

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12665/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Ashish G. Nagvekar for the petitioner
Mr. Swapnil Kamble i/b. Ashok D. Shetty for the respondent

CORAM : K. K. TATED, J.

DATE : DECEMBER 14, 2016

P.C.:

1. Heard. By this petition under Article 226 and 227 of the Constitution of India, the petitioner challenges order dated 04.09.2015 passed by the Industrial Court, Mumbai in complaint (ULP) No.101/2015 below exhibit C-5 dismissing the petitioner bank's application for framing a preliminary issue as to the status of the respondent complainant u/s. 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act).

2. The petitioner also challenges the order dated 12.02.2016 passed by the Industrial Court below exhibit U-2 directing the petitioner not to terminate the services of the respondent complainant without following due process of law.

3. The learned counsel for the petitioner submits that the Industrial Court ought to have held that the question of jurisdiction goes to the root of the matter and therefore, same could have been decided at the earliest. He submits that the petitioner specifically raised an objection about the employee-employer relationship between the petitioner and the respondent. He submits that unless and until said issue is decided, the Industrial Court has no jurisdiction to entertain the complaint filed by the respondent. In support of this contention, he relies on the following judgments:

- (a) 1993 (0) ALJEL-SC 9397
- (b) 2001-I-LLJ SC 303
- (c) 2001-I-LLJ SC 237
- (d) 2001-I-LLJ SC 243
- (e) 2004(0) ALJ-MH-129372
- (f) 2005(0) ALJ-MH-134763
- (g) 2004(0) ALJ-MH-129899

4. The learned counsel for the petitioner submits that these facts were not considered by the Industrial Court. Hence, the order passed by the Industrial Court rejecting the petitioner's application for framing preliminary issue below exhibit C-5 dated 04.09.2015 is required to be set aside and the Industrial Court be directed to frame preliminary issue as to the status of the petitioner workman u/s.3(5) of the said Act.

5. It is to be noted that, in the present proceedings, the respondent complainant placed on record letter dated 27.07.2011 issued by the General Manager of the petitioner bank informing the Higher Authority about the increase in payment of respondent from August 2011 @ Rs.1500/-. This itself shows that the respondent was working with the petitioner on monthly basis. Similarly, the respondent placed on record another letter dated 23.11.2014. Therefore, the Industrial Court rightly held that it is not necessary to frame a preliminary issue. The aforesaid authorities cited by the petitioner are not applicable in the facts and circumstances of the present case. In the case in hand, the respondent placed on record some document to show the relationship of employee-employer and that was not the case in the authorities cited above.

6. The Industrial Court rightly allowed the application below exhibit U-2 made by the respondent, by order dated 12.02.2016 directing the petitioner not to terminate the services of the respondent complainant without following due process of law.

7. Considering the documents placed on record by the respondent complainant, *prima facie* it shows that he was working with the Bank on monthly basis and therefore, the Industrial Court restrained the petitioner from terminating his services without following due process of law. In any case, both the orders are interlocutory orders. Main complaint is pending for hearing on merits.

8. Considering the facts and circumstances of the present case, I am of the opinion that the complaint (ULP) No.101/2015 to be decided as early as possible.

9. Hence, following order is passed:

- a. Writ Petition stands dismissed.
- b. Hearing of complaint (ULP) No.101/2015 is expedited.
- c. This court expects from the Industrial Court to decide the complaint (ULP) No.101/2015 as early as possible in any case before 30.05.2017.
- d. All contentions of the parties are kept open.

JUDGE