

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5107 OF 2019**

Hanuman Shikshan Prasarak Mandal
Sarwade and others

.....Petitioners

V/s.

Mr. Dhondiram Rajaram Patil

.....Respondent

Mr. M. V. Thorat for the Petitioner

Mr. Avinash Ram Belge for respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 3, 2019.

P.C.

The petitioner society appointed respondent no. 1 in 1989 on the post of Clerk. The Board certificate certifies the date of birth of the petitioner as 01/06/1961 which is also reflected in the service book.

2 It is the case of the petitioner that since 2004 he is pursuing the issue as regards the correction of date of birth with the

petitioner. As he was to be superannuated on 31/05/2019, he preferred complaint (ULP) No. 211 of 2018 before the Industrial Court, Kolhapur and sought interim relief under Section 28 (1) r/w item Nos. 5, 9 and 10 of Sch. IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971.

3 By the impugned order dated 16/03/2019, the learned Member, Industrial Court was pleased to allow the prayer for interim relief and restrain the petitioner from superannuating the respondent no. 1 till the decision on the main complaint. As such, this petition.

4 The law on the issue as regards the correction of date of birth in the service record is well settled in catena of judgments. In case, if the petitioner succeeds in the ULP complaint, it will be always open for him to claim necessary pecuniary benefits, however, it is not open for him to ask for the interim relief which is granted by the learned Industrial Court. The order granting interim relief virtually amounts to granting final relief and that being so, the order impugned is not sustainable.

5 This Court on 22/04/2019 granted Rule and made the Rule returnable after 4 weeks. The Court has also recorded the finding that there is *prima facie* case made out in favour of the petitioner and stayed the impugned order.

6 In the aforesaid background, the petition is being heard finally by consent of the parties.

7 In my opinion, the petition can be allowed by quashing the impugned order for the reasons recorded herein above and also in the order dated 22/04/2019.

8 As such, Rule made absolute in terms of prayer clause (a).

9 This Court expect the Industrial Court to decide the complaint of the respondent no. 1 expeditiously without being influenced by the findings recorded herein above.

[NITIN W. SAMBRE, J.]