

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9947 OF 2015

Bhartiya Kamgar Sena,
Through its Secretary,
Prabhakar Shankar Mate,
Age-50 years, Occu-Agriculturst,
R/o Divisional Office Shop No.4,
Samrat Apartment Gajanan Maharaj Mandir
Road, Garkheda, Aurangabad,
Dist.Aurangabad

– PETITIONER

VERSUS

1. The Secretary,
Sanjivani Gramin Shikshan
Society, Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
2. The Principal,
Sanjivani Gramin Shikshan
Societyche – Karmaveer Bhaurao Patil
Tantraniketan Mahavidyalaya,
Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
3. The Principal,
Sanjivani Gramin Shikshan
Societyche – Abhiyantriki Mahavidyalaya,
Sajajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
4. The Principal,
Sanjivani Gramin Shikshan
Societyche – Sanjiwani Institute of Pharmacy
And Research, Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,

5. The Principal,
Sanjivani Gramin Shikshan
Societyche – Sanjiwani College of Pharmaceutical,
Education and Reasearch, Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
6. The Principal,
Sanjivani Gramin Shikshan
Societyche – Diploma in Education,
Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
7. The Principal,
Sanjivani Gramin Shikshan
Societyche – Shri Saibaba College of Education,
Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar, – RESPONDENTS

WITH
WRIT PETITION NO.9956 OF 2015

Bhartiya Kamgar Sena,
Through its Secretary,
Prabhakar Shankar Mate,
Age-50 years, Occu-Agriculturst,
R/o Divisional Office Shop No.4,
Samrat Apartment Gajanan Maharaj Mandir
Road, Garkheda, Aurangabad,
Dist.Aurangabad – PETITIONER

VERSUS

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Sanjivani Gramin Shikshan
Society, Sahajanand Nagar,
Post : Singnapur, Tq.Kopargaon,
Dist.Ahmednagar,
2. The Principal,
Sanjivani Gramin Shikshan

Societyche – Karmaveer Bhaurao Patil
 Tantraniketan Mahavidyalaya,
 Sahajanand Nagar,
 Post : Singnapur, Tq.Kopargaon,
 Dist.Ahmednagar,

3. The Principal,
 Sanjivani Gramin Shikshan
 Societyche – Abhiyantriki Mahavidyalaya,
 Sajajanand Nagar,
 Post : Singnapur, Tq.Kopargaon,
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 Education and Reasearch, Sahajanand Nagar,
 Post : Singnapur, Tq.Kopargaon,
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 6. The Principal,
 Sanjivani Gramin Shikshan
 Societyche – Diploma in Education,
 Sahajanand Nagar,
 Post : Singnapur, Tq.Kopargaon,
 Dist.Ahmednagar,
 7. The Principal,
 Sanjivani Gramin Shikshan
 Societyche – Shri Saibaba College of Education,
 Sahajanand Nagar,
 Post : Singnapur, Tq.Kopargaon,
 Dist.Ahmednagar,
- RESPONDENTS

Mr.Vinod Prakash Patil, Advocate for the petitioner.

Mr.Ashok Patil h/f Mr.A.R.Joshi, Advocate for respondent Nos. 1 to 7.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/12/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners seek to challenge the judgment and order dated 05/01/2015 delivered by the Industrial Court in Complaint (ULP) Nos. 31/2009 and 45/2010.

3. Both the complaints are almost identical and the only material prayer set out in both the complaints at paragraph No.8B, is identical. The employees concerned were represented by the petitioner Union in both these complaints, which were filed by the Secretary of the Union going by the verification and affidavit in support of the complaints. The respondent in both these complaints is the same Educational Institution which is the petitioner herein. The impugned judgments are identical.

4. It is in this backdrop that I have heard the learned Advocates for the respective sides and have taken up both the petitions for

decision together.

5. Though the learned Advocates have canvassed at length, I find that the entire issue pertains to the claim made by the petitioner that the respondent/Management has not implemented the 5th Pay Commission w.e.f. 01/01/1996. Mr.V.P.Patil, learned Advocate for the petitioner draws my attention to PRAYER clause A and B. By PRAYER CLAUSE 'B', a prayer is specifically put forth that the benefits of salary as recommended by the 5th Pay Commission be paid to the employees mentioned in Annexure A to the complaints from 01/01/1996 alongwith interest, penalty and difference of pay to the extent of the unpaid salary.

6. The Industrial Court, by the impugned judgment, has dismissed both the complaints on the ground that one Mr.Babasaheb Trimbak Bhagure, who is at Sr.No.1 in Annexure - A to the first complaint, is not the representative of the complainant / Union and therefore the complaint is dismissed. The other ground on which the complaint has been dismissed is on the basis of the statement made by Mr.Bhagure in his cross examination that the respondent / Management had started paying the benefits of the 5th Pay Commission. It is, therefore, submitted that these are primarily two

material aspects on which the complaints were dismissed by the Industrial Court, erroneously.

7. He further submits that a settlement dated 14/01/2009 was placed before the Industrial Court which was signed by the respondent Management and a recognized Union by the name Sanjeevani Education Society Karmachari Sanghatana (hereinafter referred to as the recognized Union). The petitioner is a registered Union which is not recognized under the MRTU and PULP Act, 1971 (Hereinafter referred to as Act of 1971) with relation to the respondent / Establishment.

8. He, therefore, submits that the said settlement and especially demand nos.4 and 5 were pointed out to the Industrial Court to mean that the agreement covering demand no.4 and 5 was in effect and agreement between the Management and the Recognized Union that the Union had given up its claim with regard to the benefits of the 5th Pay Commission from 01/01/1996.

9. The Industrial Court, therefore, concluded that firstly, Mr.Bhagure could not have deposed on behalf of the petitioner/Union. Secondly, the payment of 5th Pay Commission, as

per recommendations, had commenced. Thirdly, that the settlement has been signed between the Management and the recognized Union and it was applicable to all the employees of the respondent / Establishment irrespective of their Union affiliations.

10. He, therefore, submits that either the petitioner be allowed to withdraw the said complaints filed before the Industrial Court and permit them to file a writ petition directly in this Court or the complaint be remitted back for recording of proper evidence and for reconsideration of prayer clauses A & B.

11. Mr.A.V.Patil alongwith Mr.A.R.Joshi, learned Advocates have strenuously defended the impugned judgment. Contention is that the deposition of Mr.Bhagure deserves to be discarded and the Industrial Court has rightly discarded the same as he was not an office bearer of the complainant/Union.

12. It is further submitted that when Mr.Bhagure makes a statement that the respondents have commenced the payment of wages / benefits as per the 5th Pay Commission, there was no cause of action surviving before the Industrial Court. The complaints have, therefore, been rightly dismissed.

13. He further submits that there are about 600 to 700 employees employed with the respondent/Educational Institution. All have accepted the benefits under the 5th Pay Commission as have been paid to them. Prayer clause 8B cannot be entertained at the behest of workers as it is likely to reopen the whole issue and is likely to open flood gates and all these workers are likely to raise demands on the Management.

14. Mr.A.V.Patil further submits that once a settlement has been signed with the recognized Union, the same cannot be reopened. The claim put forth by the petitioner Union pertains to demands which have been covered by the said settlement. He relies on the following judgments to drive home the point that a settlement signed with the recognized Union is not open to criticism or judicial scrutiny :-

- [a] *Bombay Gas Co.Ltd.,Vs. G.S.Baj and others, [2008 (118) FLR 530],*
- [b] *Mehta Gem Tools Private Limited Vs. Aruna Arvina Parkar and others, [2011-II-LLJ-280],*
- [c] *Mukand Staff & Officers' Association Vs.Mukand Ltd.,[2013 II CLR 892*

15. Mr.Patil has taken me through the examination in chief of the witnesses of both the sides, their cross examination as well as

through the entire judgment of the Industrial Court which runs into 47 pages. He submits that the Industrial Court has rightly concluded that the evidence of Mr.Bhagure deserves to be discarded as he was not an office bearer of the Union.

16. He also points out that an authorization issued by the petitioner/Union through its Secretary dated 01/12/2008 bearing outward No.2008-09/1029, which is an authority letter given to Mr.Bhagure, was not filed before the Industrial Court, when the evidence was being recorded. It was filed after the recording of evidence was concluded. The same, therefore, is not required to be considered and hence the complaints have been rightly dismissed.

17. I have heard the learned Advocates for the respective sides as has been recorded hereinabove.

18. I wish to put to rest the first issue of maintainability of the complaint. The appeal Bench (Division Bench) of this Court while dealing with a Letters Patent Appeal in the matter of Warden and Co. (India) Ltd., Bombay Vs. Akhil Maharashtra Kamgar Union, Thane has delivered a judgment, reported at [2001(II) CLR 359].

19. Issue before the Division Bench was as to whether a complaint under Item 9 of Schedule IV could be filed by an unrecognized Union in the face of the existence of a recognized Union in the factory. The Appeal Bench has concluded in paragraph No.42 that the recognized Union is not vested with an exclusive right to file a complaint under Item 9 of Schedule IV. An unrecognized Union can also prefer such a complaint on behalf of its members. The judgment of the Apex Court in the matter of *Shramik Utkarsh Sabha Vs. Raymond Woolen Mills*, 1995(1) CLR 607 was considered.

20. It would be apposite to reproduce the observations of the Appeal Bench in paragraph Nos.33, 34, 35, 36, 37, 41 and 42.

“33. Having given our fullest consideration to this submission, we are of view that [sections 20](#) and [22](#) which confer rights on recognised and unrecognised Union, respectively, are not determinative of the rights of Unions to appear in complaints relating to unfair labour practices. What is determinative as of the right to appear is section 21(1) of the M.R.T.U. and P.U.L.P. Act read with section 28 of the M.R.T.U. and P.U.L.P. Act, which have the following effect :-

(a) That any Union or any employee or Investigating Officer may file a complaint for any unfair labour practice against an employer by virtue of section 28 of the M.R.T.U. and P.U.L.P. Act.

(b) Where the unfair labour practice complained of is in regard to items 2 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, the same can only be prosecuted by a recognised Union by virtue of section 21(1) of the M.R.T.U. and P.U.L.P. Act.

34. It was next urged on behalf of the employer that it is already concluded by the decision of the Supreme Court in [Shramik Utkarsh Sabha v. Raymond Wollen Mills Ltd. and Ors.](#), that in regard to an Industry governed by the provisions of the I. D. Act, only a recognised Union can prosecute a complaint of unfair labour practices under the M.R.T.U. and P.U.L.P. Act. Mr. Singhvi, learned counsel for the Union, submitted that this was not so primarily in view of the fact that the judgment of the Supreme Court was a judgment in which, what fell for consideration was the right of a representative Union under the Bombay Industrial Relations Act to prosecute a complaint under the M.R.T.U. and P.U.L.P. Act. It was further submitted that there is a marked difference between the scheme of the Bombay Industrial Relations Act and the I. D. Act in the matter of representation of workmen in proceedings and the decision in Raymond case is a decision only in regard to the scheme of the Bombay Industrial Relations Act and the M.R.T.U. and P.U.L.P. Act. It is rightly pointed out by the learned counsel that the Supreme Court has, vide para 14, noticed that section 21 of the M.R.T.U. and P.U.L.P. Act applies to both the I. D Act and the Bombay Industrial Relations Act and that Court was deciding a case under the Bombay Industrial Relations Act. This is obvious from the term

"representative union" used in the conclusion stated by Their Lordships. This term does not exist in the I. D. Act and does exist in the Bombay Industrial Relations Act under which the Raymond case arose.

35. Mr. Singhvi further relied on four decisions of this Court rendered by learned single Judges which have held that the ratio in Raymond case does not bar individual employees of an industry to which the Bombay Industrial Relations Act applies from filing complaints under items other than Items 2 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. These decisions are : (i) [Rama B. Rate and Ors. v. Walchandnagar Industries Ltd. and Ors.](#), (ii) [Bajirao Rajaram Patil v. Maharashtra State Co-operative Bank Ltd.](#) and Anr.; (iii) [V.D. Dhekale v. Depot Manager, M.S.R.T.C. Kolhapur and Ors.](#); and [Tata Hydro Electric Power Supply Co. Ltd. and Ors. v. N.L. Mansukhani and Ors.](#)

36. Since the case before us is different in that it concerns the right on an unrecognised Union in an industry to which the I. D. Act applies to file or prosecute a complaint under the M.R.T.U. and P.U.L.P. Act, we have ourselves perused the statutory scheme and we find ourselves in agreement with the submission that the law laid down in Raymond case was not in respect of a matter arising in an industry where the I. D. Act applies, but a matter relating to an industry governed by the Bombay Industrial Relations Act.

37. It is clear from a reading of the judgment in Raymond case that it arose as follows. A complaint was made by an employer in an industry to which the B.I.R. Act applied against the

representative Union of the industry. In that complaint, an unrecognised Union i.e. Shramik Utkarsh Sabha applied for being impleaded as a party-respondent and the Supreme Court held, having regard to the entire scheme of the Bombay Industrial Relations Act read with relevant provisions of the M.R.T.U. and P.U.L.P. Act, that only a representative Union under the B.I.R. Act has the exclusive right to represent the employees of the concerned industry in complaints relating to unfair labour practices under the M.R.T.U. and P.U.L.P. Act other than those specified in Items 2 and 6 of Schedule IV thereof.

41. As observed earlier, the proviso added to section 36 of the I. D. Act by the M.R.T.U. and P.U.L.P. Act also does not make any difference to this position. The said proviso only provides that where there is a recognised Union for any undertaking, no workman in such undertaking shall be entitled to be represented in a proceeding under the I. D. Act except by such recognised Union.

42. We, therefore, held that it is not the exclusive right of a recognised Union to institute and prosecute a complaint under the M.R.T.U. and P.U.L.P. Act in respect of an industry governed by the [I.D. Act](#) in relation to unfair labour practices other than those specified in Items 2 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. We, therefore, uphold the judgment of the learned Single Judge in this regard.”

21. In the light of the ratio as above, the petitioner, therefore, was competent to file the complaints before the Industrial Court. The

Industrial Court however has not followed the ratio laid down in the judgment in the case of Warden (supra) on the ground that the prayer in the said matter was with regard to unpaid wages. The said conclusion of the Industrial Court deserves to be set aside.

22. This takes me to the thrust of the respondents' case that the settlement signed with the recognized Union by itself would lead to the rejection of prayer clause 8B of the complaints.

23. I have gone through the entire settlement with the assistance of the learned Advocates. The agreement between the recognized Union and the Management touching the issue of wages is only restricted to demand Nos.4 and 5 as was put forth by the recognized Union. Demand No.4 is with regard to the claim of the recognized Union for 47% dearness allowance. Demand No.5 was to raise the wages of the Class-IV employees as per Pay Commissions. There is no reference to the 5th Pay Commission so as to conclude that the recognized Union has given up its claim for wages as per the 5th Pay Commission from 01/01/1996 onwards till a particular date.

24. Demand No.5 is with regard to 75 employees. Their wages have been enhanced w.e.f. 01/11/2008 after they have completed 9 years

in service. There is no settlement on the point of waiver of the benefits of the 5th Pay Commission from 01/01/1996 till a particular date. As such, the Industrial Court has misdirected itself by concluding that this settlement with the recognized Union covers the prayer clause 8B of the complaints.

25. It is not in dispute that both these complaints were taken up together by the Industrial Court for adjudication due to the identical issues involved and the identical prayer clause 8B. As observed above, prayer clause 8B is a demand for wage benefits from 01/01/1996 as per the 5th Pay Commission.

26. It is not in dispute that Mr.Babasaheb Trimbak Bhagure is the beneficiary complainant at Sr.No.1 in Annexure A to Complaint (ULP) No.31/2009. He has deposed before the Industrial Court. His examination and cross examination has been partly utilized by the Industrial Court and which has been used against the complainant. His admission that the payment as per the 5th Pay Commission has commenced and he has received its benefits, led the Industrial Court to conclude that there is no cause of action. His statement that he was an office bearer of the Union was read by the Industrial Court to mean that he was deposing on behalf of the Union, he had no

authority to depose and since none of the other beneficiaries have come forward before the Industrial Court, his deposition deserves to be discarded and the complaints deserve to be dismissed for being untenable.

27. I am astonished by these conclusions. Mr.Bhagure is one of the beneficiaries in the complaints. His testimony can be read as being on behalf of himself and even on behalf of his co-beneficiaries who are mentioned in Annexure-A. The Industrial Court has misdirected itself by proceeding on the premise that Mr.Bhagure was deposing in his capacity as an office bearer and his testimony cannot be considered as he has no authority.

28. If his examination in chief is considered, he has specifically stated that he is a member of the complainant/Union and is a beneficiary as set out in the Annexure to the complaint. The Industrial Court viewed his deposition as being purely restricted to his purported role as a Union Office Bearer and by concluding that his deposition cannot be read as being on behalf of the beneficiaries, renders the impugned judgment erroneous. It is immaterial that Mr.Bhagure has taken the benefits of the settlement since the settlement is with regard to different demands and if the demands

are scrutinized, it is clear that the recognized Union had not put forth any demand and had not arrived at any agreement as regards waiver of the implementation of the 5th Pay Commission.

29. In the above backdrop, the issue of settlement and there being no challenge to the settlement, unnecessarily has weighed upon the mind of the Industrial Court. There can be no dispute that a settlement signed with the recognized Union, unless any clause amounts to contracting out, cannot be opposed or challenged by any employee or member of an unrecognized Union. The binding effect of a settlement signed by the recognized union is well in place and the citations relied upon by the respondent would assist the respondent to the extent of the legality and validity of the said settlement dated 14/01/2009. However, since the said settlement is not in connection with the waiver of the benefits of the 5th Pay Commission, it would not come in way of prayer clause 8B of the complaints.

30. I specifically posed a query to the respondent/Management, as to whether it can state that it has paid the benefits of the 5th Pay Commission from 01/01/1996 to all eligible employees. Mr.A.V.Patil took instructions from the respondent representative present in the Court and stated that he cannot make such any statement. He,

however, stated that if prayer clause 8B is allowed, the respondents will have to pay the 5th Pay Commission benefits to 600 to 700 employees w.e.f. 01/01/1996.

31. Notwithstanding the above, it does appear from the record that the petitioner Union should have taken more efforts in the adjudication of the complaints. It has also been recorded by the Industrial court that several workers mentioned in Annexure A to the complaints have withdrawn from the litigation. Only 21 employees can be said to be prosecuting the complaint. These names are mentioned in Annexure A.

32. In the light of the above, the impugned judgments dated 05/01/2015 are quashed and set aside. Complaint (ULP) Nos. 31/2009 and 45/2010 are remitted to the Industrial Court, Ahmednagar with the following directions :-

- [a] The evidence on record shall not be discarded.
- [b] Both the litigating sides are at liberty to lead additional evidence.
- [c] Prayer clause 8B of the complaints shall be adjudicated upon by the Industrial Court.
- [d] The effect of the Government Resolution dated 15/05/2000 shall also be taken into account by the Industrial court while

deciding the two complaints.

- [e] In the event, the petitioner succeeds before the Industrial Court in the two complaints, it shall not be entitled for interest on the unpaid amounts from the date of filing of the complaints till passing of this order since I have concluded that the petitioner has not taken sufficient efforts to conduct these two complaints.
- [f] The litigating sides shall appear before the Industrial Court on 23/12/2015 and formal notices need not be issued.
- [g] The Industrial Court shall endeavour to decide these two complaints expeditiously.

33. These petitions are partly allowed and Rule is made partly absolute in the above terms.

34. At this stage, the respondents make a request that this judgment be stayed for a period of 8 (eight) weeks. Learned Advocate for the petitioner opposes the said request. Since I have remitted the complaints to the Industrial Court for a fresh adjudication, the request of the respondents is refused.

(RAVINDRA V. GHUGE, J.)