

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4052 OF 2014

1. The President,
Omerga Taluka Shikshak Va
Sevakachi Sahkari Patsanstha
Maryadit, Omerga, Tq. Omerga,
District Osmanabad.

2. The Secretary,
Omerga Taluka Shikshak Va
Sevakachi Sahkari Patsanstha
Maryadit, Omerga, Tq. Omerga,
District Osmanabad.

..Petitioners

Versus

Sidram Mahadappa Birajdar
Age 59 years, Occ. Retired,
R/o Akondi (Jahagir),
Tq. Omerga, Dist. Osmanabad.

..Respondent

...
Advocate for Petitioners : Shri Patne Santosh N.
Advocate for Respondent : Shri Golewar V. P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 05, 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 have challenged the judgment and order dated

10.3.2014 in Complaint (ULP) No.170 of 2011, by which, the Complaint was allowed under item 9 of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the Industrial Court directed the petitioners to pay the gratuity for an amount of Rs.4,08,000/- to the respondent herein.

5. I have heard the learned Advocates for the respective sides for quite sometime. Both have taken me through the petition paper book and the affidavit in reply filed by the respondent.

6. In fact, the Respondent had initially claimed gratuity under the Gratuity Act, 1972. Since the petitioner establishment engaged only 3 employees, the claim was opposed as being untenable. Therefore, the respondent withdrew the said proceedings and filed the complaint under MRTU and PULP Act, 1971.

7. The only issue, which deserves consideration in this matter is as to whether the respondent was entitled for gratuity in the light of Clause 30 of the Service Rules and as to whether the said amended clause 30 had been approved by the competent authority, which entitles the respondent to claim its implementation.

8. It is not disputed that Clause 30 of the Service Rules was approved by the Administrator and was also approved by the Assistant Registrar, Cooperative Societies, under the Maharashtra Cooperative Societies Act,

1960 (“the said Act”). The contention of the petitioners that the Administrator approved the Rules but did not place the said Rules before the General Body was negated by the Industrial Court for the reason that Clause 30 was approved in 1988 by the Competent Authority under the said Act and there was no grievance raised by the petitioner.

9. Notwithstanding the fact that the Industrial Court could not have issued a direction for payment of gratuity, I find that the Industrial Court has upheld Clause 30 of the Rules, which was proved below Exhibit U-8. The Industrial Court, therefore, concluded that the petitioners were under a legal obligation to implement Clause 30 on the retirement of an employee and hence the failure to implement Clause 30 was held to be an unfair labour practice under item 9 of Schedule IV of the State Act. It is undisputed that the petitioners have not resorted to any proceeding in the last 27 years for seeking a remedy as regards its grievance against Clause 30.

10. Since the Industrial Court has held that failure to implement Rule 30 amounts to a ULP, I do not find any perversity in the impugned judgment so as to cause any interference in my writ or supervisory jurisdiction.

11. The petition is devoid of merits and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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