

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 2861 OF 2012

Mr. Numan Akhtar Jainulabedin Ansari	... Petitioner
V/s.	
Mr. Sajidullah Ibrahim Ansari & Anr.	... Respondents

Mr. M.A. Shaikh for the Petitioner.
Mr. Devang Sharma i/b Anamika Manjhalkar for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 16/02/2017**

PC.:

1. Heard learned Counsel for the parties.
2. By this petition under Article 227 of Constitution of India, the Petitioner is challenging the Judgment dated 28.04.2011 passed by Industrial Court at Thane in Complaint (ULP) No. 58 of 2010 filed by the Petitioner under Section 28 r/w Items 9 and 10 of Schedule 4 of the M.R.T.U. & P.U.L.P Act, 1971 for non implementation of the Award passed by the 3rd Labour Court, Thane dated 13.11.2006. The said complaint was dismissed by the Industrial Court on the ground that Petitioner failed to prove the relationship of employer-employee.
3. Few facts of the matter are as under:
 - a) The Petitioner original complainant was working in the power loom of the Respondent as “Mehta” (i.e. Accountant) from 22.08.1998 and was drawing monthly wages Rs.4,500/-. He was

doing the work of writings challans and day-to-day entries of production and delivery of the clothes of the Respondents. The Respondents terminated petitioner's services from 16.09.2002 without giving any notice or chargesheet. Hence, the Reference (IDA) No. 237 of 2004 was made to the 3rd Labour Court. The Reference was "Whether the Petitioner worker is entitled to reinstatement in service with full back wages and continuity in services w.e.f. 16.09.2002". In the said Reference, the Labour Court framed following issues:

No.	ISSUES	FINDINGS
1	Does the Second Party workman prove that the First Party has illegally terminated his service with effect from 16.09.2002?	Yes.
2	Does the Second Party workman prove that he is entitled to be reinstated with full back wages and continuity of service?	Yes
3	What award?	As per award passed below.

4. The learned 3rd Labour Court after considering the oral documentary evidence and circumstantial evidence on record held that the Second Party Workman was working with the First party employer as 'Mehta' w.e.f. 22.08.1998 and he has been illegally terminated by the First party employer w.e.f. 16.09.2002. Finally, the Labour Court directed Petitioner First Party to reinstate the Respondent Second Party Workman in service with full back wages and continuity of service w.e.f. 16.09.2002.

5. The said award was challenged by the Respondents by preferring Writ Petition No. 5023 of 2007 before this Court. The said Writ Petition was dismissed by the learned Single Judge on 09.07.2007.

6. Being aggrieved by the said Judgment of the learned Single Judge, the Respondents preferred Letters Patent Appeal No. 170 of 2007. The Division Bench of this Court by order dated 16.09.2016 dismissed the Letters Patents Appeal. The said order reads thus:

“P.C.

1. None appears on behalf of the Appellants and the Respondent. The Appellants are challenging the order passed by the Learned Single Judge dated 9th July, 2007. By the said order, the petition filed by the Appellants (Original Petitioners), challenging the award being Reference (IDA) No. 237 of 2004 -Part II was dismissed. It was urged on behalf of the Appellants that there is no employer-employee relationship between the Petitioners and Respondent-workman. The Learned Single Judge, after going through the evidence, had given a finding that the respondent has established that he was the employee of the Appellants-Original Petitioners. The Learned Single Judge, thereafter, has observed that no case is made out for remanding the matter to the Labour Court merely because the issue on that point has not been framed. We do not see any reasons to interfere with the impugned order passed by the Learned Single Judge. Hence, Letters Patent Appeal is dismissed.”

7. In the meanwhile, the petitioner filed Complaint (ULP) No. 58 of 2010 under Section 28 r/w Items 9 and 10 of Schedule IV of

M.R.T.U. & P.U.L.P. Act, 1971 for implementing the Award dated 13.11.2006 with following prayers:

- A] That it may be declared that the Respondents have engaged in and is engaging in unfair labour practice under Items 9 and 10 of Schedule IV to Act.*
- B] That the Respondents be directed to cease and desist in engaging in unfair labour practice.*
- C] That the Respondents be directed to reinstate the Complainant in the service of the Respondents and pay him wages from 14.11.2006 till he has been reinstated.*
- D] The pending hearing and final disposal of the complaint the Respondents be directed to pay amount of wages from 14.11.2006 till date or the same may be directed to be deposited in this Hon'ble Court.*
- E] The pending hearing and final disposal of the complaint the Respondents be directed to temporarily take back/ reinstate the complainant in service or in the alternative the Respondents be directed to pay 75% of the wages payable the Complainant every month or the same may be directed to be deposited in this Hon'ble Court.*
- F] Such other relief as this Hon'ble Court may deem fit.”*

8. In the said complaint, the Respondents filed written statement dated 28.09.2010 and opposed the said complaint. The parties also entered into witness box. The Industrial Court framed following issues:

Sr.	ISSUES	FINDINGS
1	Does the complainant prove that the Respondents are guilty of the unfair Labour Practices under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971?	No.
2	Does the Complainant prove that	No.

	it/he is entitled for the reliefs claimed?	
3	What order?	As per final order.

9. The Industrial Court by Judgment dated 28.04.2011 considering the evidence on record, dismissed the petitioner's complaint. The Industrial Court at the time of deciding the complaint filed by the Petitioner held that Respondents preferred Letter Patents Appeal No. 170 of 2007 and same was admitted. Therefore, there is no question of granting any relief to the petitioner.
10. Being aggrieved by the Judgment dated 28.04.2011 passed by the Industrial Court in Complaint (ULP) No. 58 of 2010, the Petitioner preferred present Writ Petition.
11. The learned Counsel Mr. M.A. Shaikh appearing on behalf of the Petitioner submits that Industrial Court erred in coming to the conclusion that Petitioner failed to make out the case for allowing Complaint (ULP) No. 58 of 2010 directing respondents to implement the Award dated 13.11.2006 in Reference (IDA) No. 237 of 2004.
12. The learned Counsel for the Petitioner submits that the learned Member of the Industrial Court has ignored the objections of the Petitioner that it is beyond the scope of the Industrial Court to again to reframe and reconsider the issue of existence of employer-employee relationship once the said issue was decided

by the Competent Court and Award was passed and against which Writ Petition and Letter Patent Appeal stand dismissed. He submits that Industrial Court by reconsidering the issue of employer-employee relationship exceeded its jurisdiction, while deciding the complaint of unfair labour practice of the Respondent.

13. The learned Counsel for the petitioner submits that once the Award was passed by the Competent Authority and same was upheld by this Court, then there is no question of reframing the entire issue in application/complaint for implementing the said Award. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the Judgment dated 28.04.2011 passed by the Industrial Court, Thane in Complaint (ULP) No. 58 of 2000 directing Respondents to reinstate the Petitioner in the service with full back wages and continuity of service w.e.f. 16.09.2002. He submits that if the petition is not allowed, irreparable loss and injury will be caused to them.
14. On the other hand, the learned Counsel Mr. Devang Sharma appearing on behalf of the Respondents vehemently opposed the present Writ Petition. He submits that Industrial Court rightly held that the petitioner failed to prove the relationship of employer-employee in the said Complaint. He submits that though the Award was passed by the Labour Court on 13.11.2006, the same was challenged by them by preferring Writ Petition before this Court. He submits that though the Writ Petition was dismissed by this Court, they preferred Letter Patent

Appeal. He submits that the said Letter Patent Appeal was dismissed as no one appeared on behalf of Respondents on the date of hearing. He submits that they already preferred Civil Application for restoration of the said Letter Patent Appeal. He submits that they have good chance of success in the said Civil Application for restoration of Letter Patent Appeal. He submits that if the Letter Patent Appeal is allowed by this Court, there is no question of reinstatement and/or payment of back wages. He submits that these facts were properly considered by the Industrial Court and dismissed the petitioner's complaint. Hence, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

15. In the present proceeding, the Respondents terminated petitioner's services. As the matter was not settled, the Reference was made to the Industrial Court being Reference (IDA) no. 237 of 2004 for determining the reinstatement of the petitioner with the Respondents and full back wages with continuity of service. The said Reference allowed by the labour Court by Award dated 13.11.2006. The Petitioner from time and again called upon the Respondents to implement the Award dated 13.11.2006, they failed and neglected to do so. Hence, the Petitioner filed Complaint (ULP) No. 58 of 2010 under Section 28 r/w Item 9 and 10 of Schedule IV of M.R.T.U. and P.U.L.P Act.
16. The Industrial Court instead of deciding the Complaint (ULP) No. 58 of 2010 on its own merits, unnecessarily made several other

inquiries. The Industrial Court recorded findings that, petitioner failed to prove the relationship of employer-employee and hence, he is not entitled to any benefit. Even the Industrial Court failed to consider the fact that Award dated 13.11.2006 was not implemented by the Respondents. Hence, Respondents should have been directed to implement the same with immediate effect. Considering these facts, I am of the opinion that the Judgment passed by the Industrial Court dated 28.04.2011 is against justice, equity and good conscience and same is required to be set aside.

17. The Respondents deposited sum of Rs.2,24,700/- with the concerned Tahsildar towards the back wages from the date of termination i.e. 16.09.2002 till 13.11.2006.
18. On the basis of above mentioned facts and the submissions made by the learned Counsel for the Petitioner, Writ Petition is allowed in the following terms:
 - A) Judgment dated 28.04.2011 passed by the Industrial Court, Thane in Complaint (ULP) no. 58 of 2010, is set aside.
 - B) Complaint (UL) No. 58 of 2010 filed by the petitioner before the Industrial Court under Section 28 r/w Item 9 and 10 of Schedule IV of M.R.T.U. and P.U.L.P Act, is allowed.
 - C) Respondents are directed to comply the Award dated 13.11.2006 passed by the 3rd Labour Court, Thane in Reference (IDA) No. 237 of 2004.

- D) Respondents are directed to pay admissible wages to the Petitioner from 14.11.2006 upto date.
- E) An arrears of wages from 14.11.2006 to be paid within four weeks from today, failing which they have to pay interest @ 9% per annum.
- F) Respondents to reinstate the Petitioner with immediate effect.
- G) Writ Petition is allowed in above mentioned terms with costs.

(K.K.TATED, J.)