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

WRIT PETITION NO.11151 OF 2014

Kinetic Engineering Ltd.,
Nagar Daund Road,
Ahmednagar

..PETITIONER

VERSUS

Raju s/o Madhavrao Shinde,
Age: 46 years, Occu: Service,
R/o. 1832, Subhedar Galli,
Ahmednagar

..RESPONDENT

Mr Sachin V. Dankh & Mr Lalit B. Deshmukh, Advocates holding for Mr V.
S. Bedre, Advocate for petitioner;
Mr K. M. Nagarkar, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 10th November, 2017

ORAL ORDER:

Learned Counsel Mr Sachin Dankh is permitted to file his
Vakalatnama.

2. Complaint (ULP) No.472 of 1988 came to be allowed on 24th
February, 1994, which was confirmed in Writ Petition No.1275 of 1994, on
11th March, 2005 and subsequently in Letters Patent Appeal No.86 of
2005, on 3rd July, 2008. By the said order, permanency was conferred on
the present respondent along with consequential benefits.

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3. The present respondent-employee, having realized that he is not paid his consequential dues, initiated proceedings under Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 (for short "Act"), which was registered as Misc. Application (U.L.P.) No.1 of 2012. In the said proceedings he sought directions for recovery of amount of Rs.9,61,012.32 ps., as money due from the employer. The said Misc. Application came to be allowed and a certificate of recovery as contemplated under Section 50 of the Act ordered to be issued for the said amount, by the judgment and order dated 31st July, 2014, passed by Member, Industrial Court, Ahmednagar. As such, this petition by the employer.

4. Heard Mr Dankh, learned Counsel appearing on behalf of the petitioner-employer and learned Counsel Mr Nagarkar on behalf of respondent-employee.

5. Mr Dankh would invite attention of this Court to the benefits which are conferred on the respondent-employee by the learned Industrial Court in Complaint (ULP) No.472 of 1988. He submits that what was invoked while granting such benefit was provisions of Items 6 and 9 of Schedule IV of the Act. He would then urge that after the order has attained finality, the employer has complied with the said order and nothing due and payable remained. According to him, as such, the proceedings which are taken out by the respondent-employee under Section 50 of the Act were not within limitation. He would then urge that if the contention of the respondent-

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employee in the application with that of his own evidence and his witness is appreciated, the same cannot be formed to be a basis for making an order for invoking Section 50 of the Act, as according to him the remedy lies elsewhere and that is, initiation of ULP complaint for flouting provisions of Item 5 of Schedule IV of the said Act. So as to substantiate his contentions, Mr Dankh would invite attention of this Court to the two judgments, namely, in the matters of **Ultra Drytech Engineering Ltd. and anr. vs. Vaibhav Laxman Suravkar and anr.**, reported in **2005 (1) Mh.L.J. 279**, particularly paragraph 15 and **Mahatma Phule Krishi Vidyapeeth Rahuri, Through its Registrar & anr. vs. Ahmednagar Zilla Shetmajoor Union & ors.**, reported in **(2017) 2 AIR Bom R 389**, particularly paragraphs 15 to 20. Mr Dankh, by taking me through evidence of all three witnesses viz. the evidence of the employee, his own witness and that of the representative of the petitioner-employer submits that the petitioner has discharged its burden by demonstrating that the entire amount is paid to respondent-employee. According to him, the only inference that can be drawn by appreciating evidence of respondent-employee and his witness in the backdrop of pleadings made in ULP complaint is that a case for relief under Item 5 of Schedule IV of the Act could have been initiated. He would urge that the learned Industrial Court has committed an error in exercising the powers under Section 50 of the Act for ordering recovery, when no such right to the benefit was adjudicated and conferred in favour of the respondent-employee.

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6. Per contra, Mr Nagarkar, learned Counsel appearing on behalf of the respondent-employee would urge that the provisions of Section 50 of the Act itself provides for mechanism for recovery of amount due from the employer, upon adjudication of rights of a party under the provisions of Chapter VI of the Act. He would urge that the plain reading of the written statement in the backdrop of the pleadings raised in the application under Section 50 of the Act, the evidence of respondent-employee and his witness, namely, Sanjay Misal in clear terms establishes that the amount as ordered was due and payable to him. He submits that in the said application the respondent has nowhere brought on record as to the amount which was payable to him pursuant to the judgment of the Industrial Court. He sought dismissal of the petition.

7. Considered rival submissions.

8. Upon perusal of application under Section 50 of the Act preferred by respondent-employee, it is reflected that the respondent-employee has given the amount due and payable to him by the petitioner-employer for the period from February, 1994 to July, 2009 and also towards compensation, pursuant to the order passed in Complaint (ULP) No.472 of 1988. In response to the same, except a plea of denial put-forth by the petitioner, no material whatsoever is brought on record depicting how the calculations of the employee are incorrect and how much amount was due and payable and paid pursuant to the earlier award of the Industrial Court. The employee thereafter examined himself and one more witness and

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established that he is entitled to receive an amount of Rs.9,61,012.32 ps. So as to establish the same, he has produced on record certain documentary evidence in relation to other similarly placed employee. He has also examined Sanjay Misal, a similarly placed employee, who could establish from his pay slip and also from the period in which the employee had worked with him, that he was entitled for the similar benefits. In cross-examination of both these witnesses, the present petitioner-employer was unable to extract anything to demolish the case of the respondent-employee of his entitlement under Section 50 of the Act for the amount claimed. Not only this, when the petitioner-employer examined its witness Shashikant Gulave, who was working as Senior Manager (H.R.), the amount which was paid to the present respondent and how much was entitled and payable to him under the award was not established. The present petitioner has also failed to demolish the case of the respondent-employee in cross-examination of their witnesses, that the respondent is entitled for the similar benefits as that of extended to the employee, namely, Sanjay Misal.

9. In the wake of above factual matrix and evidence brought on record, it has to be inferred from the record that the respondent-employee has established his case *qua* his entitlement to recover the amount, pursuant to the provisions of Section 50 of the Act.

10. So far as submission of learned Counsel appearing on behalf of petitioner as regards provisions of Item 5 of Schedule IV of the Act is

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concerned, it is required to be noted that upon complete adjudication of the claim of the present respondent, particularly about his entitlement under Items 6 and 9 of Schedule IV, an adjudication has attained finality upto this Court, after which the present respondent has tried to recover his amount pursuant to the provisions of Section 50 of the Act. It is not the case put-forth by the present respondent that he is treated indiscriminately, but what is sought to be claimed by the respondent is that the adjudication as was made by Industrial Court in Complaint (ULP) No.472 of 1988 is not taken to its logical end by making him payment to which, in law, he was entitled to.

11. Learned Counsel appearing on behalf of the petitioner, when confronted with the nature of evidence brought on record through evidence of the petitioner and failure on the part of the petitioner to extract the anything during cross-examination so as to demolish the case of employee, would urge that by putting the present petitioner to certain conditions, the matter be remitted back for fresh adjudication. Learned Counsel appearing on behalf of the respondent-employee strenuously opposed the same by stating that the respondent is agitating for his rights since 1988 and the proceedings have attained finality upto this Court.

12. Having considered aforesaid submissions, it is required to be noted that if the contention of the petitioner for remand of the matter is accepted, the same would amount to permitting it to fill in lacunae, which were left in recording of the evidence. Apart from above, this Court is not inclined to consider the said request, as already the rights of the parties are

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adjudicated on merits and what is sought to be claimed through the present petition is rightful entitlement under such adjudication. Thus, the prayer for remand is rejected.

13. In the aforesaid background, if the finding recorded by the Division Bench of this Court, in the matter of Ultra Drytech Engineering Ltd. (supra) is appreciated, what is required to be considered is, even plain arithmetical calculations are sufficient for deciding the entitlement of a party whose rights are already adjudicated under Chapter VI of the Act. In view thereof, the judgments relied upon by the petitioner will hardly be of any assistance.

14. In that view of the matter, no case for interference in the impugned order is made out. Writ Petition fails and stands dismissed.

(NITIN W. SAMBRE, J.)

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