

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2328 OF 2012

1. The Managing Director,
The Maharashtra State
Cooperative Cotton Growers
Marketing Federation Ltd.,
Head Office at Nagpur
Nagpur.

2. The Zonal Manager,
The Maharashtra State
Cooperative Cotton Growers
Marketing Federation Ltd.,
Office at Ashirwad Building,
Near Natraj Theater, Zilla Peth,
Jalgaon.

..Petitioners

Versus

Bhatu Sonu Borse
Age 63 years, Occ. Nil.
R/o Kunal Housing Society,
Plot No.43, Near Jorawali
Police Colony and Near
Ganpati Temple, Sakri Road,
Dhule.

..Respondent

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Advocate for Petitioners : Shri S T Shelke
Advocate (*amicus curiae*) for Respondent : Shri V C Patil Ashtekar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 05, 2015

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ORAL JUDGMENT :-

1. Since the earlier Advocate for the sole respondent sought discharge in appearing on behalf of the respondent, in accordance with the Bombay High Court Appellate Side Rules, fresh notice was issued to the sole respondent on 26.11.2013.

2. The sole respondent has appeared in person. I found that he had several ailments, was aged and was unable to hear. I, therefore, have appointed Shri Patil-Ashtekar, learned Advocate to represent the cause of the respondent.

3. Rule.

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

5. Shri Shelke, learned Advocate for the petitioner straight away points out that the order of compulsory retirement pursuant to a domestic enquiry was issued to the respondent on 12.9.2003. He challenged the same before the Industrial Court in Complaint (ULP) No.37 of 2006 under items 5, 6, 9 and 10 of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ").

6. Shri Shelke submits that an order of discharge / dismissal / termination / compulsory retirement or otherwise removal from service can be assailed under item 1 of Schedule IV only before the Labour Court. The Industrial Court does not have the jurisdiction to consider a challenge to an order of compulsory retirement. He, therefore, submits that the impugned judgment dated 31.1.2012, delivered by the Industrial Court was without jurisdiction and is a nullity.

7. Shri Patil has strenuously supported the impugned judgment. He submits that the respondent was not unnecessarily absent. He had suffered a heart-attack. He is affected by several ailments. On account of illness he was absent. He joined employment in 1972 as a Sr. Clerk and was confirmed in employment in 1973. Presently, the respondent is a Senior Citizen and can barely make two ends meet. He, therefore, submits that no interference is called for in the impugned judgment.

8. I have considered the submissions of the learned Advocates.

9. Section 4 of the Act defines “industrial Court and its duties”. Similarly, Sections 6 and 7 define the “Labour Court and its duties”. It is only the Labour Court, which can consider a challenge to removal from service in any form under item 1 of Schedule IV. The Industrial Court could not have exercised jurisdiction in the Complaint preferred by the respondent by which he had challenged his compulsory retirement. The Industrial Court was bereft of jurisdiction. The complaint was untenable.

10. In the light of the above, this petition is allowed. The impugned judgment and order dated 31.1.2012 is quashed and set aside. Complaint (ULP) No. 37 of 2011 is rendered untenable and hence dismissed.

11. Nevertheless, the respondent is at liberty to assail his compulsory retirement by resorting to available remedies. The time spent by the

petitioner in the Industrial Court from 2006 and before this Court till the passing of this order, shall be a good ground for condonation of delay, if any.

12. So also, the respondent is at liberty to submit a representation to the petitioner seeking gratuity, if not already paid and pension, if qualified. The petitioner shall consider such representation in accordance with the Rules and decide the same as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of the representation.

13. Rule is, therefore, made absolute in the above terms.

14. Since Shri Patil has been appointed on behalf of the respondent by this Court, his fees are quantified at Rs.5,000/- and the same shall be paid to him by High Court Legal Services Authority, Sub-Committee, Bench at Aurangabad.

(RAVINDRA V. GHUGE, J.)

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akl/d