

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 461 OF 2017

PRADEEP SAHEBRAO Pradeep Sahebrao Nimase and others.

-VERSUS-

Mula Pravara Electricity Cooperative Society Ltd.

WITH

WRIT PETITION NO.:996 OF 2017

Jagdish Arjun Kharat

VERSUS

Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director.

WITH

WRIT PETITION NO.:997 OF 2017

Ganesh Rangnath Hadake

VERSUS

Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director.

WITH

WRIT PETITION NO.:998 OF 2017

Dattatraya Haribhau Bandre

VERSUS

Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

WITH

WRIT PETITION NO.:999 OF 2017

Anil Ganpat Naik

VERSUS

Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

**WITH
WRIT PETITION NO.:1000 OF 2017**

Hanuman Narayan Pandhare
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

**WITH
WRIT PETITION NO.:1001 OF 2017**

Ansar Ekbal Shaikh
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

**WITH
WRIT PETITION NO.:1002 OF 2017**

Kishor Venunath Gagare
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

**WITH
WRIT PETITION NO.:1003 OF 2017**

Ashok Laxman Unde
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director

**WITH
WRIT PETITION NO.:1004 OF 2017**

Sanjay Bajirao Badakh
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director.

**WITH
WRIT PETITION NO.:1005 OF 2017**

Pradeep Narayan Patare
VERSUS
Mula Pravara Electricity Co Operative Society Ltd Through Its Managing
Director.

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Advocate for Petitioners : Shri Barde Parag Vijay.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th January, 2017

Per Court:

1 Considering the numerous ULP complaints filed before the Industrial Court and a single Writ Petition filed in this Court, I had passed the following order on 18.01.2017:-

- "1. This petition shall be treated as a proceeding in connection with Complaint (ULP) No.72/2013 filed by Pradeep Sahebrao Nimse.
2. With regard to the rest of the complaints mentioned in the prayer clause, the petitioners shall file the memo of the writ petition. Mr.Barde submits that this would be done by 20.01.2017.
3. Stand over to 20.01.2017 at 2:30 pm for passing orders.
4. Since court fees for all these petitioners has been deposited, petitioner Nos.2 to 11 would be exempted from depositing fresh court fees. Memo of the writ petitions under the signature of the learned Advocate for the petitioners, in the light of the above, are permitted to be filed."

2 All the Petitioners before this Court are parties to their

individual complaints before the Industrial Court. By the impugned judgment dated 08.11.2016 and 09.11.2016, the ULP Complaints filed by these Petitioners have been dismissed on the ground that the prayers set out cannot be entertained by the Industrial Court under Items 5, 9 and 10 of Schedule-IV of the MRTU & PULP Act, 1971.

3 Shri Barde, learned Advocate for the Petitioners, has strenuously criticized the impugned judgments. The contention is that though the complaints were filed assailing the order of retrenchment dated 03.12.2012 with retrospective effect from 03.10.2011, it was further prayed that unpaid wages from 03.10.2011 till the order of retrenchment dated 03.12.2012 should be paid to the Petitioners. The VRS (Voluntary Retirement Scheme) made available to the other employees, should also be made available to these Petitioners and the Maharashtra State Electricity Distribution Company Limited be directed to absorb the Petitioners in its employment akin to some other employees, who have been similarly absorbed.

4 He further submits that Respondent No.1 has closed down its business activity. The VRS is floated. Some workers are conveniently selected for the benefits of the VRS and after discharging their services, they were not paid the benefits of the VRS. Such matters are before this

Court for hearing.

5 Despite the strenuous submissions of the learned Advocate, I find that these matters stand on a different footing. These Petitioners were retrenched on 03.12.2012 with effect from 03.10.2011. The issue of termination and retrenchment with retrospective effect is to be considered. The learned Division Bench of this Court in the matter of *Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional, Mula*, **1988 (4) Bom. C.R. 158 : 1987 (2) CLR 231**, has laid down the law that the termination of any employee, be he a temporary or a daily wager or permanent, with retrospective effect is unsustainable and unforeseen in law.

6 Under Section 7 of the MRTU & PULP Act, 1971, the jurisdiction of the Labour Court is to entertain the cases of discharge, dismissal, termination, retrenchment, removal, etc.. Under Section 5, the Industrial Court can entertain grievances falling under Schedules-II and III and items 2 to 10 of Schedule-IV of the MRTU & PULP Act, 1971. The Honourable Supreme Court in the matter of *Hindustan Lever v/s Ashok Vishnu Kate*, **1995(6) SCC 326**, has concluded that the Labour Court can entertain the grievance even against the proposed termination at the penultimate stage.

7 Considering the above, if the Industrial Court has held in these cases that the cause of action of termination and the prayers incidental and consequential to the act of retrenchment, cannot be gone into by the Industrial Court, I do not find that the said conclusion could be faulted.

8 Considering the above, all these petitions are disposed of with liberty to the Petitioners to avail of the remedy under Item 1 of Schedule-IV of the MRTU & PULP Act, 1971 before the Labour Court. In the event, the said complaints are filed within the period of three weeks from today, the time spent by these Petitioners before the Industrial Court from 28.01.2013 till the passing of this order, shall be a good ground for condonation of delay.

9 Needless to state, as the complaints have not been entertained by the Industrial Court for being untenable, the view taken by the Industrial Court in the common judgment dated 08.11.2016 and 09.11.2016 shall not be an impediment for the Labour Court to decide the complaints of these Petitioners on their own merits.