

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12301 OF 2018
(Umar Khan Abdulla Khan Vs. The Secretary)

Mr.S.D.Kotkar, Advocate for the petitioner.
Mr.P.P.Mandlik, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/11/2018

PER COURT :

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 20/07/2018 by which Revision (ULP) no.43/2016 filed by the respondent/Aurangabad Mathadi and Unprotected Labour Board, was allowed, the judgment of the Labour Court was quashed and set aside and the proceedings were remitted to be considered afresh.

2. I have considered the submissions of the learned Advocate for the petitioner/original complainant before the Labour Court in Complaint (ULP) No.29/2014 and the learned Advocate for the Board. With their assistance, I have gone through the 8 grounds formulated in the memo of the petition and the paper book.

3. It is obvious from the judgment of the Labour Court dated

27/07/2016 that the Labour Court, as observed in paragraph No.5, held that as the Mathadi Board did not enter its written statement, there is no requirement for framing of issues. Since the oral evidence and certain documents produced by the petitioner were considered, the Labour Court allowed the complaint by declaring that the Mathadi Board has committed a ULP under Item 1 of Schedule IV of the MRTU and PULP Act. The Industrial Court has set aside the said judgment purely on the count that the Board was unrepresented and it was an ex-parte judgment. By imposing costs of Rs.3,000/-, the proceedings were remitted to the Labour Court.

4. I find two issues which, in order to properly appreciate the facts of the case in consonance with the law prescribed, need to be considered in this petition.

Firstly, nowhere in the ULP complaint has the petitioner invoked Item 1 of Schedule IV. In paragraph No.9, the petitioner has invoked Item 2 of Schedule IV, which is not in connection with the act of termination, discharge, dismissal, retrenchment or otherwise removal from service. It pertains to abolishing the work of regular nature and passing over the work to contract labourers as a measure of breaking a strike. This aspect was lost sight of by both the Courts below. Nevertheless, it might be an error on the part of the

petitioner in invoking Item 2 by which his complaint would not be tenable before the Labour Court under Section 7. It could be possible that the petitioner desires to mention Item 1, but Item 2 is inadvertently typed.

Secondly, the Aurangabad Mathadi and Unprotected Labour Board is constituted under the Maharashtra Mathadi, Hamal and other Manual workers (Regulation of Employment and Welfare) Act, 1969. The table prescribed under Section 1 of the said Act indicates the industries to which the said act would be applicable. Such industries would be defined as Scheduled Industries and an unprotected workman working on loading and unloading assignments in that scheduled industry engaged by a particular factory/industry, would be covered by the said Act. Whether the Board constituted u/s 6 of the said Act would amount to an industry u/s 2(j) of the Industrial Disputes Act, 1947 will first have to be considered without which the Labour Court would not have any jurisdiction to entertain such a ULP complaint u/s 28 of the 1971 Act.

5. Considering the above, this petition is disposed of.

6. The Labour Court shall first frame an issue as to whether the

complainant could be termed as being a workman covered by the definition u/s 2(s) of the I.D.Act, 1947 r/w Section 3(5) of the 1971 Act and whether the respondent / board is an industry u/s 2(j) of the I.D.Act This issue shall be dealt with peremptorily as the Labour Court cannot exercise jurisdiction unless both these contingencies are satisfied. After deciding this issue of workman and industry, if both the definitions are satisfied, the Labour Court may thereafter proceed to deal with the complaint.

7. Needless to state, the respondent/board shall file its written statement alongwith all documents, if any and place the same before the Labour Court in any case on or before 14/12/2018. The respondent/Board shall note that any laxity or negligence in conducting the matter before the Labour Court, would deprive it of any ground of 'no opportunity of hearing'. Parties are at liberty to move the Labour Court to decide the case expeditiously.

(Ravindra V.Ghuge, J.)