

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

WRIT PETITION NO. 9708 OF 2014

Bapu Ramappa Kamble

..Petitioner

Vs.

The Asst. Municipal Commissioner and ors.

..Respondents

Mr. Afroz A. Siddiqui, Advocate for the petitioner.

Mr. P. M. Palshikar a/w Ms. Pallavi Thakur i/by Mr. U. H.

Deshpande, Advocate for respondents No.1 and 2.

Mr. A. R. Metkari, Additional Government Advocate for respondent No.3.

Coram : Smt. R. P. SondurBaldota, J

Date : 11th August, 2015.

P.C. :

1. The petitioner - employee challenges the order dated 22nd July, 2014, by which the Labour Court dismissed his application for interim relief seeking reinstatement in service. The respondent opposes the petition on merit as well as on the ground of its maintainability.

2. Mr. Palshikar, the learned advocate for respondents No.1 and 2 – employers points out that the petitioner has an alternate efficacious remedy of filing revision before the Industrial Court. He ought to have resorted to that remedy before approaching this court. Mr. Siddiqui, the learned advocate for the petitioner submits in reply that there is no absolute bar in approaching this Court by invoking Article 227 of Constitution of India. Undoubtedly there is no absolute bar. However, in such a

situation resort to Article 227 of the Constitution of India, can be made only in extra-ordinary circumstances. Ordinarily, a litigant is expected to adopt the statutory remedies available to him. No extra-ordinary circumstance is either pleaded in the petition nor anything has been pointed out during the course of submissions. Hence the petition is liable to be dismissed on this ground alone.

3. The petitioner was serving as Majjak (Buchwala) with respondent No.2 – Corporation. He was one of the accused in C.R.No.249/2004 dated 27th January, 2005 registered with Vikroli Police Station corresponding to C.R. No.152/2004 of D.C.B.C.I.D., Mumbai for the offences punishable under Sections 20(b), 302, 304, 326, 324, 328, 272, 273 r/w 34 of I.P.C. and under Sections 66(1)(b)(d)(e)(h) r/w Section 81 of the Bombay Prohibition Act. On consumption of illicit liquor on 27th December, 2004, several persons in Vikroli area were poisoned and some of them died. The petitioner was absconding since the date of the incident i.e. 27th December, 2004 till his arrest on 14th January, 2007. He came to be released on bail on 10th January, 2009. He was suspended from service on 26th March, 2010 with effect from 28th December, 2004. By the judgment and order dated 26th April, 2012 the Sessions court convicted the petitioner for the offences alleged against him. He was sentenced to suffer rigorous imprisonment for a period of two years and fine of Rs.2,000/-. The petitioner has challenged his

conviction by preferring Criminal Appeal No.559/2012. In the appeal, he applied for suspension of his conviction. By the order dated 25th April, 2013, the Division Bench of this Court considered the fact that the petitioner had undergone the entire substantive sentence imposed by the Court and was inclined, in the peculiar facts of the case, to stay his conviction. This interim order has been upheld by Apex Court by its order dated 25th August, 2014.

4. Armed with the order of suspension of conviction, the petitioner approached Labour Court with complaint (ULP) No.241/2013 for his reinstatement in service and applied by the interim order for reinstatement. The Labour Court dismissed the application observing that the appeal preferred by the petitioner is still pending and the petitioner is not yet acquitted of the serious offences alleged against him. There is no infirmity in view taken by Labour Court. Hence, the petition is dismissed.

5. In view of dismissal of the petition, the Civil Application No.2426 of 2014 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]