

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8675 OF 2016

Manisha D. Parmar	]	
Hindu, Adult, Indian Inhabitant,	]	
Residing at Room No.55, Shahid	]	
Bhagat Singh Road, Lucky House	]	
Fort, Mumbai-1.	]	].Petitioner

Versus

M/s. United Spirits Ltd.	]	
By its Secretary, Regional Office	]	
Piramal Towers,	]	
Peninsula Corporate Park,	]	
Ganpatrao Kadam Marg,	]	
Lower Parel (West), Mumbai-13	]	].Respondent

Mr. Devang D. Parmar for the Petitioner.
Mrs. N. R. Patankar a/w Mr. V. P. Sawant, Mr. Prabhakar Jadhav for
the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 22nd SEPTEMBER, 2016

ORAL JUDGMENT

1 Rule. Having regard to the nature of the challenge raised
made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the
order dated 29.01.2016 passed by the Learned Member of the Industrial
Court, Mumbai. By the said order, the Revision Application (ULP) No.92

of 2015 came to be allowed and resultantly, the order dated 05.06.2015 passed by the Learned Judge of the Labour Court came to be set aside. Having regard to the purport of the impugned order, it would have to be said that though the Revision Application was allowed, the reliefs which were granted, were against the Petitioner herein.

3 The facts giving rise to the filing of the above Petition can in brief be stated thus :-

The Petitioner herein was appointed as a Confidential Secretary in the Respondent company with effect from 01.06.2013. It seems that she was thereafter appointed to the post of MIS (Management Information System). The Respondent termed her appointment as promotion, whereas the Petitioner denies the same. It seems that the Petitioner's services came to be terminated with effect from 15.12.2014 on the ground that the Petitioner was not upto the mark in her work. The termination of the Petitioner's services resulted in the Petitioner invoking the provisions of the MRTU & PULP Act, 1971 (For short "the said Act") by filing Complaint (ULP) No.6 of 2015 under items 1(a), (b), (d), (f) and (g) of the said Act. The sum and substance of the case of the Petitioner was that she was a workman and that her services have been terminated without following any procedure and especially Section 25F

of the Industrial Disputes Act, 1947. In the said Complaint, the Petitioner filed an application for interim relief Exh.U-2. By way of interim relief, the Petitioner sought reinstatement in service till the decision in the main Complaint.

4 In so far as the Respondent is concerned, it filed its reply vide Exh.C-4. The Respondent tried to justify the termination of the services of the Petitioner. The Respondent admitted that no enquiry was held, but that the Respondent would prove the misconduct in Court. In so far as the interim relief sought was concerned, the Respondent opposed the grant of such relief on the ground that granting the said relief would be like granting the final relief sought in the Complaint without a trial.

5 The Learned Judge of the 4th Labour Court, Mumbai, considered the said application Exh.U-2 filed by the Petitioner for interim relief. The Learned Judge adverted to the respective cases of the parties, wherein as indicated above, it was the case of the Petitioner that her services have been terminated without following the procedure, whereas it was the case of the Respondent that the services of the Petitioner were terminated for a misconduct and that the said misconduct would be proved by the Respondent in Court. The Learned Judge also considered the judgments cited on behalf of the Respondent on the said aspect of the

employer being permitted to lead evidence in Court and on the aspect of whether interim relief in the nature of final relief could be granted whilst considering an application for interim reliefs. The Learned Judge held having regard to the said fact such a relief could not be granted. However, considering the fact that the services of the Petitioner were terminated without following the procedure, came to a conclusion that though the relief of reinstatement pending the Complaint could not be granted, the application Exh.U-2 filed by the Petitioner was required to be partly allowed and accordingly allowed the said application by directing the Respondent to deposit wages from month to month in the Labour Court pending the Complaint. The operative part of the order dated 05.06.2015 passed by the Labour Court reads thus :-

“1. Application is partly allowed.

2. Application for reinstatement of the complainant at interim stage is rejected.

3. The respondents are directed to deposit every months' salary of the complainant in this court since June 2015 till the decision of main complaint or until further orders.

4. The parties are not at liberty to withdraw any amount till final decision or order of this Court.

5. In the peculiar circumstances no order as to costs.”

6 Aggrieved by the said order dated 05.06.2015 passed by the

Labour Court partly allowing the application Exh.U-2, the Petitioner filed a Revision being Revision Application (ULP) No.92 of 2015. It seems that after the Labour Court had decided the application Exh.U-2, the Respondent on certain documents being made available to it filed its written statement on 21.08.2015. In the said written statement, the maintainability of the Complaint was challenged on the ground of the Petitioner being not a workman, on the ground of the territorial jurisdiction of the Labour Court to try the Complaint having regard to the jurisdiction clause in the appointment letter. It seems that an objection was also raised on the touchstone of Section 59 of the said Act. The Learned Member of the Industrial Court whilst exercising the revisionary jurisdiction having regard to the said objections raised, held that the Learned Judge of the Labour Court had erred in deciding the said application Exh.U-2 as the objections raised by the Respondent go to the root of the matter as regards the maintainability of the Complaint. The Learned Judge accordingly deemed it appropriate to set aside the order dated 05.06.2015 passed by the Labour Court. However, as indicated above, the Learned Member of the Industrial Court though has allowed the Revision Application, in fact the reliefs granted by the impugned order dated 29.01.2016 were against the Petitioner. It is the said order dated 29.01.2016 passed by the Learned Member of the Industrial Court

which is taken exception to by way of the above Petition.

7 Heard the Learned Counsel for the parties. The question that arises is whether the Industrial Court could have set aside the order in a Revision filed by the Petitioner. Though the said order is vulnerable on the said ground, the intervening facts would have to be noted. The above Revision Application was filed on 03.09.2015. It appears that in the proximity of the filing of the Revision Application, the Respondent herein had made an application on 19.10.2015 for a preliminary issue to be framed, which preliminary issue as indicated above was revolving around the territorial jurisdiction of the Labour Court. It seems that the application is pending consideration of the Labour Court and is awaiting the filing of the reply by the Petitioner. Since the Learned Counsel appearing on behalf of the parties i.e. Mr. Devang Parmar appearing for the Petitioner and Mrs. N. R. Patankar appearing for the Respondent are ad-idem that the preliminary issues as culled out in the operative part of the impugned order passed by the Industrial Court are required to be framed, it is therefore not necessary to await the outcome of the application filed by the Respondent. The operative part of the impugned order passed by the Industrial Court is accordingly set aside and substituted by the following :-

I) In view of the consensus between the Learned Counsel for the parties, the following three preliminary issues are framed :-

- A) Whether the Complaint filed by the Petitioner being Complaint (ULP) No.6 of 2015 is maintainable having regard to the Section 59 of the MRTU & PULP Act, 1971 ?
- B) Whether the Petitioner is a workman within the meaning of 2(s) of the Industrial Disputes Act, 1947 ?
- C) Whether the Labour Court, Mumbai has the territorial jurisdiction to entertain the Complaint ?

II) The said issues to be decided latest by 31.12.2016 by the Learned Member of the Industrial Court by giving proper opportunity to the parties.

III) The order of the Labour Court directing the payment of deposit of wages from month to month would continue to operate till the decision is rendered on the preliminary issues and would cease to operate if the preliminary issues are decided against the Petitioner.

IV) The direction contained in the order of the Labour

Court of not permitting the Petitioner to withdraw the amount would continue to operate.

8 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

[R.M.SAVANT, J]