

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1515 OF 2016

Bipin Devraj Panda : Petitioner.
versus
National Textile Corporation Ltd.
and anr. : Respondents.

Mr. Prithvi R Singh for the Petitioner.
Mrs. Meena H Doshi for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 23rd September 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16/10/2015 passed by the learned Member of the Industrial Court, Mumbai by which order the Application for interim relief filed by the Petitioner i.e. Exhibit U-2 came to be rejected and consequently the order of ad-interim relief passed below Exhibit U-2 dated 04/07/2015 came to be vacated. The learned Member of the Industrial Court directed framing of 3 issues which are mentioned in the operative part of the impugned order, which read thus :-

- 1] Whether the appropriate Government is the Central Government in relation to the dispute between the present complainant and the respondents?
- 2] Whether the jurisdiction to entertain the present

dispute is to the Central Government Industrial Tribunal and not to the State Industrial Tribunal?

- 3] Does the complainant prove that the respondent engaged in an unfair labour practice under Items 5, 9 & 10 of Schedule IV of the MRTU & PULP Act, 1971.

2 The Petitioner herein who is the original Complainant was employed with one Jupiter Mills Ltd as an “operative”. The said Jupiter Mills Ltd was a cotton textile mill and has been taken over by the Respondent No.1 - National Textile Corporation Limited (for short “NTC”). It seems that the Petitioner herein was promoted as semi clerk on 01/01/2007 and posted to work in one of the retail shops run by the NTC. The Petitioner was attaining the age superannuation on 06/07/2015 and hence the Respondent No.1 issued notice dated 08/06/2015 intimating the Petitioner that he would stand retired from 06/07/2015. This notice resulted in the Petitioner filing Complainant (ULP) No.243 of 2015 alleging unfair labour practice on the ground that in terms of Certified Standing Orders applicable to the Cotton Mills the age of retirement is 63 years, and therefore, the Petitioner being made to retire at the age of 60 years, amounts to an unfair labour practice. The Petitioner therefore sought the relief that he is entitled to continue up to the age of 63 years in terms of the Certified Standing Orders.

3 In the said Complaint the Petitioner filed the instant Application (Exhibit U-2) for interim relief and the interim relief sought was that he should be allowed to continue in service pending the Complaint. It is required to be noted that in the said Complaint the Petitioner has averred as regards his promotion to post of Semi Clerk and his posting at one of the retail shops of the NTC.

4 The Respondent NTC file its reply to the said Application for interim relief. The stand taken by the Respondent NTC was that after the erstwhile Jupiter Mills Ltd. was taken over by the Respondent NTC, the NTC being a Government of India Undertaking, the appropriate government would be the Central Government and in view thereof the Central Government Industrial Tribunal would be the appropriate forum for entertaining the Complaint. The fact that the Petitioner was posted in one of the retail shops of the NTC was also stated. The applicability of the Bombay Industrial Relations Act was also disputed. The maintainability of the Complaint was therefore questioned on the said grounds.

5 The learned Member of the Industrial Court considered the said Application for interim relief and, by the impugned order dated 16/10/2015 has rejected the said Application and has vacated the ad-interim relief which was granted on 04/07/2015. The learned Member has adverted to the fact

that the Petitioner i.e. the Complainant on 01/01/2007 was promoted as Semi Clerk (Market Division). The learned Member has also adverted to the fact that the Certified Standing Orders applicable to the operatives and clerks in the Bombay Cotton Textile Industries. The learned Member has adverted to the fact that all the mills are transferred to NTC and therefore the provisions of Bombay Industrial Relations Act (Now Maharashtra Industrial Relations Act) are not applicable to the NTC and with effect from 15/09/2010 the NTC (Western Region) is under the Central Government. On the said basis the learned Member of the Industrial Court reached a conclusion that the Petitioner – Complainant has not made out any prima facie case nor has produced any material on record to indicate that any particular set of workers have shown favouritism by NTC as also produced any material to show that he is entitled to continue till the age of 63 years. The learned Member observed that since the Petitioner – Complainant has been made to retire at the age of 60 years in terms of Certified Standing Orders applicable to him, the retirement would not be said to be a forceful retirement. The learned Member was prima facie held that no ingredient of any unfair labour practice under Items 5, 9 & 10 of Schedule IV of the MRTU and PULP Act is shown by the Complainant. The learned Member has adverted to the judgments of this Court as well as the Apex Court revolving around the aspect of the grant of interim relief in the context of the age of retirement and the retirement of employees. As indicated above, the learned Member of the Industrial Court by the impugned order has

rejected the Application (Exhibit U-2) as also directed to frame 3 issues which are adverted to herein above.

6 In my view, having regard to the conspectus of facts as narrated herein above wherein the Petitioner herein i.e. the original Complainant has admittedly been promoted as Semi Clerk (Market Division) and posted in one of the retail shops of the NTC, the applicability of the Certified Standing Orders as applicable to the “operatives” of the Cotton Mills is an issue which is very much in contention, as also the issue of the applicability of the Bombay Industrial Relations Act. As the learned Member of the Industrial Court has rightly observed that if the Petitioner – Complainant ultimately succeeds, he can be compensated by way of awarding the wages for the period between 60 and 63 years. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]