

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9194 OF 2018

Rashtriya Girani Kamgar Sangh, Sholapur & Ors. Petitioners
V/s.
Vithal Ramchandra Shinde and Ors. Respondents

Mrs. Seema Sarnaik, with Ms. Sanchita Thakar, for the Petitioners.

Mr. Prajakt M. Arjunwadkar for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH DECEMBER, 2018.

P.C. :

1. Heard Mrs. Sarnaik, learned counsel for the Petitioners, and Mr. Arjunwadkar, learned counsel for Respondent No.1.

2. The issue raised for consideration in the present Writ Petition is about interpretation of Section 28(1A) of the Trade Unions Act, 1926, which reads as follows :-

“Section 28(1A) - Power of Industrial Court to decide certain disputes.

(1) Where there is a dispute as respects whether or not any person is an office-bearer or a member of a registered Trade Union (including any dispute relating to wrongful expulsion of

any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner, as may be prescribed, refer the dispute to the Industrial Court, constituted under the Bombay Industrial Relations Act, 1946, for decision.”

3. According to learned counsel for the Petitioners, the necessary implication of this Section is that, a person has to be the Member of a registered Trade Union for a period of six months, preceding the date on which the dispute is raised. Here in the case, it is submitted that, Respondent No.1 was expelled from the Membership by the letter dated 18th August 2008 and he has raised the dispute on 25th February 2010. Therefore, as on that date, he was not the Member for preceding six months, the Industrial Court had no jurisdiction to entertain his dispute.

4. In support of this submission, learned counsel for the Petitioners has relied upon the Judgment of the Hon'ble Supreme Court in the case of *Borosil Glass Works Limited Employees Union Vs. D.D. Bambode and Others, 2001 (1) Bom.L.C. 343*.

5. However, as rightly submitted by learned counsel for Respondent No.1 and as held by the Industrial Court, the interpretation of Section 28(1A) of the Trade Unions Act, 1926, cannot be made to suggest that

the period of six months has to be necessarily preceding the date on which the dispute is raised. Even paragraph No.7 in the Judgment of *Borosil Glass Works Ltd. Employees Union (Supra)* does not state so. It merely says that,

“The section specifically provides that, it can be only invoked by a person, who has been a Member of such registered Trade Union for a period of not less than six months.”

6. It does not say that, such period of six months must be preceding the date on which the dispute is raised. Here in the case, admittedly, Respondent No.1 was a Member of the Trade Union for not less than six months. It is irrelevant whether the said period of six months was preceding the date when he raised the dispute. In view thereof, no interference is warranted in the impugned order passed by the Industrial Court, holding that it has the jurisdiction to entertain the complaint filed by Respondent No.1, as he was the Member of the Trade Union for a period of six months, though the said period might not be exactly preceding the date on which he raised the dispute.

7. As regards the contention raised in paragraph No.6 of the Writ Petition, that in view of Clause No.6 of the Constitution of the Trade Union, Respondent No.1 has not paid his monthly subscription for six months, the said contention having not been raised before the Industrial

Court, in the present Writ Petition, this Court cannot entertain the same; especially when the said contention involves factual aspects.

8. Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]