

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10941 OF 2017

The Chief Executive Officer,
Parbhani District Central
Cooperative Bank Limited,
Parbhani.

..Petitioner

Versus

Nathuji Shankarrao Bhakre
Age 58 years, Occ. Nil
R/o Vidya Nagar, Hingoli,
Tq. and Dist. Hingoli.

..Respondent

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Advocate for Petitioner : Shri Joshi Sachin G.
Advocate for Respondents : Shri Kadu Shivraj B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 05, 2018

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. On 8.9.2017, this Court has recorded the submissions of the petitioner in the order which reads as under:-

"1. The petitioner is aggrieved by the judgment dated 10/04/2017 passed by the Industrial Court, Jalna, by which Revision (ULP) No.9/2015 filed by the respondent has been allowed and the judgment of the Labour Court dated 27/07/2012 rejecting Misc.ULP No.6/2011 has been set aside.

2. The dates in this matter are crucial and which are as under :-

[a] The respondent was terminated on 09/12/1998 for proved misconducts.

[b] He preferred Complaint (ULP) no.13/1999 and by virtue of an interim order, continued in employment.

[c] By order dated 29/06/2006, the Labour Court dismissed ULP No.13/1999 in default.

[d] Misc. ULP No.6/2011 u/s 31 of the MRTU and PULP Act, 1971 was filed in 2011.

[e] By judgment dated 27/07/2012, the Labour Court rejected the Misc. proceedings on the ground of delay.

[f] The Industrial Court, by the impugned judgment dated 10/04/2017, allowed the revision petition and by setting aside the judgment of the Labour Court, restored Complaint (ULP) No.13/1999 before the Labour court.

3. It is obvious that the Industrial Court has lost sight of the law as is laid down by the learned Division Bench of this Court in LPA No.3/2004. Based on the view taken by the learned Division Bench, the learned Single Judge of this Court has delivered its judgment in the matter of Dilip Vithalrao Jogdand Vs.

Vaidyanath Urban Co.-op.Bank Ltd.,[2007(II) CLR 293]. The petitioner also relies upon the view taken by this Court in Association of Engineering Workers Vs. Sunita Engineering Private Limited , whereby it was concluded that an application for seeking restoration of a complaint dismissed in default, after 30 days of the dismissal, was not tenable.

4. *This Court has also taken the said view in the judgment dated 18/03/2014 in WP NO.122/2013 in the matter of Baban Raosaheb Dongre Vs. Pravara Medical Trust, Loni .*

5. *Considering the above, issue notice to the respondent, returnable on 11/10/2017. The impugned judgment of the Industrial Court dated 10/04/2017 shall stand stayed and the Labour Court, Nanded shall not proceed with Complaint (ULP) No.13/1999.*

6. *The petitioner shall submit the copies of the petition paper book on or before 14/09/2017, failing which the petition shall stand dismissed without further reference to the Court. "*

5. The speaking to the minutes motion was accepted on 13.9.2017 so as to mention the citation with regard to the judgment referred to in the earlier order in the matter of Association of Engineering Workers (supra) and Baban Raosaheb Dongre (supra).

6. The learned Advocate for the respondent has made a valiant

attempt to justify the impugned judgment of the Industrial Court. It is further stated that the respondent is a poverty stricken person. He is already above 60 years of age. On sympathetic grounds, the impugned order be sustained.

7. I find it obvious from the order of the Labour Court, dated 27.7.2012 and the impugned judgment of the Industrial Court dated 10.4.2017, that the law laid down by this Court in LPA No.3 of 2004, which was followed by three Courts in Dilip (supra), Association of Engineering Workers (supra) and Baban (supra) was not cited. In accordance with the Scheme under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act") and the Labour Court (Practice and Procedure) Rules, 1975, the Labour Court or the Industrial Court would lose jurisdiction over a complaint which is dismissed in default, after 30 days from such dismissal and therefore, it cannot entertain an application for condonation of delay. The only remedy available to an employee, in such circumstances, is to approach the Industrial Court against the dismissed in default order of the Labour Court or before this Court if the dismissed in default order is passed by the Industrial Court.

8. In view of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 10.4.2017 is quashed and set

aside and Revision (ULP) No. 9 of 2015, filed by the respondent / employee is restored in the peculiar facts of this case, with the following directions:-

(A) The Labour Court was functus officio under Section 31(2) of the MRTU & PULP Act, 1971 and therefore, it could not have entertained Misc. (ULP) No.6 of 2011. Hence, the order of the Labour Court dated 27.7.2012 is hereby declared a nullity and the said Misc. proceedings stand disposed off.

(B) Revision (ULP) No.9 of 2015 can be independently considered as a Revision as against the dismissed in default order dated 29.6.2006. The respondent is granted four weeks time to move an application for adding specific grounds for challenging the dismissed in default order in the said Revision (ULP), after his appearance before the Industrial Court.

(C) The petitioner / management would be at liberty to file a written statement post amendment of the Revision petition.

(D) The Industrial Court would therefore, deal with the Revision (ULP) only in relation to the dismissed in default order of the Labour Court dated 29.6.2006, by exercising its revisional jurisdiction under Section 44 of the said Act.

(E) The litigating sides shall appear before the Industrial Court, Jalna on 15.12.2018. Formal notices need not be issued.

(F) The Industrial Court shall decide the said revision on its own merits.

(RAVINDRA V. GHUGE, J.)

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