

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3149 OF 2015

Sonyabapu Shekuji Zaware,
Age-70 years, Occu-Retired,
R/o Taharabad, Taluka Rahuri,
Dist.Ahmednagar

– PETITIONER

VERSUS

1. Ahmednagar Zilla Dekh-Rekh Sahakari
Sanstha Maryadit, Station Road,
Ahmednagar, Taluka and Dist.Ahmednagar
Through its Chief Executive Officer,

2. Rahuri Taluka Sahakari Dekh-Rekh Sangh
Maryadit, Rahuri, Taluka Rahuri,
Dist.Ahmednagar,
Through its Executive Officer

– RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.G.B.Rajale, Advocate for respondent Nos. 1 and 2.
Mr.N.T.Bhagat, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/01/2017

ORAL JUDGMENT :

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

2. While issuing notice to the respondents, I had recorded the contentions of the petitioner in my order dated 20/10/2015 which

reads as under :-

“1. The petitioner is aggrieved by the order dated 14.10.2013, by which the II Labour Court, Ahmednagar rejected Misc. Application (ULP) No. 6 of 2011 and the judgment of the Industrial Court dated 13.10.2014, by which, Revision (ULP) No.32 of 2014 filed by the petitioner has been dismissed.

2. The petitioner had filed Complaint (ULP) No.41 of 2001 on 20.3.2001. It was dismissed in default by order dated 20.7.2011. He immediately filed Misc. Application No. 6 of 2011 on 8.8.2011, within 30 days from the date of the dismissal in default order under Section 31 of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Same has been dismissed by the impugned order dated 14.10.2013.

3. The petitioner preferred Revision (ULP) No. 32 of 2014 before the Industrial Court, which was dismissed by the impugned judgment dated 13.10.2014.

4. The petitioner points out that the observations of the Labour Court in the impugned order from the second line of paragraph No.9 and ending on at the bottom two lines on page 40 of the petition paper book, which start with the words, “Hence I am of the view”, have been verbatim copied by the Industrial Court in paragraph No.11 second line, beginning with the words “Evidence affidavit Exhibit U/A.....” till the sentence “Hence, I am of the view”, which are the last lines on page 66 of

the petition paper book.

5. Issue notice before admission to the respondents returnable on 27.11.2015.”

3. It is not in dispute that the Labour Court had granted a last chance on 15/06/2011 while allowing the adjournment application Exhibit U-25. The petitioner was 66 years old as on the said date. One more last chance was granted on 28/06/2011 and finally as no application was filed for seeking adjournment and neither the petitioner nor his advocate were present on 20/07/2011, the Labour Court dismissed Complaint (ULP) No.41/2001 on the said date.

4. There is no dispute that the petitioner filed Misc.Appl.No.6/2011 on 08/08/2011 u/s 31 of the M.R.T.U. and P.U.L.P. Act, 1971 seeking restoration of the ULP complaint. Section 31 reads as under :-

“31. CONSEQUENCES OF NON-APPEARANCE OF PARTIES. –

(1) Where in any proceeding before the Court, if either party, inspite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed ex parte, and make such order as it thinks fit.

(2) Where any order is made ex parte under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order.

If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party."

5. The Labour Court, while passing the impugned order dated 14/10/2013 rejected the Misc.Appl., and has concluded that the petitioner failed to prove that he was prevented by illness from attending the Court on 20/07/2011.

6. The Industrial Court has dismissed the revision petition of the petitioner by the impugned judgment dated 13/10/2014 for the same reason. What is disturbing is that the Industrial Court has copied some portions of the order of the Labour Court *verbatim* and pasted them in its judgment as if those are the conclusions of the Industrial Court.

7. Mr.Rajale, learned Advocate for the respondent has strenuously opposed this petition. He submits that unless good and sufficient reasons are cited, the complaint could not have been restored by the Labour Court. In the alternative, he prays that heavy costs be saddled on the petitioner.

8. I find that a senior citizen like the petitioner who has stated that he was unwell at the age of 66 in 2011, cannot be brushed aside since there is every probability that at his age he may have fallen ill. So also, his Advocate remained absent which led to the dismissal of the complaint.

9. It cannot be ignored that the application for restoration was filed within 30 days and there was no delay caused. In such circumstances, the Labour Court and the Industrial Court should have taken a pragmatic view rather than taking a pedantic view. As a consequence, five years have lapsed and the petitioner is before this Court at the age of 70 years.

10. In the light of the above, this petition is partly allowed. The impugned order dated 14/10/2013 passed by the 2nd Labour Court is quashed and set aside. Misc.(ULP) No.6/2011 stands allowed and by

setting aside the order dated 20/07/2011, Complaint (ULP) No.41/2001 is restored to the file of the 2nd Labour Court, Ahmednagar. The impugned judgment of the Industrial Court dated 13/10/2014 is quashed and set aside and the Revision (ULP) No.32/2014 stands disposed of.

11. The litigating sides shall appear before the Labour Court on 04/02/2017 and formal notices need not be issued by the Labour Court.

12. In the event the petitioner succeeds in the ULP complaint, he would not be entitled for monetary benefits from 20/07/2011 till 04/02/2017.

14. The ULP Complaint having been instituted in the year 2001, shall be decided by the 2nd Labour Court as expeditiously as possible and preferably prior to 15/12/2017.

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

(RAVINDRA V. GHUGE, J.)