

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4376 OF 2014

SUSHIL BABURAO SARODE
VERSUS
MULA PRAVARA ELECTRIC COOPERATIVE SOCIETY LTD.,
SHRIRAMPUR AND OTHERS

Advocate for Petitioner : Mr. P.V. Barde.
Advocate for Respondent No. 1 : Mr. Ajinkya Deshmukh
h/f. Mr. A.V. Hon.
Advocate for Respondent No. 2 : Mr. S.M. Godsay.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 21st February, 2018

PER COURT :

1. After I had considered the extensive submissions of the learned advocate for the petitioner, the learned senior advocate for respondent No. 1 and the learned advocate for respondent No. 2 on 21/11/2017, the following order was passed :

“1 I have heard the learned Advocates for the respective sides for some time.

2 The Petitioner is aggrieved by the judgment of the Industrial Court dated 30.01.2013 by which, his Complaint (ULP) No.78/2005 has been dismissed.

3 There is no dispute that the Petitioner's father died while in service on 21.12.2003 and the Petitioner has made an application for

compassionate appointment on 06.04.2004 when he was 20 years old. This application was made on the basis of the award applicable to the parties, delivered in Reference (IT) No. 3/1984, which was proved before the Industrial Court at Exhibit U-6. By the said award, a provision has been made for effecting compassionate appointment in the event any permanent employee dies while in service.

4 The Petitioner had approached the Industrial Court on the ground that the award, which binds Respondent No.1/ Establishment, gives him the benefits as a legal heir of the deceased and hence, the right flowing from the award can be asserted. The violation of such right would amount to violation of the award which would be covered by Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

5 After considering the submissions of the learned Advocates for the respective sides, I find that the following conclusions of the Industrial Court render the impugned judgment perverse and unsustainable:-

"27. In my opinion, there was no relationship of employer and employee between the complainant No.2 in both the complaints with the respondent No.1. It is crystal clear that unless and until there is a relationship

between employer and employee complaints are not maintainable and complaint cannot be proceeded by third party. In both these complaints, in absence of evidence of the complainant No.1, complainant No. 2 adduced the evidence which in my opinion is not material and considerable in the absence of relationship of employer and employee. There appears order of the Labour Court under the Workmen's Compensation Act by virtue of which a sum of Rs.3,73,800/- was awarded as a compensation to the legal heirs of the deceased."

6 This Court has dealt with the applicability of the award or settlement in similar circumstances facilitating the compassionate appointment, in the matter of the State of Maharashtra and others vs. Sanjay Jagannath Viste, Writ Petition No.8460/2016 decided on 10.10.2016 and has concluded in paragraphs 7, 8 and 9 as under:-

"7. The petitioners have put-forth two grounds for challenging the judgment of the Industrial Court. Firstly, that the petitioners have not committed any ULP by deleting the name

of the respondent and secondly, there is no employer-employee relationship between the petitioners and the respondent.

8. *The Industrial Court concluded that there was notional extension of relationship between the petitioners and the respondent by relying upon the following three judgments:-*

(i) Manish Mishra V/s State of U.P. [1998 (79) FLR 846],

(ii) Bablu Singh V/s Coal India Ltd. [2009 I CLR 568], and

(iii) Writ Petition No.38 of 2008 Ahmednagar Municipal Corporation V/s M.C.Galphade and others.

9. *Considering the above, I do not find that the challenge posed by the petitioner to this extent deserves to be entertained."*

7 It is, therefore, apparent that the impugned judgment of the Industrial Court, refusing to exercise the jurisdiction on the ground that there was no employer-employee relationship between the Petitioner and Respondent No.1 herein, is unsustainable. The complaint, therefore, can be remitted to the Industrial Court for reconsideration and without going into the aspect of employer-employee relationship, since the pleadings are

complete and the oral and documentary evidence has already been led by all the sides.

8 However, Shri Barde, learned Advocate for the Petitioner, submits that considering the passage of time and the fact that Respondent No. 1 has lost its licence to conduct its business, it would be a matter of speculation as to whether, the Petitioner would succeed in getting the compassionate appointment when Respondent No.1/ Establishment is not conducting its business. He, therefore, submits that this Court may consider Section 30(1)(b) of the MRTU & PULP Act, 1971 and quantify reasonable compensation to undo the effects of the legal injury caused to the Petitioner by the conduct of Respondent No.1.

9 Shri Hon, learned Senior Advocate appearing on behalf of Respondent No.1, submits that he would require instructions in this matter so as to quantify the compensation since the prayer has been put forth by the Petitioner in the alternative.

10 Considering the above, stand over to 11.12.2017 so as to enable Respondent No.1 to make a statement and address this Court.”

2. Learned counsel for respondent No. 1 submits that considering the above, if this Court is inclined to remit

the ULP Complaint to the Industrial Court, all contentions of respondent No. 1 can be kept open. Learned counsel for the petitioner submits that since, this Court has already taken a view that employer-employee relationship dispute would not survive in such proceedings, barring the said issue, the ULP Complaint could be remitted with a direction that it should be decided within a time frame as it was lodged in the year 2005.

3. Considering the above, this petition is partly allowed. The impugned judgment and order dated 30/01/2013, is quashed and set aside and Complaint (ULP) No. 78/2005, is remitted to the Industrial Court, Ahmednagar, on the following conditions :

(a) Since, the issue of employer and employee has been settled by this Court, that issue has been put to rest.

(b) Considering the statement made by the learned counsel for the petitioner, on instructions that the petitioner would be only seeking compensation in lieu of compassionate appointment and consequential benefits, the Industrial Court shall accordingly deal with the said Complaint to the extent of the prayer put forth by the petitioner as is recorded.

(c) The litigating sides would appear before the Industrial Court on 09/03/2018. Formal notices need not be issued by the Industrial Court.

(d) The oral and documentary evidence already recorded would be considered.

(e) In the event any of the litigating sides desire to lead further oral evidence, leave is so granted.

(f) Complaint (ULP) No. 78/2005, shall be decided by the Industrial Court expeditiously and in any case on/or before 31/10/2018.

(g) The litigating sides shall not seek adjournments on unreasonable and trivial grounds.

(RAVINDRA V. GHUGE, J.)

S.P.C.