

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

WRIT PETITION NO.1706 OF 2016

The Municipal Corporation of Greater Mumbai .. Petitioners

Versus

Shri. Rajendra Sahadev Chavan and another .. Respondents

Mr. R. N. Shah with Ms. Kavita Anchan i/by M. V. Kini & Co. for the
Petitioners.

Mr. Sanjay Singhvi, Senior Advocate i/by Mr. Rahul Kamerkar for the
Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.

DATE : 18th AUGUST 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 04.11.2014 passed by the Learned Member, Industrial Court, Mumbai, by which order, an application Exh.U-2 for interim reliefs filed by the Respondents herein came to be allowed and the Petitioners herein were directed to reinstate the Respondent No.1 herein i.e. Shri. Rajendra Sahadev Chavan in service with immediate effect on the post of Compounder-cum-Assistant to Clerk in the Vikhroli Bus Depot and pay him the regular wages.

2 The Respondent Nos.1 and 2 herein have filed the complaint

in question being Complaint (ULP) No.293 of 2015 alleging unfair labour practice on the part of the Petitioners under Item No.1(a), 4(a) of Schedule II and Item Nos.3, 5, 9 of Schedule IV of the MRTU and PULP Act, 1971. The Respondent No.1 herein was working as Compounder-cum-Assistant Clerk in the establishment of the BEST Undertaking. The Respondent No.2 herein is a Trade Union operating in the said BEST Undertaking. A charge-sheet came to be issued to the Respondent No.1 alleging habitual absenteeism from work. It seems that pursuant thereto, the inquiry proceedings commenced sometime in May 2015. It appears that on two dates in May 2015 the Respondent No.1 sought an adjournment on the ground that he was suffering from back pain. The said request of the Respondent No.1 was acceded to and the inquiry was kept on 31.07.2015. On the said day, the Respondent No.1 did not appear. As a consequence of which an announcement was made on the public address system in the Vikhroli Bus Depot and thereafter the inquiry was proceeded with and a dismissal order came to be passed against the Respondent No.1 on the same day i.e. on 31.07.2015. It seems that the inquiry was conducted by the Traffic Officer one Prashant R. Dhoke who has also passed the order of dismissal as a Competent Authority.

3 The instant complaint was filed on 30.07.2015 and was moved for the next day i.e. on 31.07.2015 of which notice was given to

the BEST Undertaking. On 31.07.2015 advocate Shri. T. Baig appeared on behalf of the BEST Undertaking and gave an undertaking that inquiry would not be proceeded with until further orders, this was in view of the fact that the application Exh.U-2 for interim relief was moved by the Respondent No.1. However, as indicated above, the final order of dismissal came to be passed on 31.07.2015 itself. In the complaint, the instant application Exh.U-2 for interim relief came to be filed. The said application was replied to on behalf of the BEST Undertaking. The Learned Member of the Industrial Court as indicated above has by the impugned order dated 04.11.2015 has allowed the said application Exh.U-2 for interim relief and has issued the directions which have been adverted to in the earlier part of this order. The impugned order is based inter-alia on the fact that the inquiry was proceeded with notwithstanding the statement made before the Court by Shri. T. Baig on 31.07.2015 that the inquiry would not proceed with. The order is also founded on the fact that the Inquiry Officer and the Competent Authority who is vested with the power of punishment is one and the same person and that the inquiry has been completed on 31.07.2015 as also the order of punishment passed on the same day. In so far as transfer of the Respondent No.1 from Vikhroli to Backbay Bus Depot is concerned, the Learned Member held that normally the transfer has to be around locality of the residence of the

worker and since in the instant case, the transfer is from Vikhroli to Backbay Bus Depot, the said transfer was malafide.

4 The Learned Counsel appearing on behalf of the Petitioners would seek to draw this Court's attention to the fact that the instant case is a case of gross absenteeism where the Respondent No.1 has been absent for more than 150 days prior to the issuance of the charge-sheet. It was also the contention of the Learned Counsel that in so far as the transfer is concerned, though there being no material on record to bring home the allegation of the transfer being malafide, a finding has been recorded to the said effect.

5 Per contra, the Learned Senior Counsel appearing on behalf of the Respondents Mr. Sanjay Singhvi would support the impugned order. The Learned Senior Counsel would contend that the aspects as regards the manner in which the inquiry was conducted, the aspect of the manner in which the punishment was imposed as also the malafides in respect of the transfer from Vikhroli to Backbay Depot are issues which would have to be considered at the hearing of the said complaint. However, having regard to the reasons mentioned by the Learned Member, the order allowing the interim application Exh.U-2 cannot be faulted with.

6 Heard the Learned Counsel for the parties. Though it is well settled that interim reliefs in the nature of final reliefs cannot be granted in the proceedings. However, the same is also subject to an exception namely that if a strong prima-facie case is made out then such mandatory reliefs could be granted. In the instant case, the facts which have weighed with the Learned Member of the Industrial Court whilst allowing the said application Exh.U-2 have already been adverted to in paragraph 2 hereinabove. In my view, having regard to the said facts the grant of interim reliefs by way of mandatory order cannot be faulted with. In so far as the transfer of the Respondent No.1 from Vikhroli to Backbay Depot is concerned, except stating that the said transfer of the Respondent No.1 was one amongst the 55 transfers effected from one depot to another depot, there does not seem to be any other material to justify the said transfer. Hence, prima-facie the finding recorded by the Learned Member as regards the said transfer cannot be taken exception to at the interim stage. As rightly contended by the Learned Senior Counsel appearing on behalf of the Respondents the issues relating to the manner in which the inquiry is conducted as also whether the punishment is proper or not would have to be gone into at the hearing of the complaint. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 However in the facts and circumstances of the case, the hearing of the Complaint (ULP) No.293 of 2015 is expedited and is directed to be disposed of latest by 31.05.2017.

8 Needless to state that the observations made in the instant order or in the impugned order are only for the purposes of consideration of the application Exh.U-2. The Complaint undoubtedly would be tried on its own merits and in accordance with law uninfluenced by the instant order or the impugned order.

[R.M. SAVANT, J]