

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 1219 OF 2005**

Nanasaheb Eknath Suryawanshi  
Punyai Nagar

... Petitioner

Vs.

The Pune District Central Co-op.  
Bank Ltd.

... Respondent

.....

Mr. Deshmukh Rajaram Bhausahab for the petitioner.

Mr. Vilas B. Tapkir for the respondent.

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**CORAM : S.C. GUPTE, J.**

**DATE : 28.04.2016.**

**ORAL JUDGMENT:**

1. Heard the learned counsel for the parties. Rule. By consent the petition is forthwith taken up for hearing.

2. The petition impugns an order passed by the Industrial Court at Pune in an Appeal under Section 84 of the Bombay Industrial Relations Act. By the impugned order the Industrial Court quashed and set aside the judgment and order passed by the Labour Court at Pune, on an application under Section 78(1) of the B.I.R. Act filed by the Petitioner herein for reinstatement with continuity in service and full back wages.

3. Since 1982 the Petitioner was employed as a clerk with the Respondent-Bank. The terms and conditions of his service were governed by the certified standing orders framed under the B.I.R. Act. On 06/11/1995, the Petitioner was charge-sheeted for having

committed mis-appropriation of funds. The allegation was that the Petitioner in collusion with the constituents of the Bank, allowed deposit of a stolen draft and withdrawal of money from the Laxmi Road Branch of the Respondent-bank. In a disciplinary enquiry initiated by the Respondent, on or about 26/12/1998 a report was submitted by the enquiry officer. The report held him to be guilty of mis-conduct complained of. The Petitioner thereupon filed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. & P.U.L.P. Act), being Complaint (U.L.P.) No. 3 of 1999, before the Labour Court at Pune seeking a restraint against the Respondent-bank from terminating his services. The Petitioner's application for interim relief against termination was rejected by the Labour Court on 16/01/1999. The Respondent, thereafter, issued a termination order to the Petitioner. The Petitioner thereupon sent an approach notice under Section 42 of the B.I.R. Act and filed an Application under Section 78 of the B.I.R. Act before the Labour Court for quashing of the termination order and praying for reinstatement with continuity in service and full back wages. During the pendency of the Application before the Labour Court, the Petitioner withdrew his complaint earlier filed before the Labour Court under the M.R.T.U. & P.U.L.P. Act and thereafter, on 30/04/2003 a preliminary issue concerning fairness and propriety of the enquiry was framed by the Labour Court. Pending hearing of the preliminary issue, the Petitioner

was acquitted by a Criminal Court. Even the other employees, who were charge-sheeted along with the Petitioner, were reinstated in service. On 20/04/2004 the Petitioner's application under Section 78 of the B.I.R. Act was allowed and the termination order was set aside by the Labour Court. The Respondent was directed to reinstate the Petitioner with continuity in service and full back wages with effect from 16/01/1999. The Respondent-bank challenged the order of the Labour Court in an appeal under Section 84 of the B.I.R. Act before the Industrial Court. The Industrial Court allowed the appeal and quashed and set aside the impugned order of the Labour Court solely on the ground that the Application under Section 78 was barred by reason of Section 59 of the M.R.T.U. & P.U.L.P. Act. That order of the Industrial Court is in challenge in the present petition.

4. Section 59 of the M.R.T.U. & P.U.L.P. Act is in the following terms.

***“59. Bar of proceedings under Bombay or Central Act:- If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act”.***

5. As is plain from its language, the condition for applicability of the bar under Section 59 is that a proceeding in respect of a matter

falling within the purview of M.R.T.U. & P.U.L.P. Act is instituted under that Act. If such proceeding is instituted, then no other proceeding shall be entertained thereafter by any authority “in respect of that matter” under any Central or State Act.

6. The word “instituted” in Section 59 has been interpreted by a Division Bench of our Court in the case of ***Consolidated Pneumatic Tool Co. (I) Ltd. Vs. R.A. Gadekar & Ors.***<sup>1</sup> The word “instituted” appearing in Section 59, according to the Division Bench, meant something more than mere filing of a complaint. Where the applicant does nothing more than filing a complaint under the M.R.T.U. & P.U.L.P. Act and withdraws it before any effective steps are taken, it cannot be said that any proceeding is “instituted” under the M.R.T.U. & P.U.L.P. Act so as to attract the bar under Section 59 of that Act.

7. Based on this ruling, it is submitted by learned counsel for the Respondent that in the present case, effective steps were actually taken in the complaint originally filed by the Petitioner under the M.R.T.U. & P.U.L.P. Act. It is submitted that, accordingly, here is a case where proceedings under the M.R.T.U. & P.U.L.P. Act have actually been instituted and that, in the premises, no proceedings can be entertained by any authority in respect of the matter under the B.I.R. Act.

8. Leaving aside the question as to whether or not further steps were initiated in the original complaint filed by the petitioner

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1 322 H.C. CLR 1986

under the M.R.T.U. & P.U.L.P. Act, what is important to note here is that the complaint related to a disciplinary enquiry initiated by the Respondent and the termination action likely to be taken by the Respondent on the basis of such disciplinary enquiry. After the Petitioner failed to obtain any interim relief from the Labour Court, the Respondent actually proceeded further with the disciplinary action and actually terminated the services of the Petitioner. It is that “matter” namely, termination of the Petitioner by an order dated 16/01/1999, which is the subject matter of the present proceedings under the B.I.R. Act. The proceedings earlier filed before the Labour Court under the M.R.T.U. & P.U.L.P. Act were in respect of the disciplinary enquiry and a possible termination on the basis of such enquiry, whereas the proceedings before the Labour Court under the B.I.R. Act was in respect of breach of standing orders under that Act occasioned by the actual termination of services purportedly contrary to the standing orders. These two are evidently different “matters” and the bar of proceedings under other Central or State Acts within the meaning of Section 59 of the M.R.T.U. & P.U.L.P. Act does not apply to the present proceedings under the B.I.R. Act.

9. This issue has been considered by a Full Bench of our Court in the case of *C.S. Dixit V/s. Bajaj Tempo Ltd., Pune*.<sup>2</sup> That was a case where a complaint in respect of a disciplinary enquiry under the

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<sup>2</sup> 2000 II CLR 719

M.R.T.U. & P.U.L.P. Act was pending before the Industrial Court. Pending such complaint, the concerned employees came to be dismissed. An amendment was sought in the pending complaint for incorporating that fact. That amendment was not allowed by the Industrial Court. Subsequently, a reference came to be made under the Industrial Disputes Act in respect of the dismissal of the concerned employees pursuant to the enquiry. The employer raised the issue of bar under Section 59 of the M.R.T.U. & P.U.L.P. Act for the proceedings under the Industrial Disputes Act. The matter was referred to a Full Bench in view of conflicting decisions of our Court on the point. The Full Bench, after analysing the applicable law, held that on account of the subsequent development, namely, the dismissal of the concerned employees, a new cause of action had arisen and unless that matter was allowed to be raised before the Industrial Court under the pending complaint, it could not be said that a proceeding was instituted in respect of that matter before the Industrial Court. The relevant observations of the Full Bench are quoted below:

*“17. Likewise, on account of the subsequent development, if there is a new cause of action, as noted above, in the instant case, that matter, unless allowed to be raised before the Industrial Court under the said Act, cannot be said to be brought before the Industrial Court seeking to remedy the grievance, as the amendment itself was disallowed. Obviously, therefore, it was not possible to say that the remedy was resorted....*

*19. In our opinion, there is no question of bar of Section 59 being invoked when the matter sought to be agitated is based on a new cause of action. As the*

*matter was pending before the Industrial Court under the said Act, obviously it was not dealing with the said new cause of action.”*

10. The law laid down by the full bench in the case of **C.S. Dixit (Supra)** settles the controversy as far as the contention raised in the present petition is concerned.

11. Learned counsel for the Respondent, however, urged that it was open to the petitioner to amend his pending complaint before the Labour Court, when he was dismissed from service by the Respondent-bank. The Petitioner certainly had the option but he equally had an option not to prosecute his original complaint and instead challenge the dismissal in a new proceeding. Besides, the new challenge was not under the M.R.T.U. & P.U.L.P. Act but for breach of standing orders under Section 78 of the B.I.R. Act. That challenge obviously could not be brought before the Labour Court in the pending complaint under the M.R.T.U. & P.U.L.P. Act. In any event, as I have shown above, the cause of action is entirely different and it is perfectly legitimate for the Petitioner to institute an altogether different proceeding under a different Act.

12. Accordingly, the impugned order of the Industrial Court, which did not disagree with the Labour Court on merits of the matter, but allowed the Appeal solely on the ground of the bar under Section 59, is clearly illegal and cannot be sustained.

13. In the premises, Rule is made absolute and the impugned order of the Industrial Court dated 30/10/2004 is quashed and set aside and the order of the Labour Court dated 20/04/2004 is restored.

14. Learned counsel for the Respondent applies for a stay of this order. Considering the fact that the Petitioner is due to superannuate in the following month, which was anyway the basis on which the petition was taken up, in the first place, for an expeditious hearing, I am not inclined to grant any stay. The Application for stay is, accordingly, refused.

**(S.C. GUPTE, J.)**