

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.35 OF 2015

Municipal Corporation of Gr.Mumbai

.. Petitioner

Vs.

Aparna Anil Kesarkar @ Miss Shanti

H. Kankekar & Ors.

.. Respondent

Mr. A. Y. Sakhare a/w Vinod Mahadik i/b. U.H. Deshpande for the Petitioner.

Mr. S.C.Naidu a/w T.R. Yadav for respondent no.1.

Mr. Aditya Bhagat i/b. V.M. Thorat for respondent no.2.

CORAM : A.K. MENON , J.

DATED : 4th JANUARY, 2018

P.C. :

1. This writ petition seeks to challenge an order dated 24th June, 2014 passed in Revision Application (ULP) No.135 of 2013 in Miscellaneous Criminal Complaint ULP No.44 of 2010 and the order dated 19th August, 2013 passed by the Sixth Labour Court, Mumbai issuing process against the accused persons under Section 48(1) of the MRTU & PULP Act. The order dated 19th August, 2013 records that respondent no.1 had filed a complaint Exhibit-U-1 alleging that the accused had deliberately violated the order and judgment dated 27th January, 2009 passed by the Industrial Court in Revision Application

(ULP) No.113 of 2008 in complaint ULP No.53 of 2000 and therefore sought issuance of process under Section 48(1) of the MRTU & PULP Act.

2. The impugned order records that by the order and judgment dated 27th January, 2009 the Industrial Court directed the respondent therein to reinstate the applicant (respondent no.1 in present petition) with continuity of service and full backwages or to pay wages as earlier, till the time a regular candidate is appointed in place of the said respondent. The order records that the opponents in Revision Application (ULP) No.113 were aware of the directions issued by Industrial Court because they were responsible for day-to-day affairs of the KEM Hospital, Mumbai but have not complied with the directions of the Industrial Court contained in the order dated 27th January, 2009 and are therefore liable to be prosecuted.
3. The application was opposed by the accused contending that the accused had not committed any offence or nor have they deliberately or intentionally violated the order dated 27th January, 2009. It is contended that the order had provided alternative relief and the complainant therefore cannot insist on reinstatement. It records various factual aspects and records that a person known as Bharati Ramesh Talekar has been employed in place of the complainant with effect from 16th March, 2000. According to respondents they had

complied with the order dated 27th January, 2009 by offering remuneration of the period upto December 1999. The Labour Court considered various judicial pronouncements and found that prima facie, it is an admitted fact that the directions to reinstate the respondent-complainant with continuity of service has not been complied with and the accused only submitted that they were ready to comply with alternative relief which could not be complied since the bank account details and ECS particulars were not provided. The finding of the Labour Court was that the accused has not complied with the directions. This aspect has been considered in the judgment pronounced today in Writ Petition No.2758 of 2015. Accordingly, it is not necessary to deal with the facts in detail. The Labour Court found that a strong case has been made out to hold that the accused has not complied with the directions of the Industrial Court.

4. Vide order dated 8th January, 2015 while issuing notice to respondent no.1 ad-interim relief in terms of prayer clause (c) was granted and accordingly the petition has remained pending and no further proceedings were taken pursuance of issuance of process. Prayer clause (c) of the criminal writ petition granted stay of operation and implementation of the judgment dated 24th June, 2014 passed by the Industrial Court in Revision Application No.135 of

2013 and the order dated 19th August, 2013 passed by the Sixth Labour Court in Miscellaneous Criminal Complaint (ULP) No.44 of 2010.

5. Mr.Sakhare, learned counsel appearing on behalf of the corporation submitted that in view of challenge to the order dated 27th January, 2009 the order issuing process has liable to be set aside. It is contended that the order passed by the Industrial Court is not under Section 30 and there is no question of issuing process pursuant to an application under Section 48 (1) of the MRTU & PULP Act. It is further contended by the petitioner that the order of Industrial Court directing for alternative solution is not capable of being made the subject matter of a criminal complaint since according to them they have complied with alternative relief granted. That there was no deliberate act of willful disobedience in proposed action against the Municipal Commissioner is baseless. Yet another ground in the order of the Industrial Court has been complied with and calls for no further action and therefore, it is contended that there was no contempt.
6. The other ground taken is that when the order is passed under Chapter VII under Section 30(2) of the MRTU & PULP Act cannot be implemented under Section 50 of MRTU & PULP Act and for the purpose of recovery of money an order was required to be passed

under Section 28 of the MRTU & PULP Act. This ground militates against earlier ground to the effect that the impugned order dated 27th January, 2009 was not an order under Section 30 of the Act. Even otherwise

7. Section 28 provides for procedure of dealing with complaints and it is not possible to accept the contention that payment of backwages cannot be implemented under Section 50. Section 50 provides for recovery of money due to an employee from employer pursuant to an order passed under Chapter VI. Chapter VI incorporates Section 28 and fairly provides procedure in dealing with the complaints of unfair labour practice and for passing appropriate orders.
8. Section 30 falls under Chapter VII of MRTU & PULP Act and provides for powers to the Court. It entails that if the person named in the complaint is engaged in unfair labour practice and the Court can direct affirmative action including reinstatement of the employee with or without backwages. In the circumstances, I do not see how the order impugned in this petition does not constitute an order under Section 30. The other ground that the order is in the revisional jurisdiction and not under Section 30 is also of no consequence inasmuch as there is no distinction made in the matter of orders made in revisional jurisdiction and that under section 30.
9. The petitioner proceeded on the basis that these are aspects to be

considered for grant of relief. It is not possible to accept the contention of the petitioner that the order passed in revisional jurisdiction is not one under Section 30. The order dated 27th January, 2009 came to be passed in revision application pursuant to the application seeking reinstatement. The revision application was filed under Section 44 of the Act. Section 44 empowers the Industrial Court of superintendence over the Labour Court. Section 43 empowers the Industrial Court to modify, add to or recall the order passed by the Labour Court appealed against. In the circumstances it is difficult to accept the contention that the Labour Court is not empowered to pass the impugned order.

10. In operational terms, these orders are passed under Chapter VII and the opening words of Section 30 provides for the Court power to decide that any person named in the complaint is engaged or engaging in unfair labour practice when any Court empowers it to pass appropriate orders. In the circumstances, the contention that the impugned order is one under Section 30(2) of the MRTUP & PULP Act and therefore cannot be implemented under Section 50 has no merit, therefore, must be rejected. The other grounds are merely formal grounds which did not have any substance. The order is merely one of issuing process and nothing has been shown to me which can render the said order perverse.

11. In the circumstances, I find no reason to interfere with the impugned order especially given the fact that Writ Petition No. 2758 has now been decided. However, in view of the fact that petitioners are to be given reasonable opportunity of complying with the impugned orders of reinstatement and back wages in Writ Petition 2758 of 2015, it will be appropriate that the petitioners in this petition are protected for a limited period. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) The Order and judgment dated 24th June, 2014 passed by the Industrial Court, Mumbai in Revision Application No. 135 of 2013 and the order dated 19th August, 2013 passed by the Labour Court in Miscellaneous Criminal Complaint (ULP) No. 44 of 2010 shall not be acted upon for a period of six weeks from today.
- (iii) Petition is disposed of in the above terms.

(A.K.MENON,J.)