

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

WRIT PETITION NO. 2894 OF 2017

Sunil s/o Vitthalrao Jikre,
Age : 44 years, Occupation : Nil,
R/o Nagoba Galli, Main Road,
Bhoom, Tq.Bhoom,
District Osmanabad.

...PETITIONER

-VERSUS-

The Manager,
Janseva Nagri Sahkari Bank Ltd.,
R/o S.No.220, Kureshi Building,
Kusum Nagar, Tq.Bhoom,
District Osmanabad.

...RESPONDENT

...

Advocate for Petitioner : Shri Ghute Suhas B.

Advocate for Respondent : Shri Mukul S. Kulkarni and Shri D.A.Madake.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have considered the strenuous submissions of Shri Ghute,
learned Advocate for the Petitioner/ original Complainant before the

Labour Court and Shri Kulkarni, learned Advocate on behalf of the Respondent/ Employer.

3 Considering the order that I intend to pass, I deem it proper not to advert to their entire submissions since it might lead to certain observations which would come in the way of either of the parties keeping in view that the ULP complaint is pending adjudication.

4 The Labour Court, by order dated 06.05.2015, has allowed the application Exhibit U/2 in Complaint (ULP) No.44/2014 and has granted interim relief under Section 30(2) of the MRTU & PULP Act, 1971 whereby, the Respondent is directed to reinstate the Petitioner/ workman till the decision in the main complaint.

5 It is trite law that final relief at an interim stage cannot be granted. To put it conversely, interim relief in the nature of final relief ought not to be granted.

6 The Industrial Court, by the impugned judgment dated 29.11.2016, has allowed Revision (ULP) No.25/2015 filed by the Respondent and has quashed and set aside the interim order of the Labour Court. The complaint is made time-bound and the Labour Court is

directed to decide the complaint within four months.

7 There is no dispute that the Respondent has entered the Written Statement specifically listing out the misdeeds committed by the Petitioner which would amount to sexual harassment. Several other instances have been cited which convinced the Management to dispense with the service of the Petitioner looking at the seriousness and gravity of the situation. On internal page 9 of the Written Statement, the Respondent/ Management has specifically reserved its right to conduct an enquiry and prove the charges of misconduct before the Labour Court. This is in tune with the law laid down by the Honourable Supreme Court (five judges Bench) in the matter of *KSRTC v/s Lakshmiddevamma*, 2001 (2) CLR 640. The Respondent is, therefore, under an obligation to conduct an enquiry before the Labour Court by leading evidence for proving the charges. The onus and burden lies on the Management to prove the charges. Once this burden is discharged, it would then be for the workman to prove that he has not committed the said misconduct.

8 Notwithstanding the above, from 06.05.2015 till the Industrial Court delivered the impugned judgment, interim order was operating and the Industrial Court had not stayed the said interim order. Only to balance the equities, I am, therefore, inclined to direct the

Respondent to pay an amount equal to 50% of the gross salary of the Petitioner/ Employee for a period of three months, keeping in view that the Labour Court is to decide the complaint on its merits by the end of April, 2017.

9 Considering the above, this Writ Petition is partly allowed by modifying the impugned judgment of the Industrial Court as under:-

- (a) The Labour Court shall frame the issues, if not already so done.
- (b) The Respondent/ Management shall commence the recording of its evidence before the Labour Court for proving the charges against the Petitioner/ original Complainant.
- (c) After the Management has concluded recording its evidence, the Petitioner shall then commence the recording of his evidence.
- (d) Both the parties are at liberty to place documentary evidence on record besides their oral evidence to be recorded as observed above.
- (e) The Respondent/ Management shall deposit the amount equal to 50% of three months gross wages of the Petitioner (said to be Rs.8000/- per month) before the Labour Court within four FOUR WEEKS from today and the Petitioner shall

be entitled to withdraw the said amount without conditions.

- (f) The Labour Court shall endeavour to decide the complaint as directed by the Industrial Court by the end of April, 2017 and the litigating sides shall cooperate with the Labour Court by refraining from seeking unnecessary adjournments on unreasonable or trivial grounds.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)