

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1870 OF 2015

Vishnukant S/o Babarao Kadam,
Age-56 years, Occu-Nil,
R/o Galli No.1, Plot No.28,
Behind Big Bazaar, Bhanudas Nagar,
Jawahar Colony, Aurangabad`

PETITIONER

VERSUS

1. The Maharashtra State Cotton
Growers' Marketing Federation Ltd.,
through its Managing Director,
having its Head Office at
Cotton Complex, Ajni Chowk,
Wardha Road, Nagpur,

2. The Zonal Manager,
Maharashtra State Cooperative
Cotton Growers' Marketing Federation Ltd.,
Zonal Office, N-5, CIDCO,
Aurangabad.

RESPONDENTS

Mr.V.P.Golewar, Advocate for the petitioner.
Mr.S.T.Shelke, Advocate for respondent Nos.1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/07/2015

ORAL JUDGMENT :

1. Heard.

2. Rule.

3. Rule made returnable forthwith and heard finally by the consent

of the parties.

4. The petitioner claims to be a workman with the respondents. By order dated 21/07/2009 passed by the respondents, it is alleged that the petitioner, who in his capacity as a “Grader” on contract basis, has misused his powers and has purchased raw cotton against the norms prescribed by the respondents. It is alleged that a loss of Rs.8,26,257/- is caused to the respondents by the conduct of the petitioner. Therefore, his remuneration payable for the period February 2009 to July 2009 has been forfeited and he has been black listed.

5. The petitioner challenged the abovesaid order dated 21/07/2009 in W.P.No.6811/2011 before this Court. The same was withdrawn by order dated 28/02/2012 and the petitioner was granted the liberty to take recourse to an alternate remedy available in Law. Therefore, the petitioner preferred a complaint of unfair labour practices u/s 28(1) of the M.R.T.U. and P.U.L.P.Act, 1971 before the Industrial Court at Aurangabad. An application for condonation of delay was filed, which was registered as Misc.Appl.(ULP) No.7/2012. By the impugned order, the application has been rejected.

6. The petitioner vehemently contends that he is a workman u/s 2(s) of the Industrial Disputes Act, 1947 and therefore an employee u/s 3(5)

of the M.R.T.U. and P.U.L.P. Act, 1971. He claimed illness as a ground for the delay as well as the pendency of the writ petition from 2011 till its disposal on 28/02/2012. He, therefore, prays that the impugned order be quashed and set aside.

7. Mr.Shelke, learned Advocate for the respondents submits that the respondents had preferred a written say at Exh.C-6 opposing the application on the ground that the petitioner is not a workman and there is no employer-employee relationship. He is a contractual Grader, who has executed a contract with the respondents. He has the independent power to select quality raw cotton in accordance with the norms prescribed. He is required to give a bank guarantee. He can be black listed because he is a contractor.

8. Notwithstanding the above, Mr.Shelke submits that the application for condonation of delay has been correctly rejected. The Industrial Court has recorded that he was given a contract for a temporary period. No interference is therefore called for as the delay was not properly explained and the petitioner had approached the Industrial Court with tainted hands.

9. In my view, it appears from the submissions of the learned Advocates that the Industrial Court would first have to conclude

whether it has jurisdiction to deal with the said complaint. This controversy is peculiar for the reason that unless the delay is condoned, the complaint cannot be registered. Similarly, unless the Industrial Court has jurisdiction over the matter, it cannot consider the application for condonation of delay. Without jurisdiction vested in it by Law, it cannot pass a judicial order either allowing or rejecting the application for condonation of delay.

10. I find from the impugned order that the issue as to whether the petitioner is a workman or not as to whether he shared an employer - employee relationship with the respondents or whether he was an independent contractor and his relationship was not of master-servant, but a business relationship, has not been considered at all.

11. In my view, the Industrial Court, without concluding that it has jurisdiction over the matter, has proceeded to deal with the application for condonation of delay and has thus exercised jurisdiction under Regulation 101 of the Industrial Court Regulations, 1975.

12. In the light of the above, I am left with no option but to quash and set aside the impugned order and remit the application for condonation of delay to the Industrial Court for framing an issue as to whether the respondent proves that the complainant is not a workman and as to

whether there was an employer / employee relationship between the two.

Once these issues are answered, the Industrial Court could arrive at a conclusion as to whether it has jurisdiction to deal with the application and the complaint under the M.R.T.U. and P.U.L.P. Act, 1971.

13. As such, this petition is partly allowed. The impugned order dated 02/07/2014 in Misc.Appl.(ULP) No.7/2012 is quashed and set aside. The said application is remitted back to the Industrial Court for framing issues regarding status of the petitioner and his relationship with the respondents.

14. The litigating sides shall appear before the Industrial Court on 07/08/2015. Both the sides are at liberty to lead oral and documentary evidence after the Industrial Court frames two issues, as observed hereinabove. All contentions of the parties are kept open.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)