

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5312 OF 1995

Maharashtra State Road
Transport Corporation,
Through Divisional Controller,
Ahmednagar.

..Petitioner

Versus

Maharashtra S.T.Kamgar
Sangathana, Ahmednagar,
Raj Chambers, Near Kothala
Bus Stand, Ahmednagar,
through Divisional Secretary.

..Respondent

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Advocate for Petitioner : Shri M.K.Goyanka
Advocate for Respondent : Shri S.N. Boiwar
h/f Shri R.L. Chintalwar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 25, 2016

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ORAL JUDGMENT:-

1. Learned Advocate for the respondent submits that this petition has become infructuous, considering the fact that the complaint that was filed by the respondent- Union on behalf of Shri D.D.Kahane, before the Industrial Court and which is pending, was for challenging his earlier termination. Shri D.D.Kahane has been again dismissed on 8.7.1999.

2. Since he was acquitted by the Sessions Court, Shrirampur in 1998, he had challenged his termination in Complaint (ULP) No.79 of 1999, which was partly allowed and he was reappointed on 21.2.2003. The said order of the Labour Court is said to be sub-judice in Revision (ULP) No.49 of 2003 before the Industrial Court.

3. Notwithstanding the above, the impugned orders dated 3.5.1995, 8.5.1995 and 25.7.1995, in Complaint (ULP) Nos.257 of 1995, are in relation to the proposed termination of Shri Devidas Kahane, who is represented by the Union in the Complaint. In fact, by order dated 8.5.1995, the Industrial Court directed the petitioner to temporarily withdraw the termination order dated 3.5.1995 and thereafter, directed the petitioner to continue Shri Kahane in service.

4. The Honourable Supreme Court in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326], has concluded that any proposed termination or apprehended termination can be challenged under item (1) of Schedule IV of the the Maharashtra Recognition of Trade Unions

and Prevention of Unfair Labour Practices Act, 1971 (“the 1971 Act ”) before the Labour Court.

5. This Court in the matter of National General Mazdoor Union Vs. Nitin Castings [1990 II CLR 641], has concluded that the Industrial Court's jurisdiction under Section 32 cannot be enlarged or expanded than what is provided for under the Act of 1971. As such, considering Sections 4 to 7 of the 1971 Act, matters pertaining to termination or proposed punishment of termination / dismissal, cannot be considered by the Industrial Court under Schedule II or under any of the items of Schedule IV.

6. As such, this petition is allowed. The impugned three orders are quashed and set aside. The Industrial Court shall proceed to decide Complaint (ULP) No.257 of 1995 expeditiously and on priority on/or before the 23.12.2016. Needless to state, in the event the said Complaint is rendered infructuous, the litigating sides are at liberty to point out the same to the Industrial Court and seek disposal of the said complaint.

7. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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