

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.867 OF 2016

GANPAT PANDIT MOTEWAD
VERSUS
EXECUTIVE DIRECTOR II AND COMPETENT AUTHORITY AND OTHERS

...
Advocate for Petitioners : Shri Deshpande Ajay S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th January, 2016

Per Court:

1 The Petitioner is aggrieved by the order dated 30.04.2015 passed by the Industrial Court, Latur in Complaint (ULP) No.20/2015.

2 Shri Deshpande, learned Advocate for the Petitioner, strenuously submits that when the learned Division Bench of this Court in Writ Petition No.5822/2015 has passed an order dated 11.06.2015 staying the departmental enquiry until further orders in the said Writ Petition, the Industrial Court insists that the Petitioner should proceed with Complaint (ULP) No.20/2015.

3 He submits that since the criminal proceedings are underway before the competent court, the Employer was not required to initiate the

disciplinary proceedings. Once the criminal proceedings with regard to the same charge were in progress, there is no reason for the Employer to invoke the service conditions and commence the disciplinary proceedings for the same purpose.

4 I have heard the learned Advocate for the Petitioner for quite sometime. Complaint (ULP) No.20/2015 has been instituted on 10.02.2015 before the Industrial Court. Prayer clause (C) is with regard to the relief of staying the domestic enquiry initiated by the Employer until the criminal proceedings before the competent court are decided. I also find an identical prayer set out by the Petitioner in Writ Petition No.5822/2015 in terms of prayer clause (C), which reads as under:-

“(C) Pending hearing and final disposal of this Writ Petition, the respondent No.1 and 2 may kindly be directed to defer the Departmental Enquiry initiated against the petitioner under Exh.C dated 06.03.2014, till the conclusion of criminal prosecution launched against him by ACB authorities under the provisions of Prevention of Corruption Act, 1988, under FIR No.3001/2014 dated 22.01.2014.”

5 The Industrial Court has framed an issue as to whether, the Complainant (Petitioner herein) proves that he is a workman under Section 2(s) of the Industrial Disputes Act, 1947.

6 The grievance of the Petitioner is that when the matter was posted for hearing on application Exhibit U/2, which is an application for interim relief under Section 30(2) of the MRTU & PULP Act, 1971, there was no occasion for the Industrial Court to frame an issue, whether, the Complainant is workman or not.

7 I am unable to accept the submissions of Shri Deshpande. This Court in the case of *Dalal Engineering Private Limited vs. Ramrao Bhauroao Sawant*, **1991 (2) CLR 808**, has concluded that unless the Court has jurisdiction to entertain a ULP complaint, granting interim relief first and then taking up the matter on merits and jurisdictional issue, is not permissible.

8 The Industrial Court, in my view, has rightly framed the issue since unless the Petitioner is a workman under Section 2(s) of the Industrial Disputes Act, 1947, the Industrial Court would not have the jurisdiction to entertain his complaint.

9 Insofar as the Petitioner having filed Complaint (ULP) No.20/2015 before the Industrial Court for the same relief which has been prayed for in Writ Petition No.5822/2015 is concerned, it is left open to the Petitioner to deal with the said situation. Normally, the proceeding

initiated earlier in time is to be maintained. However, since the Writ Petition is pending before the learned Division Bench, I am not required to deal with the said issue.

10 In the light of the above, I do not find any perversity or error in the order dated 30.04.2015 passed by the Industrial Court, impugned in this petition. As such, this Writ Petition is devoid of merit and is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)