

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4113 OF 2014

Balasaheb Maruti Dhas,  
Age-55 years, Occu-Agriculturist,  
R/o Village Hol, Tal.Kaij,  
Dist.Beed

-- PETITIONER

VERSUS

1. Chandrakant Tukaram Shinde,  
Age-Major, Occu-Vice President,  
Maharashtra Gramin Bank Employees  
Union,  
R/o Yermala, Tal.Kallamb,  
Dist.Osmanabad,

2. Deputy Registrar,  
Trade Union, Aurangabad Division,  
Deputy Labour Commissioner Office,  
Aurangabad,

3. The State of Maharashtra,  
Through the Deputy Commissioner  
of Labour, Aurangabad Division,  
Maljipura, Station Road,  
Aurangabad.

-- RESPONDENTS

Mr.V.S.Undre, Advocate for the petitioner.  
Mr.Ashish Rajkar h/f Mr.S.D.Joshi, Advocate for respondent No.1.  
Mr.S.N.Kendre, AGP for respondent Nos. 2 and 3.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties

2. The petitioner is aggrieved by the order dated 05/03/2014 by which respondent No.2 has suo-motu cancelled the consent certificate dated 14/02/2014 issued for permitting the petitioner to approach the Industrial Court u/s 28-1A of the Trade Unions Act, 1926.

3. I have heard the learned Advocates for the respective sides

4. The petitioner was dismissed from service by the employer on 03/01/2013. He was a member of the Maharashtra Gramin Bank Employees' Union (erstwhile Marathwada Gramin Bank Employees' Union). After his dismissal from service, the Union has not passed a specific order terminating his membership or expelling him from the membership of the said union.

5. By a Complaint dated 28/03/2013 addressed to respondent No.2, the petitioner has listed out the financial irregularities committed by respondent No.1 who is the Vice President of the said Union. Respondent No.2 issued notices and commenced the hearing on the said application. On 02/01/2014, respondent no.1 addressed

an application to respondent No.2 praying for an adjournment and requesting that the consent certificate may not be issued ex-parte.

6. On 14/02/2014, the said consent certificate was issued. Respondent No.2 has observed that he is satisfied that a dispute of the nature mentioned in Section 28-1A(1) exists and permission was granted to the petitioner to approach the Industrial Court at Nanded. However, without issuing any notice to the petitioner, respondent No.2 cancelled the consent certificate by the impugned order dated 05/03/2014 and posted the hearing to 22/04/2014.

7. There can be no dispute as regards a member of a Trade Union raising a dispute u/s 28-1A(1). The requirement is that the complainant must be a member of the Trade Union at least for 6 months before making such a complaint. In the consent certificate, respondent No.2 has noted that the petitioner is an ex-member of the Union. If he is not a member of the Union on the date of the complaint, no complaint can be entertained u/s 28-1A(1).

8. Section 28-1A(1) of the Trade Unions Act, 1926 reads as under :-

*“Power of Industrial Court to decide certain disputes - (1) Where*

*there is a dispute as respects whether or not any person is an office bearer or a member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.”*

9. It is trite law that an order passed by the authority cannot be recalled without issuing any notice to any of the parties. Respondent No.2 apparently has acted highhandedly and has cancelled the consent certificate dated 14/02/2014 without notice to any of the parties. Such an act is not permissible and needs to be deprecated.

10. It also appears that respondent No.2 has not applied his mind to Section 28-1A and has not addressed the issue as to whether the petitioner is a member of the Union. Dismissal of the petitioner from service will not *ipso-facto* lead to his expulsion or termination of his membership except in accordance with law.

11. Since I find that respondent No.2 has not considered all the

material factors of the case while passing the impugned order dated 05/03/2014, the said order needs to be quashed and set aside. However, it cannot be ignored that the petitioner is stated to be an ex-member of the Union in the consent certificate and if that be so, he would not be legally entitled to file an intra-union dispute u/s 28-1A(1).

12. Respondent No.1 submits that he has also been dismissed from service and presently is not the Vice-President of the Union.

13. Considering the peculiar facts as above, this petition is partly allowed with the following directions :-

[a] The impugned order dated 05/03/2014 stands quashed and set aside.

[b] The Consent certificate dated 14/02/2014 shall be kept in abeyance.

[c] The petitioner and respondent No.1 agree to appear before respondent No.2 at the office of the Deputy Commissioner of Labour, Aurangabad on 24/03/2017 at 11.00 a.m.

[d] In the event respondent No.1 makes a statement on appearance before respondent No.2 that he no longer represents the Union, respondent No.2 shall then issue notice to the President and General Secretary of the Union for the purpose of proper adjudication of the complaint filed by the petitioner.

[e] Respondent No.2 shall verify the membership of the petitioner as on date of the complaint which is 28/06/2013 and in the event it emerges from the record that his membership continues on the basis of the subscription paid and he has not been expelled or his membership has not been terminated, the petitioner would be legally entitled to seek a consent certificate.

[f] Respondent No.2 shall, therefore, consider the record of the Union and after considering the grievance of the petitioner set out in the complaint dated 28/06/2013, shall pass an appropriate order under Rule 23(2) under the Trade Unions Act, on the merits of the complaint.

[g] It is expected that respondent No.2 would decide the said complaint as expeditiously as possible and preferably on or before 23/06/2017.

[h] Respondent No.1/Union shall be duty bound to produce the original records of the Union and its membership for the perusal of respondent No.2 and failure to do so, would entitle respondent No.1 to draw an adverse inference against the Union.

[i] After respondent No.2 passes a fresh order u/s 28-1A, the order dated 14/02/2014 shall lose its efficacy.

14. Rule is made partly absolute in the above terms.

15. Pending civil applications, if any, do not survive and stand disposed of.

( RAVINDRA V. GHUGE, J.)