

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3049 OF 2018**

Mr. Alpesh D. Dedhia.

...Petitioner.

V/s.

M/s. Lalji Mulji Transport Company & anr. ...Respondents.

Mr. Mahesh Shukla I/b. Mr. Niraj Prajapati, advocate for petitioner.

Mr. A.S. Peerzada, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 10, 2018.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein impugned the order dated 9/3/2018 and 24/8/2018 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 244 of 2014 below Exh. U-11 and U-13. The respondent herein challenges the proceedings before the Industrial Court filed by the Complainant/Petitioner on the ground that the petitioner does not fall within the definition of workman. The petitioner herein was appointed

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as Manager Operations vide appointment letter dated 24/1/2009 by the respondent No. 1 Company herein which is engaged in the business of Fleet Management and are having about 230 offices ranging from Maharashtra to Gujrat. It is the contention of the petitioner that although his designation was styled as Manager-Operations, he was never given the responsibility of either supervision or managing any of the affairs of the company. And therefore, he is workman within the ambit of the definition of "workman" as contemplated under section 2(s) of the Industrial Disputes Act or "Employee" as contemplated under section 3(5) of the MRTU and PULP Act.

4 It is the specific contention of the petitioner that his last drawn wages were Rs. 28,890/-. Since January, 2014 his wages were not paid and therefore, he continued to demand his wages persistently. Finally, the amount of Rs. 13,000/- was paid to him. It is the contention of the petitioner that the respondent company has employed more than 20 employees. The Provident Fund deductions were made from the salary but were never credited to the account of the employees. The workmen were not paid bonus, leave wages etc. Till 31st May, 2014 Petitioner continued with his persistent request for his wages to be paid which made the respondent No. 1 furious and the result was that services of the petitioner were terminated without paying any legal

dues.

5 The petitioner was not served upon with any show cause notice. Consequently, no hearing was given and hence, according to the petitioner, the respondent had indulged into violation of the principle of natural justice. According to the petitioner, the total amount due to be received by him from the respondent is Rs. 4,30,854/-. According to the petitioner, he was constrained to approach the Industrial Court and file a complaint in respect of the unfair labour practice on the part of the respondent. The Petitioner has submitted his oral evidence in lieu of examination-in-chief. He was cross-examined. Similarly, the respondent had also adduced oral evidence by filing affidavit of Girish Dedhia.

6 In the cross-examination of the Petitioner it was suggested that the vouchers produced alongwith Exh. C-7 were in the hand writing of the petitioner and that he has signed other vouchers as well. It was suggested that on the basis of the vouchers, he would not be entitled to any payment. The petitioner has admitted that he was subjected to oral termination. He had waited for 5 months for some positive reaction from the respondent and finally, he had to search for an alternative employment and since then, he was working in New Era Transport Company. It is admitted by the Petitioner that he is not seeking reinstatement, but is claiming an amount of Rs. 4,30,534/- towards

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bonus, increment, arrears, notice pay, leave pay, gratuity amount and earned wages. The said admission was recorded by the Court. The respondent had examined one Nisha Menon as Forensic Expert to prove the signature of the petitioner on certain vouchers. However, she had admitted that she is neither a Government employee nor the Government has issued any certificate to her as a Forensic Expert. She has neither any degree certificate nor qualification to show that she is a Forensic Expert. In view of this, her evidence need not be considered.

7 The petitioner herein had filed an application before the learned Industrial Court seeking direction for producing 11 documents including muster rolls from 2009 to 2015, balance-sheet from 2008 to 2017 and bonus register from 2009 to 2015 in order to substantiate his contention that although there was deduction towards the Provident Fund, the same was not credited in the account of the employees. It was suggested that it would be necessary to place the said documents on record for resolving controversy between the parties. It was the contention of the respondent that the complainant is indulging into fishing and roving enquiry. The learned Court was of the opinion that the petitioner has not mentioned his precise date of termination and that he has stopped reporting on duty from 3/5/2014. According to the learned Court, the demand of the said documents were not relevant for

the purpose of deciding the issue in question. The onus has been thrown on the complainant to give a notice of documents calling relevant documents for placing implicit reliance. It was opinion of the Court that the complainant is indulging in fishing and roving enquiry. The application was rejected vide order dated 9th March, 2018.

8 In fact, the said document would be relevant for the reasons that the muster roll would substantiate that the petitioner was not holding any managerial post, the balance-sheet would indicate that the deduction of the amount and the fact that the employees were deprived of their legal dues, the bonus register would substantiate that the employees were not paid their bonus. In fact, all these contentions are raised in the complaint and therefore, order dated 9th March, 2018 deserves to be quashed and set aside.

9 The petitioner had then filed an application for summoning the competent officer, In-charge of the Circle-2 of Employees Provident Fund, Mumbai. The petitioner/complainant had submitted that the testimony of the officer and the documents therein are necessary for substantiating the contentions that the amounts were not deposited towards provident fund. At that stage also, the respondent reiterated that the petitioner was not workman under section 2(s) of the Industrial

Disputes Act or "Employee" as contemplated under section 3(5) of the MRTU and PULP Act. The learned Industrial Court was of the opinion that the application below Exh. U-11 was rejected on the ground that the complainant is indulging into fishing and roving enquiry. Therefore, the complainant could not seek documents from the custody of the EPF office. It is the opinion of the Industrial Court, Mumbai that the burden is on the complainant to prove unfair labour practice and entitlement of alleged legal dues. Therefore, the said application was also rejected.

10 It appears prima face that only because the application below Exh. U-11 was rejected, the Industrial Court was of the opinion that summoning the EPF officer would still amount to fishing and roving enquiry. In fact, the complainant had specifically contended in the complaint itself that in paragraph-5 of the complaint, the complainant had expressed his wish to examine further witnesses as and when found necessary. In paragraph-8(c) of the complaint, the complainant had prayed for earned wages, bonus of the preceding 3 years, increments, arrears, gratuity, etc. The complainant had specifically stated that the provident fund amount is not being deposited in the account of the employees.

11 It is pertinent to note that the respondent has not tendered

any documents or has not examined any witness to show that they have not engaged more than 20 employees or even to demonstrate that the provident fund amount is deposited or that the bonus was paid to the employees, i.e. to the complainant and the similarly placed employees. There is no question of rowing enquiry. Since the complainant had specifically stated that the respondent is indulging into unfair labour practice, it would be incumbent upon him to substantiate the same at the time of trial and he cannot be denied the said liberty on the ground that he is indulging into a fishing and rowing enquiry. In fact, the said applications ought to have been considered by the Industrial Court in the interest of justice and to establish that it was a fair enquiry. That the filing of additional documents and summoning the officers of EPF would not cause prejudice to the respondent and instead, would be assistance to the Industrial Court to arrive at a proper conclusion.

12 In view of this, the order dated 22/10/2018 deserves to be quashed and set aside. The Industrial Court shall permit the petitioner to file said documents on record. The only reason on which the applications are rejected is that the complainant is not entitled to a fishing and rowing enquiry. This Court is of the opinion that it is in the interest of justice that the Industrial Court shall direct the respondents to produce the documents as contended in the application below Exh. U-13

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and thereafter, summon the competent officer, In-charge of Circle -2 of Employees Provident Fund, Mumbai.

13 It is further made clear that this Court has not gone into the merits of the matter as to whether the petitioner is entitled to seek legal dues, but the impugned orders are quashed and set aside only to ascertain in fair and legal manner as to whether the respondent has indulged into unfair labour practice by denying legal dues to the petitioner and the action of oral termination as against the complainant. In fact, in all probabilities, it may benefit the other employees similarly situated.

14 In the circumstances, the Writ Petition is partly allowed. The impugned orders dated 28/8/2018 passed in Complaint (ULP) No. 244 of 2014 below Exh. U-13 is quashed and set aside.

15 The rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]