

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5765 OF 2015

Chief Conservator of Forests,
Kolhapur Circle, Kolhapur

.....Petitioner

: V/S :

Shri. Dilip Laxman Patil

.....Respondent

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Mr. P.G. Sawant, AGP for the petitioners.

Mr. Chetan G. Patil, Advocate for the respondent.

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

1st July, 2015.

P.C. :-

1). This petition challenges the order dated 8th August, 2014 by which the Industrial Tribunal, Kolhapur dismissed the petitioner's application under Section 31(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) for setting aside the ex-parte judgment and order dated 15th February, 2010 passed in Revision (ULP) No. 147 of 2009.

2). The respondent had filed Complaint (ULP) No. 57 of 2009

under Section 4 of the MRTU & PULP Act seeking reinstatement in service with backwages. The petitioner despite service did not appear before the Labour Court. Then, the Labour Court, by its order dated 11th August, 2009 dismissed the complaint on merit. Being aggrieved by the order, the respondent preferred Revision (ULP) No. 147 of 2009 before the Industrial Tribunal, Kolhapur. Notice of the revision was served upon the petitioner. The petitioner again remained absent. The Industrial Tribunal, by its order dated 15th February, 2010 allowed the Revision Application and directed the petitioner to reinstate the respondent in his service on his original post with continuity of service and full backwages.

3). In the month of March, 2010 the petitioner filed Misc. Application No. 6 of 2010 under Section 31 of the MRTU & PULP Act for setting aside the ex-parte order claiming therein that because the necessary documents were not received by the Government Pleader, he could not appear in the original proceedings and file written statement. For the same reason, he could also not appear in the revision application. It is next claimed that, “due to over burden of filing work and through over-sight and communication copy filed of this case was kept aside. So the applicant could not appear in both the matters”. The second explanation offered is not intelligible, since what is meant by

“communication copy” is not known. In any case, the explanation offered needs to be rejected on account of the conduct of the petitioner. While the application for setting aside the ex-parte order in the Revision Application was pending before the Industrial Tribunal, the petitioner filed Writ Petition No. 2406 of 2014 in this Court to challenge the very order on the Revision Application only to withdraw it on 8th December, 2014, after the submissions on the petition were completely heard. In the meantime, by the order impugned herein passed on 8th August, 2014 the Industrial Tribunal had dismissed the application for setting aside the ex-parte order on the ground that the petitioner had already challenged the impugned order by way of Writ Petition.

4). There can be no infirmity in the view taken by the Industrial Tribunal. Once the petitioner challenged the order on the Revision Application on merit, the Industrial Tribunal is not expected to consider the limited challenge to the order. Mr. Patil, the learned Advocate appearing for the respondent points out that, Writ Petition No. 3406 of 2014 had been withdrawn by the petitioner after the same was extensively argued. He submits that, because the Court was inclined to dismiss the petition, the learned AGP chose to withdraw the same.

5). Mr. Sawant, the learned AGP appearing for the petitioner states that the Industrial Tribunal has erred in not deciding the

application on merit. According to him, the Industrial Court dismissed the application on two technical grounds. Firstly, that in view of filing of Writ Petition No. 3406 of 2014 to challenge the impugned order, the application could not be maintained. Secondly, that the provision of Section 31(2) of the MRTP & PULP Act, cannot be maintainable extended to Revision Application.

6). As already mentioned above, there can be no infirmity with the finding of the Industrial Tribunal that, since the petitioner had already challenged the main order on the Revision Application by preferring Writ Petition to this Court and obtained interim reliefs therein, there was no point in considering the application for setting aside the ex-parte order. Besides, it cannot be said that the Industrial Tribunal had not touched the merits at all. At para-8 of the order, the Industrial Tribunal has clearly observed that the petitioner has not shown any sufficient cause for allowing the application.

7). In this circumstance, there is no merit whatsoever in the petition filed. The Writ Petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)