

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8603 OF 2017

Sudhakar Ganpatrao Redekar

...Petitioner

Versus

Chief Executive Officer,
Kolhapur District Dekhreh Sahkari
Sanstha Ltd. Kolhapur

...Respondent

....

Mr.Prashant P. Kulkarni, Advocate a/w. Abhijeet B. Desai, for Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 28th JULY, 2017

P.C.

1. Not on board. At the request of Mr. Kulkarni taken up for admission.
2. Heard Mr.Prashant Kulkarni, learned counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 20.7.2017 passed by the learned Member, Industrial Court No.1, Kolhapur (for short, 'Tribunal') below Exhibit U-2 in Complaint (U.L.P.) No.167/2017. By that order, the Tribunal rejected the application made by the petitioner, hereinafter referred to as the complainant, for injunction restraining the respondent from

implementing the suspension order dated 1.7.2017 and directing the respondent to maintain status quo.

4. In support of this Petition, Mr. Kulkarni relied upon the bye-laws of the respondent society and in particular bye-laws No.13(h) and 15. Bye-law No.13(h) empowers the Secretary to impose penalty of suspension for substantial and sufficient reasons. Bye-law No.15 provides that the penalty prescribed under bye-law No.13(h) cannot be inflicted without holding enquiry. He submitted that the penalty of suspension was imposed without holding any enquiry. He submitted that the complainant was suspended on 1.7.2017 on the ground that he did not hand over charge to Shri Jitendra Prakash Phadake. However, Shri Phadake declined to take charge from the complainant. He, therefore, submitted that the suspension order deserves to be set aside. The Tribunal committed error in rejecting the application for interim relief.

5. I have considered the submissions advanced by Mr. Kulkarni. I have also perused the material on record. A perusal of the suspension order shows that it was issued on 1.7.2017. The complainant instituted the complaint on 4.7.2017 under Section

28 read with Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'Act') challenging the order issued on 1.7.2017.

6. It is not in dispute that the complaint was filed on 4.7.2017. On 5.7.2017, the Tribunal granted ad-interim order on the ground that the suspension order does not mention that it is pending disciplinary enquiry. The Tribunal observed that from the order of suspension *prima facie* it appears that already enquiry was done and the enquiry officer had submitted the report. The complainant came with the case that the order of suspension was by way of punishment. The Tribunal, therefore, directed the respondent not to give effect to the order of suspension dated 1.7.2017 till the next date and issued show cause notice to the respondent returnable on 10.7.2017. In my opinion, the Tribunal could not have granted *exparte* ad-interim order directing the respondent not to give effect to the order of suspension. The suspension order had already taken effect from 1.7.2017 and the complaint is instituted on 4.7.2017. The grant of ad-interim order will not amount to setting aside suspension order. It also does not amount to restoration of position prior to the suspension order

i.e. status quo ante.

7. A perusal of the written statement as also the reply to the application for interim relief filed by the respondent shows that the suspension order is issued pending enquiry. The Tribunal while passing the impugned order has referred to the contentions raised in the written statement to the effect that preliminary enquiry against the complainant was conducted and the respondent has decided to initiate departmental enquiry after issuing charge-sheet and accordingly the suspension order pending enquiry was issued.

8. Mr. Kulkarni relied upon bye-laws No.13(h) and 15 of the bye-laws of the respondent. I do not find any merit in this submission as basically the order of suspension was not issued as a measure of penalty. In view thereof and for the reasons recorded by the learned Tribunal in the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)