

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 925 OF 1995
WITH CIVIL APPLICATION NO. 529 OF 2013
IN WRIT PETITION NO. 925 OF 1995
WITH CIVIL APPLICATION NO. 12283 OF 2016
IN CIVIL APPLICATION NO. 529 OF 2013

Kalambar Vibhag Sahakari
Sakhar Karkhana Ltd., Gandhi Nagar,
At post. Kalambar, Taluka Loha,
Dist. Nanded,
through its Managing Director,
(Original respondent)

..Petitioner

Versus

1. Shri Dattatraya S/o. Tukaram Dalve,
Age. 44 years, Occu. Private Service,
R/o. Wadeपुरi, Tq. Loha, Dist. Nanded.
2. Shri Laxman S/o. Baliram More,
Died, Through L.R.S.,
2A. Anusayabai Laxman More
(Respondent Nos. 1 and 2
Original Complainants)
3. Member,
Industrial Court, Jalna.
(Respondent No. 3 - Court Below)
4. Mr. B. G. Sampatrao,
5. Mr. U.B. More,
6. Mr. Sayyad Peer Sarwar,
7. Mr. D. S. Jamge,
8. Mr. N. N. Shinde,
9. Mr. V. S. Savale,
10. Mr. N. K. Shaikh,
11. Mr. S. S. Tate,
12. Mr. M.B. Tate,
13. Mr. K. D. Lohar,
14. Mr. B. M. More,
15. Mr. V. V. Swami,
16. Mr. R. G. Majare,
17. Mr. G. N. Naik,
18. Mr. M. G. Karade,

19. Mr. P. D. Pawar,
Died Through L.R.,
19A. Godawaribai Pralhad Pawar,
20. Mr. M. N. Maheshkar,
21. Mr. V. G. Behere,
22. Mr. G. V. Kawatkar,
Died Through L.R.S.,
22-A. Shantabai Gangadhar Kawatikwar,
23. Mr. G. L. More,
24. Mr. B. R. Shirmangale,
25. Mr. T. B. Mise,
26. Mr. M. M. Mahajan,
27. Mr. B. W. Kausalya,
28. Mr. V. M. Sawant,
29. Mr. H. G. Kadam,
30. Mr. S. V. Sangale,
31. Mr. V. S. More,
Died Through L.R.,
31A. Bhamabai Uddhav More,
32. Mr. M. M. Pandale,
33. Mr. N. G. Ganorkar,
34. Mr. H. G. Tekale,
35. Mr. S. M. Giri,
Died Through L.R.,
35A. Anusayabai Laxman More,

Respondent Nos. 4 to 35 all are Major,
Occu. Agriculture / Private Service, etc.,
R/o. C/o. Mr. Dalve, Wadehuri,
Tq. Kandhar, Dist. Nanded.

(Respondent Nos. 4 to 35 workmen in
whose favour relief has been granted.)

36. The State of Maharashtra,
Through, The Secretary,
Department of Agriculture and
Cooperation, Government of Maharashtra,
Mantralaya, Bombay,
37. Honourable Minister
of State for Industries and
Labour Department.

... Respondents.

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Advocate for Petitioner : Shri R.K.Ingole Patil
Advocate for Respondents 1, 2, 4 to 35 : Shri V.N.Upadhye
AGP for Respondents 36 & 37 : Shri P.N.Kutti

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 13, 2016

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ORAL JUDGMENT :-

1. Leave to bring L.Rs. of the deceased respondents on record is granted.
2. The petitioner is aggrieved by the judgment delivered by the Labour Court, dated 30.6.1994, by which, Complaint (ULP) No.38 of 1994 (Old No. 217 of 1987) has been allowed.
3. The reliefs granted by the Industrial Court read as under:-

“Complaint is partly allowed.

It is declared that the Respondent has committed unfair labour practices under item no.9 of schedule IV read with section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act.

It is further ordered that the respondent shall cease and desist from committing such unfair labour practice.

It is further ordered that the complainants whose names are mentioned in Annexure 'A' attached to this Judgment and order

shall be entitled to reinstatement in service with continuity and backwages from the date of retrenchment i.e. 14.10.1987 till they are reinstated in the service.

It is further ordered that the Complainants whose names are mentioned in Annexure 'A' shall be also entitled to claim wages for the period February, 1986 to July, 1986 and August 1986 to October, 1987.

The complaint as far as it relates to following workmen;

1. Venkat Motiram Akale,
2. Motiram Govindrao Hippargekar
3. Ramrao Tukaram Gaikwad,
4. Raghunath Manika Pachure,
5. Pralhad Ramchandra Mulange
6. Babu Tukaram Panchal
7. Habaji Ganeshrao Kandhare
8. Balaji Rajaram Tumberfale,
9. Tukaram Shamrao Shekhapure,
10. Kisansing Hanumansing,
11. Madan Govind Rautare,
12. Uttam Venkat Kadam,
13. Babusing Harising Gunawat
14. Shriram Dattarao Shinde
15. Balansing Bahgwansinh Marmat

and stands dismissed.

The respondent is ordered to implement the above Judgment and order within two months from today.

ANNEXURE 'A'

<u>Sr.</u>	<u>Name of the complainant / employee</u>
1.	B.G.Sampatwar
2.	U.B.More
3.	Sayad Peer Sarvar
4.	D.S.Jambe
5.	N.N.Shinde
6.	V.S.Savale
7.	N.K.Shaikh
8.	S.P.Tate
9.	M.B.Tate
10.	K.D.Lohar
11.	B.M.More
12.	V.V.Swami
13.	R.G.Majare
14.	G.N.Naik
15.	M.G.Karade
16.	P.D.Pawar
17.	M.N.Maheshkar
18.	V.J.Bhere
19.	G.V.Kawatikar
20.	G.L.More
21.	B.R.Shrimangale
22.	T.B.Mise
23.	M.M.Mahajan
24.	B.N.Kausalye
25.	V.M.Swami
26.	H.G.Kadam
27.	S.V.Sangale
28.	U.S.More

- 29. N.M.Padade
- 30. N.G.Gonarkar
- 31. H.B.Tekale
- 32. S.M.Giri.

Sd/- 30.6.94
(P.M.BANSOD)
Member,
Industrial Court, Jalna”

4. By order dated 21.4.1995, passed by this Court, this petition was admitted and this Court observed in paragraph Nos. 6 and 7 as under:-

"6. The petitioner - factory is directed to deposit a sum of RS.3,20,000/- in this Court, which would roughly cover the liability about the retrenchment compensation payable to the retrenched employees and in addition to it, submit a Bank guarantee to the tune of Rs.3 Lacs to safeguard the interest of the workmen in case they are held to be entitled for further wages. The deposit and the bank guarantee to be submitted in this Court within a period of four weeks from today. Liberty to both the parties to pray for earlier bearing.

7. If any of the employees retrenched, in the meantime, wants to accept the terminal benefits offered by the factory, they are at liberty to accept it. The factory shall not employ any person in the cadre in which these 34 retrenched employees were working. Liberty to reemploy these employees. On the above conditions, interim relief in terms of prayer (C)."

5. I have heard the learned Advocates for the respective sides at length. With their assistance, I have gone through the petition paper book and the judgments cited.

6. An issue raised before this Court is with regard to the Industrial Court having entertained the Complaint filed by the respondent / employees under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”), despite the fact that the workers had been retrenched. It is argued that the retrenchment was specifically questioned before the Industrial Court and the issues as like illegal closure or illegal lock-out or an illegal lay off was not raised before the Court. The petitioner has categorically prayed that when the Industrial Court had no jurisdiction to deal with a case of retrenchment under item 9 of Schedule IV, the complaint was rendered untenable in law.

7. Learned Advocate for the respondent has cited the judgment of the Honourable Supreme Court in the matter of Mackinnon Machkenzie and Company Ltd. Vs. Mackinnon Employees Union [2015 AIR SCW 1607]. Shri Upadhye has drawn my attention to paragraph Nos. 3, 42 and 43 of the said judgment to contend that the Honourable Apex Court has laid down the law that all cases of retrenchment or termination or illegal discharge or dismissal can be

considered by the Industrial Court.

8. It is noteworthy that the Honourable Apex Court was dealing with a case of 'proposed closure' of an establishment. The proposed closure was challenged before the Industrial Court under item 9 of Schedule IV. Item 9 of Schedule IV of 1971 Act reads as under:-

“9. Failure to implement award, settlement or agreement.”

9. It also needs to be noted that neither of the parties before the Honourable Apex Court had raised a grievance as regards the jurisdiction of the Industrial Court in entertaining the said complaint. It also needs to be noted that a case of proposed closure and likely discharge was before the Industrial Court. It also needs mention that Sections 4 to 7 of the Act of 1971, which deal with the duties of the Industrial Court and the Labour Court, were not cited before the Honourable Apex Court.

10. In the instant case, the respondent / employees had putforth a solitary cause of action as regards their illegal retrenchment.

11. Section 5 which prescribes the duties of the Industrial Court and Section 7 which prescribes the duties of the Labour Court, read as under:-

"Section 7 - Duties of Labour Court.

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.

Section 5 - Duties of Industrial Court.

It shall be the duty of the Industrial Court,-

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court; and

(g) to decide appeals under section 42."

12. Item 1 of Schedule IV reads as under:-

"1. To discharge or dismiss employees -

(a) by way of victimization;

(b) not in good faith, but in colourable exercise of employer's rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegation of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

13. It is, therefore, evident that Complaints relating to ULP described under item 1 of Schedule IV are to be tried by the Labour Court and all other complaints invoking items under Schedules II, III

and items 2 to 10 of Schedule IV of the 1971 Act can be tried by the Industrial Court. This is the Scheme of the Act.

14. Notwithstanding the above, it cannot be ignored that this petition is instituted on 12.9.1994 and is before this Court for the last 22 years. Considering the fact that the petitioner / establishment has gone into liquidation on 19.1.2006, I am neither inclined to consider the objection of the petitioner regarding jurisdiction and remand the matter to the Industrial Court, for re-framing of an issue touching the jurisdiction of the Industrial Court, nor am I inclined to continue the rigors of litigation being suffered by both the sides, in the light of the subsequent events that have occurred after the admission of this matter and the directions of this Court in paragraph Nos.6 and 7 of its order dated 21.4.1995, reproduced above.

15. There is no dispute between the parties that the petitioner / factory has gone in liquidation from 19.1.2006 and there has been no manufacturing activity. Shri Upadhye contends that even after the judgment of the Industrial Court, dated 30.6.1994, the crushing season was intermittently being conducted by the petitioner / factory. Shri Patil contends that the petitioner had run into a severe financial crisis and though intermittently some stray crushing operations may have occurred, there was no sufficient work to engage about 640 employees, including the respondents herein.

16. In the peculiar backdrop as above and upon considering the impugned judgment of the Industrial Court, I deem it proper to balance the equities by suitably modifying the judgment of the Industrial Court in the light of the above facts.

17. The Industrial Court has considered that the monthly wages of some of the workers mentioned in Annexure 'A' (32 workers), reproduced above, were unpaid. As the two complainants, namely, Shri Dattatraya Tukaram Dalve and Shri Laxman Baliram More have prosecuted the complaints, it appears that their names have been inadvertently missed out from the operative part of the order of the Industrial Court. I am including them in the said list.

18. Considering the above, the disputed question is as to whether there was any crushing season and how far these respondents could have been accommodated. In the absence of any evidence that the crushing operations had continued and work was available, the direction of the Industrial Court to reinstate them in service with continuity and backwages from the date of retrenchment - 14.10.1987, cannot be sustained.

19. After this Court passed the order dated 21.4.1995, all these workmen have been sitting idle and have not been working. In the

face of the liquidation of the petitioner / factory, these 34 employees cannot be rewarded with wages since they had not worked and in the peculiar facts of this case, the grant of backwages would amount to rewarding these respondents without having worked in the said period. This petition is, therefore, being partly allowed to the extent of modifying the directions of the Industrial Court of granting backwages.

20. Since the petitioner has gone into liquidation on 19.1.2006, it presupposes that the factory has got closed down. Though the petitioner may not have formally declared a closure, it is not disputed that after going into liquidation, the petitioner / factory is defunct. It is also undisputed that despite liquidation proceedings, the assets of the petitioner / factory have not been liquidated in these last ten years.

21. Considering the over all effect of the above recorded facts and taking into account that the 34 workers involved in these cases have all crossed their age of superannuation, I deem it proper to direct the petitioner to quantify the claims of these workers towards their unpaid wages as on the date of filing of the complaint, which is dated 28.10.1987, and to calculate their retiral benefits like retrenchment compensation and gratuity till 19.1.2006 keeping in view that the Industrial Court has granted continuity in service to

these respondents along with reinstatement. I am arriving at these conclusions after recording the fact that these respondents / employees have not been working after they had lodged their complaints, their retrenchment having been rendered unsustainable and the petitioner / factory having suffered closure of manufacturing activities on 19.1.2006. This would lend a finality to this litigation which has continued from 1987 till this date, which is almost 29 years.

22. This petition is, therefore, partly allowed and the impugned judgment of the Industrial Court, to the extent of granting back wages to the respondents is set aside. However, the conclusion as regards unpaid wages till the date of the lodging of the complaints and continuity till 19.1.2006 is sustained.

23. The direction of continued wages is set aside, keeping in view that none of these respondents have worked from 14.10.1987 till 19.1.2006. Instead, as the liquidation has caused the closure of the factory on 19.1.2006, I am directing the petitioner to calculate the retrenchment compensation to be paid to these workers till 19.1.2006 and gratuity for the same period. An amount of Rs.3,20,000/- has already been deposited by the petitioner in this Court. An interest of more than Rs. 4,00,000/- has also been accumulated on the said amount, which is in this Court.

24. Shri Upadhye, learned Advocate requests on instructions that the legal heirs of the three deceased respondents have been brought on record today. He further prays that the amount of Rs.3,20,000/- and the interest accrued thereon, would be withdrawn in equal shares by the 30 employees and the legal heirs of the 4 respondents from this Court. He further submits that as regards their unpaid wages till the date of the filing of the complaint, will be calculated by these persons and they would tender individual affidavits to the Liquidator. The Liquidator would then calculate the unpaid wages as well as the retrenchment compensation and the gratuity amounts to be paid to these respondents and after adjusting the amounts withdrawn by these respondents, rest of the amounts would be disbursed by the Liquidator, if any, through the bank guarantee of Rs.3,00,000/-.

25. Considering the above stated request as regards the payment of dues, I am, therefore, issuing the following directions to the petitioner / Liquidator:-

(A) These 34 employees, inclusive of the legal heirs, shall withdraw the amount of Rs.3,20,000/- along with the accrued interest, in equal shares.

(B) Each of them will file an affidavit/undertaking along

with a recent photograph, address proof and copy of Election Commission's voter ID or UID Aadhar card.

(C) The affidavits shall mention that if these respondents have received more amounts than is due to be paid to them, they would refund the excess amount within six weeks from the date of the decision of the Liquidator.

(D) The Bank guarantee of Rs.3,00,000/- is being returned to the Liquidator and the same shall be released from this Court.

(E) The Liquidator shall endeavour to decide the individual amounts to be paid as directed herein above, and adjust the amounts withdrawn by the respondents and in the event more amounts are to be paid, the Liquidator shall do so, within a period of 4 months from today.

(F) The respondents shall also file their individual affidavits before the Liquidator within three weeks from today, indicating their unpaid wages till 28.10.1987 and the amounts received by them. The Liquidator shall, after calculating the retrenchment compensation and gratuity amounts, shall proceed to make the payments.

(G) The Bank guarantee of Rs.3,00,000/- from which the Liquidator is now being released, would be utilized for making payments of these respondents and the said amount shall not be utilized for any other purpose.

(H) After making the payments in the manner as directed above, if still some more amounts remain unpaid, the

Liquidator shall endeavour to make the said payments from the assets being liquidated, on first priority basis.

(I) Needless to state, the calculations of the legal dues of the respondents shall be till the date of liquidation or till the date of their superannuation, whichever is earlier.

26. Rule is made partly absolute in the above terms.

27. All pending Civil Applications, in view of the disposal of the main petition, do not survive and stand disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d