

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1322 OF 2014

Avinash Laxman Jejurkar

... Petitioner

v/s

Godrej Appliances ltd. & ors.

... Respondents

Mr.Vinayak Govindra Indrale for the petitioner.

Mr.Bharat Goyal along with A.K. Gopalan i/by Haresh Mehta & Co.
for the respondents.

CORAM: N.M. JAMDAR, J.

DATED : 7 OCTOBER 2015

P.C.:

The Petitioner challenges the order passed by the Industrial Court dated 21 December 2013 dismissing the complaint filed by the Petitioner.

2 When the complaint (ULP) No.881 of 2001 filed by the Petitioner was decided, another Complaint (ULP) No.770 of 2001 with identical facts was also heard by the Industrial Court in respect of another workman Mr.Manohar Dattaram Phansekar. The complaint filed by Phansekar was also disposed of on identical ground such as involved in the present complaint. The Industrial Court found that in law and on facts no relief would be granted to

the Petitioner. Mr.Phansekar filed Writ Petition No.1176 of 2014, which was disposed of by an order dated 5 August 2015 by Hon'ble Smt. SoundurBaldota, J., as under :

“P.C.:

1) *The petitioner, workman takes exception to the order dated 21st December, 2014 passed by the Industrial Tribunal, Mumbai on his Complaint (ULP) No. 770 of 2001 by which he alleged unfair labour practices on the part of the respondent, employer under Items-6 and 9 of Schedule-IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act (“PULP Act” for short).*

2) *Admittedly, there is a recognised union by name, Godrej & Boyce Shramik Sangh in the respondent Company and the complaint alleging unfair labour practices under Items-6 and 9 of Schedule-IV of the PULP Act is filed by the petitioner individually. Consequently, at the instance of the respondent, the Industrial Tribunal framed the issue of maintainability of the complaint in view of Section 21 of the PULP Act.*

3) *The Industrial Court held that, since Section 21 of the PULP Act, directly bars the complaint under Item-6 of Schedule-IV of the Act by anybody other than a recognised Union, complaint thereunder was not maintainable. As regards the complaint under Item-9 of Schedule-IV, the Industrial Tribunal noted the only allegations made in the complaint were of, denial of permanency to the petitioner despite completing 240 days of service in a year by the petitioner. Relying upon the decision of this Court in Devikumar Gawde and Others V/s. Shriram Mills and Others reported in 2006 (1100) FLR page 27, the Industrial Tribunal held that, since the ultimate relief sought by the petitioner is of permanency, the dispute relating thereto cannot be brought under Item-9 of Schedule-IV of the PULP*

Act. Such kind of dispute, clearly falls under the ambit of Item 6 of Schedule-IV of the Act. The Industrial Tribunal noted that, there are no other allegations made by the petitioner of breach of any agreement, settlement or Award.

4) *There can be no infirmity whatsoever in the view taken by the Industrial Tribunal as regards the maintainability of the complaint of the petitioner alleging unfair labour practice under Items-6 and 9 of Schedule-IV of the PULP Act.*

5) *Mr.Indrale, the learned Advocate appearing for the petitioner submits that, it is well established position in law that, a Court must give its findings on all issues and not limit itself to the preliminary issues of maintainability or jurisdiction. According to him, the complaint therefore is required to be remanded to the Industrial Tribunal for giving findings, on the merits of the allegations made in the complaint. He relies upon various decisions in support of his submission.*

6) *Since the complaint as filed is clearly not maintainable, there was no scope whatsoever for the Industrial Tribunal to give its findings on the merits of the case. Therefore, such an order cannot be passed. Remanding a matter to the Industrial Tribunal for the purpose of findings on merits of the case, would amount to directing the Industrial Tribunal to decide the complaint which is not maintainable. In the circumstances, there is no infirmity whatsoever in the impugned order. Hence, the petition is dismissed.”*

3 Mr.Indrale, learned counsel for the Petitioner submitted that both, Writ Petition No.1322 of 2014 and Writ Petition No.1176 of 2014 raise common question of law and facts. He, however, urged that the view taken by the learned Single Judge (Smt.SoundurBaldora, J.) in Writ Petition No.1176 of 2014 needs

to be re-examined. However, the facts and circumstances of both petitions being admittedly identical and which, according to Mr.Indrale, were to be heard together, it will not be proper to take different view merely because the second petition is listed before me. Therefore, I will follow the view taken by the learned Single Judge in Writ Petition No.1176 of 2014. In the order dated 5 August 2015, the learned Single Judge has followed the earlier decision of this Court reported in *Devikumar Gawde & ors. v/s Shriram Mills & ors.*, reported in *2006 (1100) FLR 27*.

4 In view of the above, the writ petition therefore cannot be entertained and is rejected.

(N. M. JAMDAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.