

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1250 OF 2015

UTTAM BABAN ABHANG
VERSUS
DURWANI KARMACHARI SAHAKARI PATSANSTHA
MARYADIT, AHMEDNAGAR AND ANOTHER

...
Advocate for Petitioner : Shri Barde Parag Vijay

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: February 18, 2015

...

PER COURT :-

1. I have heard Shri Barde learned Advocate for the petitioner for quite some time.

2. Issues raised for my consideration are as follows:-

(a) *Whether during the pendency of the Complaint (ULP) before the Industrial Court, Section 33 of the Industrial Disputes Act, 1947 ("the Central Act") would be applicable ?*

(b) *Whether during the pendency of the Complaint (ULP) before the Industrial Court, action of termination / dismissal by the employee would attract Section 33A of the Central Act ?*

3. Shri Barde contends that, in Complaint (ULP) No. 199 of 2013, filed before the Industrial Court, Ahmednagar, prayers for parity in wages and promotional appointment as a Manager were set out. Application for

interim relief - Exhibit U/2, under Section 30(2) of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the State Act") was rejected by the Industrial Court, refusing protection against apprehended termination, which was then questioned in Writ Petition No.72 of 2014.

4. This Court (Coram : S.V.Gangapurwala,J.), while rejecting the said Writ Petition, vide order dated 8.1.2014, recorded the submissions of Shri Barde, in paragraph No.2 and thereafter, made its observations in paragraph No.6, as under:-

"2. Mr. Barde, learned counsel for the petitioner submits that only because the statement was made by the respondent in the Say that the petitioner is getting more than the amount entitled to, the Court has passed the order. The petitioner has demonstrated before the Court the amount to which he is entitled to and the meager amount has been paid to him. ` 12,946/ [Rupees Twelve Thousand Nine Hundred Forty Six only] per month pay is much less than the entitlement of the petitioner. The learned counsel further submits that the Court has failed to consider Section 33 of the Industrial Disputes Act.

6. As far as the contention of the petitioner that without the permission of the Court, the petitioner can not be terminated in view of the provisions of Section 33 of the Industrial Disputes Act, the petitioner may make an application with the Industrial Court, which application the Industrial Court shall consider on its own merits expeditiously."

5. Shri Barde, therefore, submits that since the petitioner was dismissed from employment by order dated 12.3.2013, he preferred a Misc. Application (ULP) No. 1 of 2014 in the pending complaint, invoking Section 33A of the Central Act. By the impugned order, dated 22.9.2014, the Industrial Court, Ahmednagar has rejected the application as being not maintainable.

6. Contention of the petitioner is that Section 32 of the State Act, gives sufficient scope to the Industrial Court to decide all matters arising out of any application or a complaint referred to it for decision under any of the provisions of the State Act. It is, therefore, submitted that the pendency of the complaint before the Industrial Court presupposes that an Industrial Dispute under Section 2(k) of the Central Act is pending before the Industrial Court. In this backdrop, he further submits that Section 33 of the Central Act would become applicable to a termination as it would entitle the workman to file a complaint under Section 33A of the Central Act.

7. Section 32 of the State Act reads as under:-

"Section 32 - Power of Court to decide all connected matters. Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act."

8. In so far the contention of the petitioner that the Industrial Court

can decide all matters arising out of any application or a complaint referred to it, under any of the provisions of this Act and therefore, empowers it to decide the issue of dismissal for proved mis-conducts, is fallacious. This Court (Coram : R.A.Jahagirdar, J.), in the case of National General Mazdoor Union, Thane Vs. Nitin Castings Ltd. and others [1990 (2) CLR 641 (Bom)], has held that the jurisdiction of the Industrial Court cannot be enlarged so as to include the issue of dismissal from service and go into the legality of the dismissal. I am in agreement with the said view for the reasons set out in this order.

9. Paragraph Nos.7 to 11 of the National General Judgment (supra) read as under:-

"7. It has already been mentioned above that the complaint disclosed unfair labour practices of two types, some falling under Schedule II and some falling under Schedule IV. Mr. Puri does not dispute the fact that the Industrial Court has no jurisdiction to deal with the unfair labour practices falling in Schedule IV. However, he insists that if the complaint relates to unfair labour practices falling in two Schedules and if the Industrial Court can deal with the unfair labour practices falling in Schedule II, it can incidentally also deal with the unfair labour practices falling in Schedule IV, which have been included in the main complaint. The argument is not acceptable.

8. Reliance placed by Mr. Puri on section 32 of the PULP Act in this regard is misplaced. Section 32 is to be found in Chapter VII of the PULP Act, which is headed "Powers of Courts". Section 32 may be reproduced :-

"32. Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

9. From the language of section 32, it is clear to me that this does not enlarge the scope or the extent of the jurisdiction of the Industrial Court beyond what is conferred upon it by the other provisions of the PULP Act. If under the other provisions of the PULP Act the Industrial Court has no jurisdiction to deal with the unfair labour practices mentioned in Schedule IV of the Act, section 32 does not give such power to the Industrial Court. What is contemplated in section 32 is that the Industrial Court or, for that matter, even the Labour Court has power to decide all matters arising out of an application or a complaint referred to it for decision under the provisions of the PULP Act. The complaint or the application which is referred to the concerned Court must be made to the proper Court. While deciding such a complaint or an application if certain matters or issues or questions arise, the concerned Court has been invested with the power to decide all those matters, issues or questions so arising. The Court is not debarred from dealing with such matters, issues or questions arising merely on the ground that no specific provision has been made elsewhere conferring power upon the concerned Court to deal with such incidental questions. This is the meaning of section 32 of the PULP Act. It does not enlarge the jurisdiction of either the Industrial Court or of the Labour Court which is otherwise not being conferred upon but by the other provisions of the PULP Act.

10. Mr. Puri, however, is demonstrably on sound ground when he says that the Industrial Court was in error in dismissing the application of the petitioner on the ground that the complaint

related to only items in Schedule IV. The heading of the application itself and the averments made in the application go to show that the petitioner-union also wanted to complain of the unfair labour practices in items Nos. 3 and 4(a) of Schedule II of the PULP Act. The Industrial Court had undoubtedly jurisdiction to adjudicate upon the complaints in respect of these items. The dismissal of the entire complaint, therefore, is wholly unjustified. The petition, therefore, must succeed to that extent.

11. *In the result, the petition is partly allowed. The order dated 24th of July 1981 passed by the Industrial Court, Thane, in Complaint (ULP) No. 162 of 1980 is hereby set aside. The said complaint is restored to the file of the Industrial Court, which will dispose of the said complaint in so far as it relates to unfair labour practices mentioned in Items Nos. 3 and 4(a) of Schedule II of the PULP Act. No order as to costs."*

10. Similarly, this Court (Coram : R.M.Lodha, J. - as he was then), in the case of Blue Star Limited Vs. Blue Star Workers' Union and another [1997 (5) LJ 345] has observed in paragraph Nos.9 and 11 as under:-

"9. Section 32 by its very nature is supplemental provision which empowers the Industrial Court or labour Court exercising the power under the MRTU and PULP Act to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of the Act. The said power is intended to be given to the concerned Industrial Court or Labour Court to ensure that certain incidental matters arising out of any application or complaint referred to it for decision may be decided by the said Court notwithstanding anything contained in the Act. The supplemental power provided to the Industrial Court or the Labour

Court under the MRTU and PULP Act under Section 32 does not enlarge scope of jurisdiction exercisable by the said Court but is intended as any other supplemental provision to prevent the ends of justice from being defeated and pass appropriate order with regard thereto. Power exercisable by Labour Court or Industrial Court under Section 32 needs to be harmonious and consistent with the powers given to such Court under Section 30 of the Act and such supplemental power under Section 32 being in aid of the principal powers of the Industrial Court or Labour Court under Section 30 of the Act enables the Court to decide all incidental matters that may be required to be decided while deciding the complaint even in the absence of specific provision. However once the Court holds that no unfair Labour practice has been committed or is being committed, the power of such Court issuing any further direction ends and in the garb of exercise of power under Section 32 it cannot pass the order of declaration or issue direction which it cannot do under Section 30(1). In National General Mazdoor Union. Thane v. M/s. Nitin Casting Ltd. & Ors. 1990 II CLR 641 the provisions contained in Section 32 of the MRTU and PLUP Act came up for consideration and this Court held thus :

"8. Reliance placed by Mr. Puri on Section 32 of the PULP Act in this regard is misplaced. Section 32 is to be found in Chapter VII of the PULP Act, which is headed, "Powers of Courts. "Sec. 32 may be re-produced.

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

From the language of Section 32, it is clear to me that this does not enlarge the scope or the extent of the jurisdiction of the Industrial

Court beyond what is conferred upon it by the other provisions of the PULP Act. If under the other provisions of the PULP Act the Industrial Court has no jurisdiction to deal with the unfair labour practices mentioned in Schedule IV of the Act. section 32 does not give such power to the Industrial Court. What is contemplated in Section 32 is that the Industrial Court or, for that matter, even the Labour Court has power to decide all matters arising out of an application or a complaint referred to it for decision under the provisions of the PULP Act. The complaint or the application which is referred to the concerned Court must be made to the proper Court. While deciding such a complaint or an application if certain matters or issues or questions arise, the concerned Court been invested with the power to decide all those matters, issues or questions so arising. The Court is not debarred from dealing with such matters, issues or questions arising merely on the ground that no specific provision has been made elsewhere conferring power upon the concerned Court to deal with such incidental questions. This is the meaning of Section 32 of the PULP Act. It does not enlarge the jurisdiction of either the Industrial Court or of the Labour Court which is otherwise not being conferred upon it by the other provisions of the PULP Act.

10.

11. *I have already referred to the finding recorded by the Industrial Court in the impugned order wherein it has been held that the employer has not violated any agreement, award or any law by deducting the wages of the group of workmen for 25 minutes and that the employer was entitled to deduct wages proportionately for the period of absence. Thus, the Industrial Court held that the employer has not indulged in any unfair Labour practice and that complaint was liable to be dismissed and it ordered accordingly. On the other hand the Industrial Court found that the concerned*

workmen had committed misconduct by not taking permission of Mr. Sawant in going to his chamber and despite that the Industrial Court has ordered the employer to return the wages of the concerned workmen except four workmen which cannot be sustained since apparently it suffers from serious error of law and needs to be quashed and set aside. "

11. Sections 5 and 7 of the State Act have defined the jurisdiction of the Industrial Court and the Labour Court. Complaints relating to discharge / dismissal/ termination described in item No.1 of Schedule IV, are to be decided by the Labour Court. In the case of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285], the Apex Court has concluded that the employee can challenge even apprehended termination or dismissal before the Labour Court. Similarly in the case of Cipla Ltd. Vs. Maharashtra General Kamgar Union [AIR 2001 SC 1165], the Apex Court has concluded that the jurisdiction of the Industrial Court under Section 32 cannot be enlarged beyond what has been conferred upon it by the Act. This issue is therefore, laid to rest.

12. It is pertinent to note that the issue of dismissal for proved misconduct has to be dealt with by the Labour Court by following a specific procedure, which has by now been crystallized by the various judgments of the Apex Court. This Court has considered substantially the law on this aspect in the case of Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nizam [2014 (4) Mh.L.J. 688].

13. The salient aspect in the cases of dismissal is that the fairness of the enquiry and the findings of the enquiry officer have to be dealt with as preliminary issues. In the event, the enquiry is set aside for any reason, the employer can conduct a de-novo enquiry before the Labour Court and prove the charges against the workman and thereby justify the punishment of dismissal, provided the Employer has reserved its right in the Written Statement.

14. As such, section 32 is self explanatory in my view. It empowers the Court to decide connected matters, arising out of any application or complaint, referred to it for decision, under any of the provisions of the State Act. However, the ambit of the jurisdiction of the Industrial Court cannot be enlarged, keeping in view the judgment of the Apex Court in the case of Cipla (supra) and judgment of this Court in the case of National General(supra). Challenge to an order of dismissal or termination would not therefore, fall for the consideration of the Industrial Court under the State Act.

15. Coming to the issue raised by Shri Borde, certain provisions of the Central Act need reference. "Industrial Dispute" under Section 2(k) of the Central Act is defined as under:-

"2.(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

16. An industrial dispute under Section 2(k) or 2A in my view cannot be presumed to be an industrial dispute unless it is specifically raised by any party within its definition before the appropriate Government, under the Central Act.

17. Section 33 of the Central Act, reads as under:-

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such

dispute [or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman]--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being [a member of the

executive or other office-bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of subsection (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to subsection (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

18. The mechanism to deal with such industrial disputes is specifically set out under the Central Act. It is an Act to make provisions for the investigation and settlement of an industrial dispute and for certain other purposes. Consequentially, the provisions of the Central Act are aided by the Industrial Disputes (Central) Rules, 1957 and the Industrial Disputes (Bombay) Rules 1957 to the extent of the State of Maharashtra.

19. Section 2(d) of the Central Act defines a "Conciliation Officer" to mean a Conciliation Officer appointed under this Act. Section 2(e) defines "Conciliation Proceedings" to mean any proceeding held by the Conciliation Officer or Board under this Act. Section 2(f) of the Central Act defines "Court" to mean a Court of enquiry constituted under this Act. Section 2(kkb) defines a "Labour Court" to mean a Labour Court constituted under Section 7 of the Central Act.

20. Section 7 of the Central Act defines "Labour Court" as under:-

"7. Labour Courts

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless--

- [(a) he is, or has been, a Judge of a High Court; or*
- (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or*
- (c) ******
- (d) he has held any judicial office in India for not less than seven years; or*
- (e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.]*
- (f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:*
- Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or*
- (g) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.*

21. Section 2(11) of the Central Act defines a "National Tribunal" to mean a National Industrial Tribunal, constituted under Section 7(b) of the Central Act.

22. Section 7A defines a "Tribunal" as under:-

"7A. Tribunals:-

- (1) The appropriate Government may, by notification in the*

Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless--

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge;

(b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

23. Section 7B defines a "National Tribunal" as under:-

"7B. National Tribunals

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal ² [unless he is, or has been, a judge of a High Court].

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it."

24. Needless to state, the entire scheme under Section 33 is in relation to the pendency of the conciliation proceedings or any proceeding pending before (a) a Conciliation Officer or (b) a Board or (c) an Arbitrator (d) a Labour Court or (e) Tribunal or (f) National Tribunal, in respect of an industrial dispute. There has not been any provision pointed out, nor any judicial pronouncement cited to indicate that a pending Complaint (ULP) under the State Act shall have the semblance of an industrial dispute under Section 2(k) of the Central Act.

25. *Per contra*, the "Industrial Court" defined under Section 4 of the State Act reads as under:-

"4. INDUSTRIAL COURT. -

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.

(2) The Industrial Court, shall consist of not less than three members, one of whom shall be the President.

(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint :

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court :

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters."

26. As such, it is apparent that the "Industrial Court" as defined under Section 4 of the State Act cannot be construed to mean either the "Tribunal" under Section 7A of the Central Act or the "National Tribunal"

under Section 7B of the Central Act. Section 5 of the State Act defines the duties of the Industrial Court, which clearly indicate that the "Industrial Court" under the State Act shall decide the matters relating to applications for grant of recognition, withdrawal or cancellation of recognition, unfair labour practices falling under Schedules II, III and IV, except under item 1 of Scheduled IV of the State Act, decide appeals under Section 42 and exercise revisional jurisdiction under Section 44 of the State Act.

27. Section 7A of the Central Act empowers the appropriate Government to constitute an "Industrial Tribunal" by issuing a notification in the official gazette for adjudication of the industrial disputes relating to any matter, specified under Schedule II or III under the Central Act. Similar is the case with the "National Tribunal" as defined under Section 7B. As such, the "Industrial Tribunal" under the Central Act and the "Industrial Court" under the State Act operate in different fields.

28. A litigant can file a ULP Complaint under the State Act directly before the Industrial Court. Per contra, no such complaint is entertainable by the "Industrial Tribunal" directly in relation to any "Industrial Dispute" relating to any matter specified in Schedule II or Schedule III under the Central Act. As such, unless an industrial dispute is specifically raised before the Conciliation Officer and until a reference is made to the Industrial Tribunal on failure of conciliation proceedings, the jurisdiction of the Industrial Tribunal would not stand invoked.

29. As such, a ULP Complaint filed under the State Act would be tenable before the Industrial Court and not before the Industrial Tribunal under the Central Act. It is in the backdrop of the phraseology used in Sections 33 and 33A that the pendency of proceedings before the Conciliation Officer, Board, Arbitrator, Labour Court, Tribunal or National Tribunal would attract and the applicability of Sections 33 and 33A in relation to an "Industrial Dispute" which is pending before the Conciliation Officer or the authority as is provided under Section 33 of the Act. Naturally, pursuant to entertaining a Complaint under Section 33A, an award can be delivered by the Industrial Tribunal, and which is submitted to the appropriate Government for publication as per the provisions of the Central Act.

30. In the light of the provisions in the State Act and the provisions of the Central Act, as have been discussed in the foregoing paragraphs, I find that the Industrial Court under the State Act operates in a different field vis-a-vis the Industrial Tribunal under the Central Act.

31. Rule 10B under the Industrial Disputes (Central) Rules, 1957 reads as under:-

"10B. Proceeding before the Labour Court, Tribunal or National Tribunal.

(1) While referring an industrial dispute for adjudication to a

Labour Court, Tribunal or National Tribunal, the Central Government shall direct the party raising the dispute to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

(2) The Labour Court ,Tribunal or National Tribunal after ascertaining that copies of statement of claim are furnished to the other side by party raising the dispute shall fix the first hearing on a date not beyond one month from the date of receipt of the order of reference and the opposite party or parties shall file their written statement together with documents, list of reliance and witnesses within a period of 15 days from the date of first hearing and simultaneously forward a copy thereof to the other party.

(3) Where the Labour Court, Tribunal or National Tribunal, as the case may be, finds that the party raising the dispute though directed did not forward the copy of the statement of claim to the opposite party or parties, it shall give direction to the concerned party to furnish the copy of the statement to the opposite party or parties and for the said purpose or for any other sufficient cause, extend the time limit for filing the statement under sub-rule (1) or written statement under sub-rule (2) by an additional period of 15 days.

(4) The party raising a dispute may submit a rejoinder if it chooses to do so, to the written statement(s) by the appropriate party or parties within a period of fifteen days from the filing of written statement by the latter.

(5) The Labour Court, Tribunal or National Tribunal, as the case

may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, list of witnesses, etc. which shall be ordinarily within sixty days of the date on which the dispute was referred for adjudication.

(6) Evidence shall be recorded either in court or on affidavit but in the case of affidavit the opposite party shall have the right to cross-examine each of the deponents filing the affidavit. As the oral examination of each witness proceeds, the Labour Court, Tribunal or National Tribunal shall make a memorandum of the substance of what is being deposed. While recording the evidence the Labour Court, Tribunal or National Tribunal shall follow the procedure laid down in rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908.

(7) On completion of evidence either arguments shall be heard immediately or a date shall be fixed for arguments / oral hearing which shall not be beyond a period of fifteen days from the close of evidence.

(8) The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case not more than three adjournments in all at the instance of the parties to the dispute :

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to be recorded in writing, grant an adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute.

(9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be,

may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke this order that the case shall proceed ex parte, if it is satisfied that the absence of the party was on justifiable grounds.

(10) The Labour Court, Tribunal or National Tribunal, as the case may be, shall submit its award to the Central Government within one month from the date of arguments/oral hearing or within the period mentioned in the order of reference whichever is earlier."

32. It is, therefore, apparent from Rule 10B that a specific procedure is required to be followed for raising an "Industrial Dispute" and once such a dispute is referred to the Labour Court, the Tribunal or National Tribunal under the Central Act, these authorities finally are to deliver an award under the Central Act and submit the award to the Central Government. As such, it is apparent that the filing of ULP Complaint under the State Act would, therefore, not amount to an "Industrial Dispute" as is understood under the Central Act.

33. In my view, therefore, considering the definitions of the Conciliation Officer, Labour Court, Tribunal or National Tribunal and the scheme for dealing with an Industrial Dispute under the Central Act, Section 33 would not be attracted with regard to a pending complaint under the State Act

before the Labour Court or the Industrial Court, constituted under Sections 4 and 6 of the State Act.

34. As such, the protection to an employee, by keeping his conditions of service unchanged under certain circumstances during the pendency of proceedings, as is provided for under Section 33 of the Central Act, would not be available to a Complainant in a pending Complaint (ULP) before the Industrial Court under the State Act.

35. Shri Barde has assailed the impugned order dated 22.9.2014 on the ground that Section 33A was attracted to the termination / dismissal of the petitioner, dated 12.3.2014, when the Complaint (ULP) was pending before the Industrial Court. Section 33A of the Central Act reads as under:-

"33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.- Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,--

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

36. It requires no elucidation that Section 33A would become applicable only in the backdrop of the applicability of Section 33 to a pending proceeding before the Conciliation Officer, Board, Arbitrator, Labour Court, Tribunal or National Tribunal. This provision, therefore, applies to a case of pending industrial dispute or proceedings before the said authority under the Central Act, which is empowered to deliver an Award under Section 2(b) of the Central Act.

37. Under the Central Act and the Rules framed thereunder, an Industrial Dispute, against termination or dismissal, can also be referred to the Industrial Tribunal. In contra distinction, no ULP Complaint against discharge, dismissal, termination or otherwise removal from service, falling under Item 1 of Schedule IV of the State Act can be adjudicated upon by the Industrial Court under the State Act.

38. In the instant case, the petitioner had been served with a charge sheet followed by a domestic enquiry under the Industrial Employment

(Standing Orders) Act, 1946 read with the Model Standing Orders. The dismissal of the petitioner was as a result of the charges proved against him in the enquiry.

39. Section 33(1)(b) and 33(2)(b) of the Central Act protects an employee in certain circumstances during the pending industrial dispute or as defined thereunder, if the misconduct proved is in connection with the dispute under Section 33(1)(b) or unconnected with the dispute under Section 33(2)(b), and for which he has suffered an order of discharge or dismissal.

40. In the instant case, there is no industrial dispute pending conciliation, or subject matter of a reference to a Labour Court or Tribunal or Industrial Tribunal. The Complaint (ULP) preferred by the petitioner cannot be termed as a pending industrial dispute. In this backdrop, the dismissal of the petitioner, by way of punishment, can be said to be an outcome of the charge of misconduct proved against him. Owing to his dismissal, the Labour Court would have the jurisdiction under Section 7 read with item (1) of Schedule IV of the State Act. Similarly, the workman can raise an industrial dispute under Section 2A of the Central Act.

41. The ratio laid down by the Apex Court in the case of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285] clearly, therefore, lays down the law that even at the penultimate stage i.e. prior to the issuance of the order of dismissal, the Labour Court will have the jurisdiction to entertain a

complaint under Section 28(1) read with item (1) of Schedule IV of the State Act.

42. Shri Barde relies upon the definition of "words and expressions" under Section 3(18) of the State Act, which reads as under:-

"(18) words and expressions used in this Act and not defined therein, but defined in the Bombay Act, or as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976, (11 of 1976) shall in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act or, as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976; and in any other case, shall have the meanings assigned to them by the Central Act or, as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976."

43. Needless to state, Section 3(18) is in relation to an "Industry", which is defined under the Central Act. I do not find any relevance of Section 3(18) with the submissions of the petitioner in this petition. As such, Section 3(18) cannot be of any assistance in the instant case, so as to mean that the definition of "industrial dispute" found under the Central Act should be read into Section 28 of the State Act to indicate that the pending Complaint (ULP) shall be construed to mean a pending dispute before the Court or Tribunal defined under the Central Act.

44. In the light of the above, I, therefore, conclude that a pending ULP

complaint before the Labour Court or the Industrial Court, under the State Act, would not tantamount to a pending "industrial dispute" before a Conciliation Officer or a court or Tribunal under the Central Act. As such, the entire Section 33 of the Central Act, read with Section 33A would not be applicable to an employee in such pending ULP Complaints. Section 32 of the State Act, read with Sections 5 and 7 of the State Act, would not therefore, enlarge the jurisdiction of the Industrial Court so as to deal with the order of dismissal. The jurisdiction would, therefore, lie with the Labour Court under the State Act. Issues 2(a) and 2(b) as framed by me, stand answered accordingly.

45. In this backdrop, this petition is dismissed for being devoid of merits. Needless to state, the petitioner is at liberty to question the order of dismissal, dated 12.3.2014, along with the disciplinary proceedings before the Labour Court under the State Act or by raising an "industrial dispute" under Section 2A of the Central Act.

(RAVINDRA V. GHUGE, J.)

...