

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.12859 OF 2015
WITH
WRIT PETITION NO.418 OF 2018**

The Mahanagar Co-operative Bank Ltd. .. Petitioner
Vs.
Nisha Narendra Bagul & Ors. .. Respondents

Mr. Ashok D.Shetty a/w Swapnil P. Kamble for the petitioner in WP-12859/2015 and for respondent no.1 in WP/418/2018.

Mr. Nitin A. Kulkarni a/w Avinash Belge for respondent nos.1 to 3 in WP/12859/2015 and for the petitioner in WP/418/2018.

CORAM : A.K. MENON, J.

DATED : 30TH JANUARY, 2018.

P.C. :

1. By these cross petitions, the petitioners challenge the judgment dated 17th November, 2014 passed by the Industrial Court in Revision Application (ULP)No.143 of 2009. The Revision Application was partly allowed and the order of the Labour Court in a group of complaints bearing Complaints (ULP)Nos. 72 to 75 of 2004 were set aside to the extent it related to back wages claimed by the employees from 17th March, 2004 being the date of termination of their services. It appears that when the order was passed by the Labour Court i.e. on or about 28th October, 2009 the petitioner in Writ Petition no.12859 of 2015

was not on the scene. They came into the picture by virtue of an order dated 8th February, 2011 under Section 110-A of Maharashtra Co-operative Societies Act, 1960 and when the petitioner took over the affairs of the Agrasen Urban Co-operative Bank Ltd. ('Agrasen Bank') under scheme of merger, the effective date of which is 15th February, 2011.

2. The scheme contemplated transfer of assets and liabilities of Agrasen Bank to the Mahanagar Co-operative Bank Ltd. ('Mahanagar Bank'). Chapter IV of the scheme made provisions for the employees and their dues. The scheme reveals that total of 40 employees constituted the staff strength of Agrasen as on 15th February, 2011 and in pursuance of clause (2) of Chapter IV, the future of these employees i.e. whether or not they would continue with the transferee Mahanagar Bank was to be determined by Screening Committee. A maximum of 10% of the employees were to be taken over by the transferee bank.
3. Meanwhile, the Labour Court vide its order dated 28th October, 2009 had decided the complaints in favour of the respondent employees. As on that date this order was binding on the Agrasen Bank. However, by virtue of the Revision which was filed in 2009 only the order of back wages has been set aside. The original complainants, being aggrieved by the order dated 17th November, 2014 denying back wages have also filed the petition in this Court being petition no.418 of 2018. The

peculiar situation that arises today is whether the respondents who have been directed to be reinstated are to be taken on rolls of the petitioner Mahanagar Bank.

4. On behalf of the petitioner bank, it is contended that by virtue of operation of Chapter IV clause (2) the scheme of merger, the 10% of the employees that they were required to absorb have been so absorbed and there is no question of absorbing the respondents. It also appears that the Industrial Court was not appraised of factual situation when the judgment came to be passed. The judgment reveals that the title in the Revision Application was still shown as Agrasen Bank. The judgment does not indicate that any of the parties to the Revision Application had brought to the attention of the Court in fact that the Agrasen Bank was no longer in existence by virtue of the merger scheme.
5. In the circumstances, I am of the view that there will be no purpose served in considering the legality and validity of the impugned judgment on its merits, since a fundamental aspect of the matter has not been agitated before the Industrial Court. In the interest of justice, therefore, I find that it will be appropriate to remand the same to the Industrial Court for fresh adjudication by granting liberty to the parties to apply for appropriate amendment in the Revision Application to bring on record the effect of the scheme of merger so as

to enable the Industrial Court to consider the application in the light of the facts as obtaining from the effective date of the scheme viz. 15th February, 2011. Both learned Advocates for the parties in the two captioned petitions are not averse to proceedings as above.

6. In the circumstances, I pass the following order:-

- (i) The impugned order dated 17th November, 2017 is set aside.
- (ii) Mahanagar Co-operative Bank Ltd. will be at liberty to make an appropriate application for amendment of the Revision Application and the respondent shall be entitled to file the replies.
- (iii) All questions shall be kept open before the Tribunal.
- (iv) In view of the fact that the Labour Court was seized with the matter from the year 2004, it will be appropriate that the Tribunal hears and decides this matter within a period of six months from today.
- (v) In view of the above result, writ petitions are disposed of as above.
- (vii) No costs.

(A.K. MENON,J.)