

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7856 OF 2017

(Ashfaq Ali Khan s/o Abdul Ali Khan Vs. The State of Maharashtra
and another)

Mr.Amol Joshi h/f Mr.R.S.Deshmukh, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for respondent No.1.
Mr.R.K.Ingole Patil, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 29/06/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 06/06/2017 passed by the Industrial Court, Jalna by which the Industrial Court has declined to hear the application for interim relief filed u/s 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971 (For short, Act of 1971), Exhibit U-2.

2. The petitioner has voiced a grave urgency in this matter on the ground that he would be superannuating at the age of 58 years on 30/06/2017. The Industrial Court, according to the learned Advocate for the petitioner and as is evidenced by the impugned order, has declined to hear Exhibit U-2. It is unconscionable that the Industrial Court could refuse to hear an application and I disapprove it.

3. Learned Advocate appearing on behalf of respondent No.2 / Municipal Corporation and the learned AGP appearing on behalf of respondent No.1 submit that this petition deserves to be dismissed because the claim of the petitioner cannot be entertained on its merits.

4. Upon considering the extensive submissions of the learned Advocates for the respective sides, it is apparent that the petitioner has preferred Complaint (ULP) No.15/2017 for seeking correction in his date of birth. The official records indicate 05/06/1959 as the date of birth of the petitioner. The petitioner relies upon the birth certificate issued by the then Municipal council, Nanded dated 15/01/1985 which mentions his date of birth as 06/06/1962.

5. I find that the School Leaving Certificate issued by the Zilla Parishad, Secondary School, Itwara, Nanded dated 27/10/1976 indicates that the petitioner appeared for his S.S.C. examination in March 1976. His date of birth is 06/06/1959. He was, therefore, 16 years and 9 months when he appeared for his 10th standard examination. He has failed in the S.S.C. examination and has left the school. Another school leaving certificate of his elder brother Basit Ali Khan also indicates his date of birth as 05/06/1959 issued

by the same school at Itwara. Learned Advocate for the petitioner submits that the petitioner and his brother Basit Ali Khan are not twins.

6. Even if the case of the petitioner of having been born on 06/06/1962 is accepted, it would mean that he had appeared for his S.S.C. examination at the age of 13 years and 9 months. His elder brother was also in S.S.C. class alongwith him in 1975-76.

7. I, therefore, do not find, prima facie that any interim relief could be granted to the petitioner, of the nature of preventing his retirement and permitting him to continue in employment.

8. The petitioner is presently working as a 'Building Inspector'. His nature of duties and job profile will have to be scrutinized by the Industrial Court to find out whether he is a workman u/s 2(s) of the I.D.Act and whether he is an employee u/s 3(5) of the Act of 1971. Without concluding that the Industrial Court could exercise jurisdiction in this matter, no interim relief could be granted keeping in view the judgment delivered by this Court in Dalal Engineering Pvt.Ltd., Vs. Ramrao Bhaurao Sawant and others [1991(4) Bom.C.R. 571 = 1991(2) Mh.L.J. 1534].

9. Considering the above, this petition is dismissed for being devoid of merit. Needless to state, the Industrial Court shall first deal with the issue as to whether the petitioner is a workman and thereafter may consider the complaint, if it is held to be tenable.

10. Learned Advocate for the petitioner submits that after retirement, his complaint may become infructuous. I don't think that the said apprehension is sustainable since the complaint can be decided on its own merits notwithstanding that he would be superannuating on 30/06/2017.

(Ravindra V.Ghuge, J.)