

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4026 OF 2005.

Shri Kailas s/o Bapurao Samse
Age: 36 years, occu: nil,
R/o Bhande wadi, Tq. Karjat,
Dist. Ahmednagar

Petitioner

versus

1 Deputy Secretary,
Social Forestry Division,
Sudake Mala, Near Balika Ashram,
Ahmednagar.

2 Plantation Officer,
Social Forestry Division,
Karjat, At Post, Tq. Karjat
Dist. Ahmednagar

Respondents.

Mr. P.L. Shahane with Mr. P.P. Shahane advocates for petitioner
Mr.S.R. Yadav, AGP for respondents No.1 and 2.

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CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 1st, 2019

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ORAL JUDGMENT

1 I have heard the learned Advocate for the petitioner -
employee and the learned AGP on behalf of the respondents.

2 The petitioner is aggrieved by the order of the Industrial
Court dated 29.11.2004, by which Application Exhibit C-12, filed
by the respondents, seeking disposal of Complaint ULP.
No.147/94 has been allowed.

3 In the light of the submissions of the learned Advocates

and upon considering the record, it is evident that, Ahmednagar Zilla Wan kamgar Union filed Complaint ULP. No.344/1990 on behalf of several workers, whose names were mentioned in Annexure-A to the complaint. The Union had preferred the said complaint in a representative capacity, being a registered trade Union under the Indian Trade Unions Act, 1926 and since workers mentioned in the Annexure-A were its' members. The name of the petitioner was also mentioned in the said Annexure. For some reasons, the petitioner filed a separate complaint ULP. No.137/1994.

4 The record reveals that, the Industrial Court called upon the complainant to elect an option of either being a party to the complaint filed by the Union or prosecute the personal complaint.

5 I have perused the application dated 8.2.1995 filed by the petitioner, wherein, he has submitted that, though he had not requested the Union to include his name in Annexure-A, he has no objection if the complaint of the Union is prosecuted or his personal complaint is adjudicated upon.

6 In my view, a litigant, in such peculiar circumstances, cannot leave the option to the Court to decide which complaint, it would adjudicate upon. Such a right to elect, lies with the worker. In these peculiar facts, the Industrial Court proceeded to decide complaint ULP. No.344/1990 by a common Judgment dated 26.4.2002, which covers the complainant as well as other

complaints filed by the Union, representing several workers. The name of the petitioner is included in the Judgment at internal page No.25 and it is recorded that, he has filed complaint ULP. No.137/94, which shall be deemed to have merged in this Judgment. He was held entitled for pay scale at par with the permanent employees from September, 1989 to 30.3.1994. It was also recorded that, since he quit employment on 1.4.1994, no relief can be granted w.e.f. 1.4.1994.

7 A copy of the above referred judgment dated 26.4.2012 is tendered across the bar and the same is taken on record and marked as Exhibit 'X' for identification.

8 The petitioner, now makes a grievance that, the relief granted to him by the Judgment marked as Exhibit 'X', had not actually reached him, since the Judgment is not implemented to his extent. He is rendered remedy-less.

9 It requires no debate that, a person cannot be rendered remedy-less. However, at the same time, a litigant has to be diligent. The learned Advocate for the petitioner submits that the petitioner is litigating in this Court from 2005 and was therefore concentrating on this litigation.

10 Considering the above, this petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

11 However, as the petitioner has been granted certain benefits by the Judgment of the Industrial Court dated 26.4.2002, he would be at liberty to raise an industrial dispute under section 2(k) of the Industrial Disputes Act, 1947, for seeking such benefits, keeping in view that, a passage of 17 years pursuant to the said Judgment may close the doors of the petitioner in so far as provisions under different Labour laws are concerned.

(RAVINDRA V. GHUGE, J)

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