

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2861 OF 2017

Emerson Climate Technologies
India Pvt. Ltd.

.. Petitioner

Vs.

Mr. Rajesh Laxman Dhotmal

.. Respondent

Mr. K. S. Bapat i/b. Ms.Desai & Desai Associates for the Petitioner.

Mr. Neel H. Helekar i/b. Mr. Vaibhav R. Gaikwad for the Respondent.

CORAM : A.K. MENON, J.

DATED : 7th MARCH, 2019.

P.C. :

1. The challenge in this petition is to the order dated 31st December, 2007 passed in Complaint (ULP) No. 37 of 2001 and the order dated 28th December, 2015 passed by the Industrial Court in Revision Application (ULP) No. 6 of 2008.

2. By order dated 31st December, 2007 the complaint (ULP) No. 37 of 2001 was allowed. The petitioner herein was found to have engaged in unfair labour practice as contemplated under Item No. 1(a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act and was directed to reinstate the complainant with continuity of service and full back wages. In revision, the

Industrial Court rejected the Revision Application (ULP) No. 6 of 2008 thereby confirming the order of the Labour Court.

3. In the meanwhile it appears that the respondent in this petition had filed an application seeking amendment of the original complaint. The application for amendment came to be heard and disposed of. Amendments were declined as on date of hearing of this petition on 8th September, 2005. In the course of submissions the parties have now agreed that the complaint be allowed to be amended in terms of original application filed in the year 2004 especially since it appears that the impugned order relied on the contentions taken up by the amendment application. The order rejecting amendment was subjected to Revision Application (ULP) No. 2 of 2005 which came to be rejected.

4. It is therefore appropriate that the complaint be permitted to be amended, replies to be filed to the written submissions and thereafter the matter be heard uninfluenced by subsequent developments. In these circumstances, it will be appropriate that the impugned orders are set aside and the matter is remanded to the Labour Court for consideration afresh. Accordingly the following order is passed :

(i) The order rejecting the application for amendment dated 18th October, 2004, the order in Revision (ULP) No. 2 of 2005 dated 8th September, 2005,

the order dated 31st December, 2007 passed by the Labour Court in Complaint (ULP) No. 37 of 2001 and the order dated 28th December, 2015 passed by the Industrial Court in Revision Application (ULP) No. 6 of 2008 are hereby set aside.

(ii) Respondent shall carry out amendment as sought in the amendment application within a period of three weeks from today. Such amendment shall be carried out with notice to the petitioner/their Advocate.

(iii) Upon the amendment being carried out, copy shall be served forthwith thereafter.

(iv) Additional written statement shall be filed within a period of four weeks from service of the amended complaint.

(v) The Complaint shall thereafter be listed before the Labour Court which will hear the matter afresh and dispose of the complaint as amended in accordance with law and shall accord appropriate priority considering that the complaints are of the year 2001 without being influenced by these proceedings.

(vi) Mr. Bapat states that till final disposal of the complaint no coercive steps will be taken against the respondent employee in relation to the subject matter of the complaint. The statement is accepted.

(vii) Writ Petition disposed of in the above terms.

(A.K. MENON,J.)