

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

WRIT PETITION NO. 2127 OF 2015

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
SHAIKH YUNUS SHAIKH KHAJA

...
AGP for Petitioners / State : Shri P.G.Borade.
None for Respondent.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th August, 2016

Per Court:

1 While issuing notice before admission on 02.03.2015, this
Court has observed in it's order as under:-

- “1. Issue notice before admission to the respondent, returnable on 01-04-2015.
2. The petitioners are aggrieved by the impugned judgment and order dated 26-09-2014 delivered by the Industrial Court, Jalna in Complaint (ULP) No. 72 of 2012.
3. The operative part of the order passed by the Industrial Court in the impugned judgment is as under :-

ORDER

(A) Complaint (ULP) No. 72 of 2012 is hereby allowed.

(B) It is hereby held and declared that the respondents are engaged and engaging in unfair – labour practice as per Item Nos. 5, 6 and 9 of Sch. IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The respondents are hereby directed to cease and desist

from engaging unfair labour practices.

(C) The respondents are hereby directed to take the complainant in the employment on the post appointed as Safai Kamgar or absorb him on any other vacant Class-IV posts and shall extend all the benefits of Government employees in respect of the wages / salaries etc.

(D) The respondents are directed to comply the order within three months from today.

(E) The respondents to pay costs of this complaint to the complainant.

(F) Copy of judgment be sent to Secretary, Department of Higher & Technical Education, Mantralaya, Mumbai – 400032, for information and necessary action within time.

4. *So also, the petitioners point out from paragraph No. 3 of the memo of the petition that the respondent was appointed on a temporary post up to 31-05-2007. The complaint (ULP) No. 72 of 2012 was filed by the respondent on 06-09-2012 when in fact he was not even in the employment of the petitioner. Complaint is filed after five years of his dis-continuance.*
5. *Reliance is placed on the order passed by this Court on 24-11-2014 in Writ Petition Nos. 10106 of 2014, 10124 of 2014 and 10125 of 2014. I had partly allowed the petitions and quashed and set aside the impugned judgments by relegating the parties to the Industrial Court for recording of additional evidence and for deciding the matter afresh.*
5. *In the light of the above, the impugned judgment and order dated 26-09-2014 passed by the Industrial Court, Jalna shall stand stayed till the next date of hearing in this matter.”*

2 The notice was served upon the Respondent and the matter was posted for admission on 19.08.2015. None appeared for the Respondent and since then the matter is adjourned.

3 At the request of the Respondent, the matter was again adjourned on 06.06.2016. Thereafter, for the last three dates, none has appeared for the Respondent. Even today, none appears for the Respondent.

4 I have gone through the impugned judgment of the Industrial Court dated 26.09.2014 by which the complaint of the Respondent was allowed. The Respondent had specifically contended before the Industrial Court that he worked from 15.03.1999 till 31.05.2007 and since then he is not in employment. The Petitioner/ Department has taken a specific stand that the Respondent was continued on the basis of the Government Resolutions which have been reproduced below paragraph 6 of the impugned order. The work of Watchman was abolished ever since 31.05.2007 and the Petitioners are not engaging Watchmen.

5 In identical set of facts in the matter of *the State of Maharashtra and another vs. Digambar Vitthalrao Samindre and others*, **Writ Petition Nos.10106, 10124 and 10125 of 2014**, this Court by order dated 24.11.2014 has remitted the complaints to the Industrial Court for framing of an issue as to whether, the complaint was maintainable in the light of Sections 5 and 7 of the MRTU & PULP Act, 1971. Paragraphs 11

and 12 of the said order dated 24.11.2014 read as under:-

- “11. Both the learned Advocates concede that this issue was not specifically framed by the Industrial Court as regards, whether it had jurisdiction under Section 5 of the said Act vis-a-vis the jurisdiction vested in the Labour Court under Section 7 of the said Act. The learned Advocate for the respondents, therefore, submits that if the matter is remanded back to the Industrial Court, Jalna with a direction to frame a proper issue touching this aspect, the parties would lead evidence and make an attempt to convince the Industrial Court on the aspect of jurisdiction under section 5 of the said Act.
12. In the light of the above, the impugned judgment dated 25.4.2014 delivered by the Industrial Court in Complaint (ULP) Nos. 16 of 2012, 15 of 2012 and 17 of 2012 are quashed and set aside. These Writ Petitions are partly allowed with the following directions being issued to the Industrial Court, Jalna:-
- (A) The above stated three complaints are being restored to the file of the Industrial Court, Jalna.
- (B) The Industrial Court shall frame a proper issue as regards the maintainability of these complaints in the light of Section 5 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in relation to whether the Industrial Court has the jurisdiction to deal with these complaints, wherein the complainants employees have been out of employment for five years and have preferred the complaint for permanency while not being in employment with the employer.
- (C) Both the litigating parties are permitted to lead evidence on this aspect.
- (D) The evidence recorded earlier by the Industrial Court shall not be discarded and the same shall be utilized in addition to the evidence led on the newly cast issue, while deciding the complaints afresh.
- (E) Since the respondents / employees have been litigating for two years and are not in employment, the Industrial Court shall endeavour to decide these three complaints as expeditiously as possible and

preferably within a period of six months from the date of appearance of the parties.”

6 In the light of the above, this Writ Petition is partly allowed. The impugned judgment dated 26.09.2014 is set aside and Complaint (ULP) No.72/2012 is restored to the file of the Industrial Court, Jalna under the following directions :-

- (a) The Industrial Court shall frame a proper issue as regards the maintainability of this complaint in the light of Sections 4 to 7 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in relation to whether the Industrial Court has the jurisdiction to deal with this complaint, wherein the complainant/ employee has been out of employment for five years and has preferred the complaint for permanency while not being in employment with the employer.
- (b) Both the litigating parties are permitted to lead evidence on this aspect.
- (c) The evidence recorded earlier by the Industrial Court shall not be discarded and the same shall be utilized in addition to the evidence led on the newly cast issue, while deciding the complaint afresh.
- (d) Since the respondent / employee has been litigating for four

years and is not in employment, the Industrial Court shall endeavour to decide the complaint as expeditiously as possible and preferably within a period of six months from the date of appearance of the parties.

- (e) Since none has appeared for the Respondent, the Industrial Court shall issue notice to the litigating sides and thereafter, proceed with the matter.

kps

(RAVINDRA V. GHUGE, J.)