the status of the complainant.

15. It is in the above backdrop that the Labour Court concluded that the respondent was not a “workman” under Section 2(s) of the Central Act. Yet it held that it had jurisdiction to decide the Complaint.

16. The Industrial Court was expected to consider the contradiction in the conclusions of the Labour Court in between paragraph Nos.8 and 9 as are reproduced hereinabove. The Industrial Court concluded in paragraph No.15 of the impugned judgment that the two paragraphs are inconsistent with each other. As such, rather than interpreting the said situation in order to conclude which of the two paragraphs could be termed as perverse, the Industrial Court got carried away by the word “*prima facie*” used by the Labour Court in paragraph No.8 of the order.

17. The Industrial Court lost sight of the fact that the Labour Court has recorded in paragraph No.9 as well that though *prima facie* he has come to a conclusion that the complainant is not a “workman”, he has jurisdiction to entertain the matter since this Court has observed in the case of Himalaya Drugs (supra) that all the issues can be decided together.

18. The fact remains that the oral evidence below Exhibit C/5 and the documentary evidence produced on record, clearly indicate that the respondent is not a “workman”. The respondent did not produce any oral evidence on record.

19. In order to clear any doubt, I elucidated more information from the respondent's Advocate, as has been recorded in the foregoing paragraphs of this order. The respondent relied upon the judgment of this Court in the matter of Rajiv Bhalchandra Gundewar Vs. Crompton Greaves Limited [2000 I CLR 818]. In the said judgment, this Court had directed the Labour Court to decide all issues together, inclusive of whether the employee was a “workman” or not. In the instant case, the Labour Court had in fact decided the preliminary issue on the basis of oral and documentary evidence.

20. The petitioners relied upon the judgment of the learned Division Bench of the Karnataka High Court in the case of Management of Rangaswamy and Company Vs. D.V.Jagdish [1990 II CLR 56], wherein, it was held that the Labour Court ought to decide the issue, as to whether the

employee was a workman or not, as a preliminary issue, before granting interim relief. The petitioners have also relied upon the learned Division Bench judgments of this Court in the cases of German Remedies, Mumbai Vs. R.D.Lotlikar [2008 (2) Bom. L.C. 504] and in the case of Nasik Merchants' Cooperative Bank and another Vs. Madhukar Bhaurao Hingmire [2011 (2) Bom. L.C. 290].

21. As a matter of fact, in a case of disciplinary action like the present case, the Labour Court has to first conclude whether it has jurisdiction because, it has to decide whether the enquiry is conducted in a fair manner and whether the findings of the enquiry officer are perverse or not. If the enquiry is set aside, the employer would conduct a de-novo enquiry and then the Labour Court would be deciding the issues. All this cannot be done until the Labour Court has jurisdiction to entertain the complaint.

22. Considering the fact situation, it is clear that the Labour Court has decided the preliminary issue by its order dated 1.10.2014 after permitting the litigating parties to adduce oral and documentary evidence. The petitioners have filed necessary documents on record to indicate the nature of duties of the respondent. The Divisional Controller of the petitioners has also stepped into the witness box and led oral evidence. The respondent has not led evidence.

23. Taking into account the said evidence and the conclusions drawn by the Labour Court, I am of the view that the conclusion of the Labour Court,

in paragraph No.8 of the judgment dated 1.10.2014 is a conclusion on the preliminary issue framed. As such, the conclusion in paragraph No.9 that the Labour Court has jurisdiction to entertain the complaint is perverse and set aside. For the said reasons, the judgment of the Industrial Court, dated 5.12.2014, is also quashed and set aside. Needless to state, Complaint (ULP) No. 28 of 2014 is untenable before the Labour Court and is, therefore, dismissed.

24. The respondent has prayed for liberty to institute civil proceedings against the disciplinary action and the show cause notice, dated 28.7.2014. It is, however, prayed that protection be granted to the respondent till he retires in March 2014.

25. I am unable to accept the said request to the extent of protection being granted to the respondent in such a situation, in the light of the observations of the Honourable Supreme Court in the concluding paragraph of the judgment, delivered in the case of Hindustan Lever Limited Vs. Ashok Vishnu Kate[(1995) SCC 6 326]. The Apex Court has held that the relief of not to pass a final disciplinary order in the nature of termination from service, is a relief to be granted in the rarest of rare cases and should not be granted at the mere askance. The petitioner has proved charges of misappropriation against the respondent.

26. Nevertheless, in the light of the crystallized law, considered by this Court in the case of Mumbai Cricket Association Vs. Pramod G. Shinde [2011

(1) CLR 745], I am of the view that in the event the respondent succeeds against the disciplinary proceedings, he would naturally be entitled for all benefits incidental and consequential thereto.

27. In the result, Writ Petition is allowed in the above terms.

(RAVINDRA V. GHUGE, J.)

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