

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

WRIT PETITION NO.2053 OF 2013

Shri. Ramesh Dewoo Dhamankar

..Petitioner

Versus

The Bank of India Officers

Association, Bank of India

Bhavan, 70/80, Mahatma Gandhi

Road, Fort, Mumbai 400 023 and others

..Respondents

Mr. J. M. D'Silva for the Petitioner.

Mr. P. M. Palshikar for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 29th AUGUST, 2016

PC.

1 The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 07.09.2012 passed by the Learned Member of the Industrial Court, Mumbai. By which order, the application Exh.U-53 filed by the Petitioner herein to call for the Investigating Officer for the purposes of cross-examination came to be disposed of with a direction to both the parties submit their queries to the Industrial Court on or before next date and after hearing both the parties the Industrial Court will scrutinize the said carefully and submit the queries to the Investigating Officer to be answered by the Investigating Officer.

2 The proceedings in question being Application (ICTU) No.03 of 2006 have been filed under the provisions of Section 28-A(1) of the Trade Unions Act, 1926. The said proceedings have been filed for conducting an enquiry into the allegations of misappropriation made by the Petitioner against the office bearers of the Respondent No.1 union. It is required to be noted that under Section 8 of the MRTU & PULP Act, 1971, the State Government may, by notification in the Official Gazette, may appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Courts and Labour Courts in the discharge of their duties. In terms of Section 9 of the MRTU & PULP Act, 1971, the Investigating Officer is to be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

3 Having regard to the scope of the instant Application (ICTU) No.03 of 2006, an application was made by the Petitioner for appointment of an Investigating Officer to look into the allegations made against the office bearers of the Union. An order accordingly came to be passed allowing the said application and one Shri. K. N. Dharmadhikari working with the Industrial Court was appointed as the Investigating Officer. The Applicant thereafter filed application Exh.U-20, in which application amongst the relief sought was of being permitted to cross-

examine the Investigating Officer. The said application came to be partly allowed by order dated 12.06.2009 and permission was granted by the Learned Member of the Industrial Court to cross-examine the Investigating Officer. It seems that during the pendency of the proceedings, the said Investigating Officer retired. The Investigating Officer therefore filed an application being Exh.O-20 for setting aside the said order dated 12.06.2009. The said application came to be rejected. However the following directions came to be issued :-

“ii) Applicant is at liberty to submit queries in writing if he desires so instead of cross-examination of Investigating Officer on his report.”

4 It seems that thereafter the Respondent No.1 made an application for review of the said order dated 14.10.2009 vide application Exh.C-34. The said order came to be modified and instead of cross-examination the Applicant i.e. the Petitioner herein was granted permission to submit queries in writing to be answered by the Investigating Officer under the Industrial Court and Industrial Court shall after scrutinizing the same, forward the same to the Investigating Officer to answer the said queries. The queries were directed to be submitted on or before the date mentioned in the said order dated 24.04.2012. The orders passed by the Industrial Court dated 12.06.2009, 14.10.2009 and 24.04.2012 were challenged by the Applicant i.e. the Petitioner herein by

filing Writ Petition No.1313 of 2012. By consent of the parties, all the three orders were set aside by a Learned Single Judge of this Court and the statement made on behalf of the Learned Counsel for the Petitioner that a fresh application for cross-examination of the Investigating Officer would be filed within three weeks was recorded and it was directed that any application filed would be decided by the Industrial Court in accordance with law. The said Writ Petition accordingly came to be disposed of by order dated 16.07.2012.

5 It is pursuant to the said order dated 16.07.2012 that application Exh.U-53 came to be filed by the Applicant. In so far as the said application is concerned, it has been mentioned in paragraphs 3 that the Investigating Officer is presently retired. The Investigating Officer was sought to be described as Commissioner and it was stated that the Commissioner has turned hostile to the Applicant and is partial, bias and turned favourable towards the Opponents and in paragraph 4, the reasons as to why the report of the Investigating Officer could not be accepted have been stated. The application Exh.U-53 was sought to be founded on the principles applicable to the appointment of the Commissioner under Order XXVI Rule 9 of the CPC and thereby the Applicant had sought the cross-examination of the Investigating Officer on the same basis as the cross-examination of a Commissioner appointed

under Order XXVI of the CPC is sought. The said application Exh.U-53 has been rejected by the impugned order dated 07.09.2012. However, both the parties were directed to submit their queries to the Industrial Court and it has been observed by the Industrial Court that after hearing both the parties the Industrial Court will scrutinize the said carefully and then forward it to the Investigating Officer being his answers. The Learned Member of the Industrial Court whilst passing the impugned order has founded the same on the scope of an enquiry which is entrusted to the Investigating Officer and the scope of the challenge to a report submitted by the Investigating Officer. The Learned Member of the Industrial Court has adverted to the judgment of a Learned Single Judge of this Court in Teddington Chemical Kamgar Sangh Vs. Maharashtra General Kamgar Union and others reported in 1990-II-LLN-466, wherein it has been held that the Investigating Officer in so far as the verification of membership is concerned, has to act under the control of the Industrial Court. The Learned Member has also adverted to the judgment of a Division Bench of this Court in Premier Automobile Employee's Union Vs. K. M. Desai and others reported in 1996-I-CLR-1040, wherein a similar prayer as made in the instant case for cross-examination of the Investigating Officer was rejected and the following order was passed :-

“The parties will submit in writing the queries they desire to put to the Investigating Officer. The first respondent shall scrutinise the proposed queries and the ones approved by him after hearing the parties shall be answered by the Investigating Officer.”

6 The Learned Member of the Industrial Court has observed that the report submitted by the Investigating Officer is for the purpose of assisting the Court to save the time of the Court in recording the evidence and it is not binding on the Court to accept the report of the Investigating Officer as it is. The Learned Member has further held that after the receipt of the report, the Court has to consider the objections of the parties if any on the report whilst deciding the matter in terms of the guidelines in *Premier Automobile Employee's Union's case (supra)*. The Learned member has lastly observed that having regard to the nature of the mandate given to the Investigating Officer, it would be very difficult for the Investigating Officer to perform his duties, if he was to be directed to be cross-examined.

7 In my view, having regard to the mandate of Sections 8 and 9 of the MRTU & PULP Act, 1971 and having regard to the role of the Investigating Officer which can only be said to be to assist the Court in arriving at a conclusion, the order passed by the Learned Member of the Industrial Court in rejecting the application Exh.U-53 and issuing the directions as contained clause (2) of the operative part, cannot be said to

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suffer from any illegality or infirmity. Hence, no fault can be found with the impugned order. No case for interference in the writ jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]