

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6021 OF 2015

Mrs. Vasanti Prabhakar Korde

.....Petitioner

: V/S :

1. Chief Executive Officer,
Pune Zilla Parishad & 2 Ors.

.....Respondents

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Mr. Nitin A. Kulkarni a/w. Mr. Avinash Belge, Advocate for the petitioner.

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

11th August, 2015.

P.C. :-

1). The petitioner had filed complaint (ULP) No. 140 of 2007 alleging unfair labour practices under Items-3, 5, 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU & PULP Act" for short). The Tribunal by its order dated 14th October, 2014 dismissed the complaint. Being aggrieved by the order, the petitioner has approached this Court under Article 227 of the Constitution of India.

2). The brief facts required to be noted for the purpose of appreciating the dispute of the petitioner is that, she was working as a

Nurse with the respondent. She had been suspended from service on 21st August, 1995 and enquiry against her had commenced regarding serious charges of negligence of duty and avoidance of duty made against her. Later on 11th April, 2007, she was transferred to Primary Health Centre, Mahalunge-Padwal, Sakori, Tal-Ambegaon. The petitioner then filed the complaint herein challenging her transfer, as well as, the enquiry initiated against her. According to her, the transfer was not for administrative purposes, but by way of a punishment and victimisation to her since she had succeeded in some court proceedings against the respondent and the respondent was directed to pay a sum of Rs.3,85,750/- to her. Since then, the respondents allegedly had a grudge against the petitioner and transferred her to an inconvenient place.

3). The petitioner was served with the chargesheet dated 17th March, 2004. She gave her reply to the chargesheet on 23rd April, 2004. Thereafter, domestic enquiry was conducted in which opportunity was given to her to participate and also cross-examine witnesses. On conclusion of the enquiry, the petitioner was, by transfer order dated 11th April, 2007, transferred to Primary Health Center, Mahalunge-Padwal, Sakori, Taluka-Ambegaon. This, according to the petitioner was the unfair labour practice on the part of the respondents. She also alleged that, during the pendency of the enquiry, she was not given any

subsistence allowance. Mr. Kulkarni, the learned Advocate appearing for the petitioner refers to certain subsequent events to submit that, after denial of interim reliefs on 22nd July, 2008 in the complaint to the petitioner when she had gone to the place of transfer on 22nd June, 2010 for resuming duty, she was not allowed to resume duty.

4). The Industrial Tribunal, by the impugned order has noted that, transfer being an incident of service, the transfer of the petitioner as per the policy of the Government cannot be said to be a *malafide* act and an unfair labour practice. The suspension of the petitioner preceded the domestic enquiry for the alleged misconduct on her part. As the Civil Services Rules permit suspension, the act cannot be treated as an unfair labour practice. The Industrial Tribunal, also noted that the petitioner went to the place of transfer for the first time in the month of June, 2010 which was more than three years after transfer. During the intervening period, the petitioner was just litigating with the respondents as regards the alleged non-payment of subsistence allowance. The Industrial Tribunal has held that until she joins the service at Primary Health Center at Mahalunge, she would not be entitled to receive the subsistence allowance and later the wages. Therefore, non-payment of the same cannot be said to be an unfair labour practice. Mr. Kulkarni, the learned Advocate appearing for the petitioner submits that, the

petitioner infact wants to join the service and do the work, whereas, the respondents are not permitting her to report to the duty. Any such complaint, on the part of the petitioner is clearly beyond the bounds of the present proceedings as the same is not part of the Complaint (ULP) filed by the petitioner. Thus, in the circumstances of the case, in my opinion, there is no infirmity whatsoever in the order impugned in the petition. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)