

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.374 OF 2014

1. Akhil Bharatiya Kamgar Sanghatana
12/1, Nalavade Building,
Matharpakhadi Road, Mazgaon,
Mumbai-400 010.

2. Vasant Shelke (since deceased)

2A.Smt. Rekha Vasant Shelke
(Legal heir)

3. Shri Sitaram Pawar (since deceased)

3A.Shri Sunil Sitaram Pawar
(Legal heir of deceased)
C/o. Akhil Bharatiya Kamgar Sanghatana
12/1, Nalavade Building,
Matharpakhadi Road, Mazgaon,
Mumbai-400 010.

.. Petitioners.

V/s

1. M/s Joy Construction Company
2, New Mukund Nagar, J.B. Nagar,
Andheri (East), Mumbai-400 059.

2. Hon'ble Member, Industrial Court,
Bandra (East), Mumbai-400 051.

.. Respondents.

Ms. Rita Joshi i/b Mr. Ashok B. Shetty, for Petitioners.
Mr. B. Menon, for Respondent No.1.

Coram : Smt. R.P SondurBaldota, J.
Date : 13th April, 2015

P.C.

1. This petition filed on 08th May, 2015 challenges the order dated 20th June, 2009 passed by the Industrial Court in Revision Application (ULP) No.177 of 2008 preferred by the petitioners against the order of the Labour Court dated 24th September, 2008 dismissing the Complaint (ULP) No.145 of 1990. The complaint had been filed on behalf of seven employees, whose services were allegedly terminated on different dates in the months of April, September and October, 1990 by the respondent/employer. It was alleged that by illegal termination, the respondent has engaged in unfair labour practice.

2. It is specific case of the petitioners that there was an illegal lockout resorted to by the respondent-employer, in connection with which, Complaint (ULP) No.227 of 1987 was filed in the Industrial Court. The respondent-company had also filed Complaint (ULP) No.219 of 1987 alleging that the workmen had resorted to illegal strike. Both the proceedings ended with into Memorandum of Settlement dated 28th March, 1989 pursuant to which the permanent

workmen were to report for duty immediately. According to petitioner No.1, seven of its members including petitioners No. 2 and 3 (since deceased) had resumed duty but were subsequently terminated from service by oral orders. Therefore, Complaint (ULP) No.145 of 1990 came to be filed.

3. The respondent contended in reply that the seven workers never resumed duty. Because some of them were never its employees and others were not permanent workers. As has been noted by the Revisional Court, it was the petitioners' own case in the revision application that seven workmen in the present dispute were not allowed to join duty pursuant to the settlement dated 28th March, 1989. The same ground has also been taken at ground-(3) of the present petition. This would only mean that the stand of the petitioners is inconsistent with the case set out in the complaint. The seven workmen had not resumed duty. This fact has been considered by the Industrial Court at paragraph-12 of the impugned order. The relevant part reads as follows :-

“12. As I said the basic case was that the concerned employees had resumed duties pursuant to the settlement dated 28th March, 1989 and they worked till the termination of their services on different dates in April, September and October, 1990. One of the concerned employee has even stated that after joining duties pursuant to the settlement he worked for one year and then his services were terminated. Now in ground No.(1) on Page 10 of the revision application the Applicants have changed their stand. The Applicants have contended that those employees who resigned from the original union were allowed to join duties pursuant to the settlement dated 28/3/1989. The concerned 7 employees were not allowed to join duties as they continued to be members of the original union and they also did not give undertaking sought by the management. The two stands are completely paradoxical. This statement in ground (1) on page-10 disproves the Applicants case. When admittedly the concerned employees were not allowed to resume duties in March, 1989, where is the question of their working for year, and termination of their services in the year 1990.”

4. The Industrial Court has held that 7 workmen had not resumed duty in March, 1989. As such there was no question of their

termination in the year 1990. From the above facts, it is obvious that the petitioner had infact come with a false case before the Court of having resumed duties pursuant to the settlement dated 28th March, 1989. Hence, the petition is dismissed.

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