

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

WRIT PETITION NO.3618 OF 2004
AND
WRIT PETITION NO.5131 OF 2004
AND
WRIT PETITION NO.3720 OF 2004
AND
WRIT PETITION NO.3712 OF 2004
AND
WRIT PETITION NO.3718 OF 2004

Dhule Municipal Corporation,
Dhule, through Deputy Commissioner,
Dhule ..Petitioner

Vs.

1. Sanjay s/o. Sudhakar Jadhav,
Age ___Years, Occ. Business,
r/o. Siddhartha Nagar,
Chittod Road, Dhule
2. Regional Director,
Municipal Administration,
Nashik Road, Nashik Division,
Nashik ..Respondents

In all petitions :-

Mr.P.V.Barde and Mr.S.P.Shah, Advocates for petitioner

Mrs.R.D.Reddy, Advocate i/b. Mr.D.S.Bagul, Advocate for
respondent no.1

Mr.P.N.Kutti, AGP for respondent no.2

**CORAM : RAVINDRA V. GHUGE, J.
DATE : MAY 10, 2018**

ORAL JUDGMENT :

1. In all these Writ Petitions, the petitioner - Dhule Municipal Corporation is aggrieved by the judgment and order dated 06.09.2003 delivered by the Industrial Court, Jalgaon, in Revision Application (ULP) Nos.22 to 25 and 83 of 2003, which were filed by Sanjay Sudhakar Jadhav (respondent no.1 herein).

2. I have considered the strenuous submissions of the learned Counsel for the petitioner - Corporation, respondent no.1 and the learned AGP on behalf of respondent no.2.

3. The facts of these cases are peculiar. Few Class-IV employees, who were purportedly appointed by the President of the then Municipal Council, Dhule, having suffered termination from service, had approached the Labour Court, Dhule in Complaint (ULP) No.64 of 1997 and connected complaints. By the common judgment dated 30.12.2000, all the complaints were dismissed, the interim orders were vacated and the

termination of the complainants were sustained. However, the Labour Court directed that a copy of the order be supplied to the Director of Municipal Administration, Nashik Division, to initiate action for recovery of salaries and wages paid to the complainants. For the sake of clarity, the direction in Clause (3) of the judgment of the Labour Court is reproduced hereunder :-

"3. The copy of this order be sent to the Director of Municipal Administration, Nashik Division, Nashik, to initiate action for recovery of salaries and wages paid to these complainants."

4. The then President of the erstwhile Dhule Municipal Council - Shri. Sanjay Sudhakar Jadhav, filed Revision Application (ULP) in all the five matters under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "M.R.T.U. and

P.U.L.P. Act") before the Industrial Court. By the impugned common judgment dated 06.09.2003, the Industrial Court allowed the Revision Applications and set aside the directions of the Labour Court, reproduced above. The conclusions of the Industrial Court, in paragraph 9(1 and 2), are reproduced herein under :-

"1. The Revision Application (ULP) Nos.22/2003 to 25/2003 and 83/2003 are hereby allowed.

2. The common impugned judgments dt. 29.12.2000 and 30.12.2000 in ULP Complaint Nos.64/97 and others, 73/97 and others, 74/97 and others are hereby modified to the extent of quashing and setting aside the direction about the recovery of the amount of salaries/wages against the applicant."

5. The learned Counsel for the Municipal Corporation strenuously canvassed that the revisional jurisdiction of the Industrial Court under Section

44, is extremely limited and the same cannot be exercised as if the Industrial Court is dealing with an appeal under the Bombay Industrial Relations Act, 1946. Unless the direction of the Labour Court appears to be perverse and erroneous, no interference is called for. The twelve grounds formulated by the petitioner in the memorandum of these petitions are strenuously canvassed and it is submitted that the Labour Court was within its jurisdiction in issuing directions. The Industrial Court ought not to have interfered with the said directions.

6. The learned Counsel for respondent no.1 submits that the Labour Court had resorted to exercising the jurisdiction not vested in it by law. Unless unfair labour practice is declared against the respondent, consequential reliefs cannot be granted by the Labour Court. In the instant cases, the Labour Court sustained the termination of the original complainants and approved the action taken by the Municipal Council (presently Municipal Corporation)

and further concluded that the Corporation had not committed any unfair labour practice in terminating the service of these complainants. Once those complaints are dismissed and there is no ULP declaration, the Labour Court could not have directed proceedings against respondent no.1 herein, who was not even impleaded in his individual capacity in the said complaints. He was practically condemned unheard and the Industrial Court has rightly rectified the error committed by the Labour Court.

7. I find that the powers of the Labour Court and the Industrial Court are clearly set out under Sections 4 to 7 below Chapter II, under Sections 26 to 29 below Chapter VI and Sections 30 to 37 below Chapter VII of the M.R.T.U. and P.U.L.P. Act. The Labour Court or the Industrial Court, as the case may be, can entertain the cases pertaining to the unfair labour practice listed in Schedule II, III and IV of the Act. As per Item 1 of Schedule IV, termination, discharge, dismissal, removal, retrenchment, oral

termination or apprehended termination can be entertained by the Labour Court. The other cases under Schedule II, III and Items 2 to 10 of Schedule IV shall lie before the Industrial Court.

8. Section 28 of the M.R.T.U. and P.U.L.P. Act, enables the Court to deal with a complaint and grant relief, if the complaint is allowed. A declaration of ULP can also be made under Section 28 while deciding the complaint finally. Even at an interim stage, Section 30(1 and 2) of the M.R.T.U. and P.U.L.P. Act empowers the Court to decide as to which litigant in the case before it, has *prima-facie* engaged in or is engaging in unfair labour practice, and after declaring an ULP against an entity or a specific person, further directions can be given for preventing such ULP and also for grant of consequential reliefs to the complainant.

9. For the sake of clarity, Sections 28 and 30 of the M.R.T.U. and P.U.L.P. Act are reproduced as under :-

"28. Procedure for dealing with complaints relating to unfair labour practices –

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act :

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be

made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.

(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and

circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.

(7) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed."

"30. Powers of Industrial and Labour Courts –

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order –

(a) declare that an unfair practice has been engaged in or is being engaged in

by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

- (b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;*
- (c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under subsection (1) of section 20 or its right under section 23 shall be suspended.*

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of –

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed."

10. Section 29 prescribes that the order passed by it would be binding on the parties to the complaint including such persons who were summoned to appear before it. Section 29 reads as under :-

"29. Parties on whom order of Court shall be binding -

An order of the Court shall be binding on -

(a) all parties to the complaint;

(b) all parties who were summoned to appear as parties to the complaint, whether

they appear or not, unless the Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the complaint before such Court in respect of the undertakings to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relates; and

(d) where the party referred to in clause (a) or clause (b) is composed of employees, all persons, who on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be subsequently employed in the undertaking."

11. In the above backdrop, though the Labour Court may have realised, while deciding the complaint, that any authority of the Municipal Council has overstepped its jurisdiction in making appointments, it was expected to find fault with the

respondent/establishment. When no ULP was declared against the respondent/establishment, merely because the Labour Court realised that the appointments were made in an illegal/irregular manner, it would not empower the Labour Court to issue directions. Its observations in its judgment dated 20.03.2000, could be noticed by the petitioner – Corporation and after taking cognizance of the said observations, it could have resorted to such steps as would be permissible under any other law. The Labour Court was not expected to issue directions to the Director of Municipal Administration to initiate certain action against the Officers of the Corporation under Chapter VI or Chapter VII of the M.R.T.U. and P.U.L.P. Act.

12. Considering the above, I do not find that the Industrial Court has committed any error in setting aside the directions given in Clause (3), issued by the Labour Court. The Industrial Court, therefore, was right in concluding that it could have been left to the Corporation to decide, whether any

corrective measures were required to be taken for punishing those persons, who had unlawfully caused appointments and for preventing recurrence of such instances.

13. In view of the above, I do not find that the impugned judgments of the Industrial Court could be termed as being perverse or erroneous and more so, in view of the fact that the petitioner – Corporation can decide whether it desires to resort to any remedy, as is permissible in law, in so far as the conduct of its Officers is concerned.

14. The Writ Petitions are, therefore dismissed. Rule is discharged.

[RAVINDRA V. GHUGE, J.]

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