

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6880 OF 2015**

The General Manager,
Greater Bombay Milk Scheme, Mumbai & Ors. ...Petitioners
vs.
Government Milk Scheme Employees UnionRespondent

Ms.M.S. Bane, "B" Panel Counsel for Petitioners.
Mr.Mayuresh Dwarkanath Nagle for Respondent No.1.

CORAM : S.C. GUPTE, J.

08 JUNE 2016

P.C. :

Heard learned Counsel for the parties.

2 The impugned order is passed by the Industrial Court on a complaint filed by the Respondent union on behalf of Mazdoors and Daily Rated Workmen of Greater Bombay Milk Scheme, Worli Dairy and Aarey Milk colony. It was the case of the union that its member employees, who are mazdoors and daily rated workmen, were required to be designated as Junior Dairy Operators and Milk Delivery Men or Helpers, as the case may be, based on the work done by them. This was part of the settlement agreement between the Government of Maharashtra and the Petitioners on the one hand and the Respondent Union on behalf of the workmen. The relevant clause of the settlement, Clause No.5, is not disputed. The non-implementation of this clause is the subject matter of the union's complaint to the Industrial Court under Item 9 of Schedule IV of the MRTU and PULP Act, 1971. The Labour Court has accepted the union's complaint insofar as non-implementation of Clause No.5 of Settlement is concerned, terming the

same to be an unfair labour practice under Item 9 of Schedule IV.

3 Learned AGP appearing for the Petitioners pressed three submissions in support of the petition. It is firstly submitted that the complaint is filed nearly after 28 years after the settlement was signed between the parties and that the Industrial Court in the impugned order has not considered the question of limitation or delay and latches. Secondly, it is submitted that the union was not a recognised union. Thirdly, it is submitted that the State Government, which is a necessary party, is not joined as a party Respondent to the complaint.

4 It is seen from the impugned order of the Industrial Court that the questions of limitation and delay and latches have been adequately considered by the Industrial Court. The Industrial Court has come to the conclusion, firstly, that this is a continuous cause of action inasmuch as despite of signing the settlement, the concerned employees have been still continued as mazdoors and daily rated workmen and not absorbed in the respective position of JDOs / MDM or Helpers, as the case may be. The Industrial Court has considered the judgment of a Division Bench of this Court in the case of **Regional Manger, Maharashtra State Road Transport, Nagpur vs. Regional Secretary, Maharashtra State Transport Kamgar Sanghatana, Karanja**¹. In that case, this court came to the conclusion that in case a relevant term of settlement remains unimplemented, the occurrence of unfair labour practice continues. The Industrial Court has, in the premises, correctly appreciated the legal position and passed an order rejecting the contention of the Petitioners herein regarding limitation and delay and latches. As for the submission that the Respondent union is not a recognised union, the Industrial Court has taken into account the settlement executed between the Petitioners and the Respondent union and also various minutes of meeting which clearly

1 1984 LIC Page 1721 Bom.D.B.)

indicate that the Respondent union has been recognized. There is no infirmity in the impugned order on this ground. As regards the issue of non-joinder of necessary party, the same is merely required to be stated to be rejected. The State was adequately represented through the Petitioners, who were the employers of the workmen represented by the Respondent union. There is no failure of justice on that count.

5 There is, thus, no merit in the petition and the same is dismissed. No order as to costs.

6 On the application of learned AGP, the ad-interim order passed on 18 November 2015 shall continue to operate for a period of four weeks from today.

(S.C. Gupte, J.)