

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5081 OF 2015

Shetkari Sahakari Sangh Ltd. Petitioner

Vs.

Kolhapur Zilla Sahakari Nokar Respondents
Union & Others.

Mr. Saurabh Pakale i/by Mr. Avinash Belge, Advocate for the
Petitioner.

Mr. M.S. Topkar, Advocate for respondent no.1.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 31st August, 2015

P.C. :

1 This petition is directed against the concurrent findings of the courts below in the order dtd.7th August, 2012 passed by the Labour Court in Complaint (ULP) No.31 of 2005 and the order dtd. 10th October, 2014 passed by the Industrial Court in Revision Applications (ULP) No.191 of 2012 and 202 of 2012.

2 Respondent no.1 is the Union, of which respondents no. 3 to 8 are the members. Respondent no,2 is it's Branch Secretary, Kolhapur. Respondent no.1 had filed Complaint (ULP)

No.31 of 2005 challenging illegal termination of services of 13 workmen including respondents no.3 to 8 alleging that the petitioner had engaged in unfair labour practices in reducing the age of retirement of the employees to 55 years, despite the provision of age of retirement as 60 years in the Model Standing Orders applicable to the petitioner. Respondent no.1 sought reinstatement of the employees with full back-wages. The Labour Court, by its order dtd.7th August, 2012 partly allowed the complaint. It declared that the petitioner had indulged in unfair labour practice in terminating the services of 13 workmen and directed the petitioner to reinstate the employees and continue them until their age of retirement of 60 years and pay 50% of the back-wages. Against that order, both the sides had approached the Industrial Court by way of revision application. The petitioner had sought setting aside of the order, whereas respondent no.1 had sought a direction for full back-wages to be paid to the employees. The Industrial Court, by its order dtd. 10th October, 2014 dismissed revision application of the petitioner and allowed the revision application of respondent no.1. It modified the order of the Labour Court to allow 100% back-wages to the employees.

3 As has been pointed out by Mr. Topkar, the learned advocate for the respondents, the record of the proceedings reveal contumacious conduct on the part of the petitioner, which conduct is not disputed by it. Admittedly by the Resolution of

it's Board dtd.30th March, 1999, the petitioner had reduced the age of retirement of it's employees from 60 years to 58 years and retired 31 employees in implementation of the Resolution. Some of the employees had filed complaints being Complaints (ULP) No.87 and 100 of 1999 under Item 1 of Schedule IV of MRTU & PULP Act contending that in view of the provision under the Model Standing Orders governing their service conditions, they were liable to continue the employees till the age of 60 years. By it's judgment and order dtd.3rd February, 2000, the Labour Court allowed the complaint holding that reduction by the petitioner in the age of retirement from 60 years to 58 years was illegal. The age of retirement of 60 years provided under the Model Standing Orders could not have altered by the petitioner by passing Resolution of it's Board. This order was confirmed by the Industrial Court by dismissing Revision (ULP) No.29 of 2009 by it's order dtd.19th August, 2006. The petitioner had thereafter approached this court against the order by filing Writ Petition No.8060 of 2006. The writ petition was dismissed by the reasoned order dtd.21st August, 2007.

4 In total disregard of the order of the Labour Court dtd. 3rd February, 2000 passed in Complaint (ULP) No.87 and 100 of 1999 and it's confirmation by the Industrial Court by it's order dtd. 19th August, 2006, the petitioner passed the resolution dtd.20th February, 2005 further reducing the age of retirement to 55 years thereby effecting dismissal of 13

employees. In their written statement to the complaint, at paragraph 21, the petitioner had sought to rely upon the fact of pendency of the writ petition in this court to challenge the two orders by way of justification for the Resolution. But when parties went for trial, Writ Petition No.8060 of 2006 was already dismissed. In that circumstance, it was in fact necessary for the petitioner to accept the order and reinstate the employees in service with full back-wages. Instead of taking such corrective action, the petitioner not only challenged the order before the Industrial Court but has carried it further to this court. The petitioner is therefore not entitled to be heard in the matter and it's petition is liable to be dismissed with costs, for unnecessarily dragging the respondents to the court.

5 The petition is dismissed with costs. The petitioner shall pay costs quantified at Rs.10,000/- in one set to respondents no.1 and 2 and Rs.10,000/- to each of respondents no. 3 to 8.

(Smt. R.P. SondurBaldota, J.)