

Vidya Amin.

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

WRIT PETITION No. 2526 OF 2016

M/s. Thermax Babcock & Wilcox Energy
Solutions Pvt. Ltd. & Ors. ... Petitioners
VS.
Vijay Shrirang Chavan & Anr. ... Respondents

Mr. A.P. Mundargi, Senior Advocate a/w. Mr. M.S. Kocharekar, K.S.
Bapat i/b. Avinash Hari Fatangare, for the petitioners.
Mr. Shailesh S. Pathak, Advocate for respondent no. 1.
Mr. Vinod Chate, APP for the respondent/State.

CORAM : Mrs.MRIDULA BHATKAR, J.
RESERVED ON : 8th February, 2019
PRONOUNCED ON : 22nd February, 2019

JUDGMENT :

Rule. Rule made returnable forthwith. By consent, Writ
Petition is heard finally and decided at the stage of admission.

2. In this Writ Petition under Articles 226 and 227 of the
Constitution of India, the petitioners, by invoking the writ
jurisdiction of this Court, challenged the judgment and order dated
28th April, 2016 passed by the learned Member, Industrial Court,
Satara in Appeal (MMH) No. 1 of 2015 whereby the learned
Member, Industrial Court, Satara has set aside the order dated 30th
July, 2015 passed in Complaint (MMH) No. 1 of 2015 and has

remanded it to the Labour Court to try Complaint no. 1 of 2015 afresh. The orders are passed under Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "Mathadi Act").

3. Respondent no. 1/complainant is an inspector under the Act. The petitioner/accused no.1 is a factory, which is under obligation to Regulation Employment of Unprotected Workers through Mathadi Board. A complaint was filed by the respondent no. 1 under sections 17, 17A and 17B of the Act and Clause 43 of scheme Satara Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, against the petitioner, as the provisions under the scheme and Act were breached by the petitioners. On visit of the respondent no. 1/complainant on 5th March, 2014, he came across the illegalities in the employment of the workers and breach of the scheme, therefore, the notice was given to the petitioners/accused. However, they did not comply as per the inspection remark and contravened the provisions of clause 14 and 30(1) of the said scheme. The learned Judge of the Labour Court, Satara instead of passing order under section 200 of Cr. P.C. gave notice to the

accused for filing say and after considering the said say and applicability of Section 5 of Mathadi Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, dismissed the complaint by order dated 30th July, 2015.

4. The respondent no. 1 has challenged the said order before the Member, Industrial Court, Satara by filing Appeal (MMH) No. 1 of 2015 under section 17C(1)(b), 17D and 17F of the Mathadi Act. The said Appeal was allowed by order dated 28th April, 2016 by Member, Industrial Court, Satara. The said order is challenged in this Writ Petition. The learned Member, Industrial Court, Satara allowed the Appeal mainly on the ground that the learned Judge failed to follow proper procedure contemplated under section 200 of Cr. P.C.

5. The issue of maintainability of Appeal before the Industrial Court is raised and therefore, on this limited issue only, this Writ Petition is entertained without going into the merits of the case and other points.

6. At the outset, the objection was raised by the learned senior

counsel for the petitioner on the maintainability of the Appeal before the Industrial Court. He submitted that the dismissal of the complaint is not appealable under section 17 of the Mathadi Act.

7. The learned counsel for the respondent no. 1/original complainant has submitted that the learned Judge, Labour Court, Satara has passed erroneous order, as no notice should be given to the accused before issuance of process. Moreover, the respondent no. 1/complainant is a public servant and the learned Labour Court Judge should have decided it on the basis of the complaint itself. He has submitted that the challenge of maintainability of Appeal was not raised before the Industrial Court. In fact, it is the correct forum, as Appeal is allowed. He submitted that the provisions of Section 17C are to be read along with section 17D wherein it is stated that all the powers and procedures mentioned under the Maharashtra Industrial Relations Act, 1946 are available to the Industrial Court constituted for the purpose under the Act and therefore, the Industrial Court has same powers to entertain any Appeal or Reference in any proceedings decision by or of the Labour Court.

8. The issue raised before the Court involves interpretation of Section 17C and 17D of the Mathadi Act. Section 17C starts with non-obstantive clause. It gives the list of orders passed by the Labour Court under the Act appealable to the Industrial Court, which are:

- a) against a conviction by a Labour Court, by the person convicted;
- b) against an acquittal by a Labour Court, by the complainant;
- c) for enhancement of a sentence awarded by the Labour Court by the State Government;

In this category of a, b and c, the order of dismissal of the complaint is not mentioned and therefore, the said order cannot be said is appealable.

9. An Appeal is a statutory remedy and therefore, unless there is provision of appeal in the statute, no appeal can be filed against the order. As argued by the learned counsel for the respondent no. 1, Section 84 of the Maharashtra Industrial Relations Act. 1946 is seen. Section 84 is reproduced as under:

84. Appeals.- (1) Notwithstanding anything contained in

section 83 an appeal shall lie to the Industrial Court -

- a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub-section (1) of section 78 except to the extent to which it determines whether a strike(lock-out, closure or stoppage) was illegal or not, or a decision of such Court under paragraph C of sub-section (1) of the said section;
- b) against a conviction by a Labour Court, by the person convicted;
- c) against an acquittal by a Labour Court in its special jurisdiction, by the (State) Government;
- d) For enhancement of a sentence awarded by the Labour Court in its special jurisdiction, by the (State) Government;

In clause (a), the decision of the Labour Court in respect of strike, lockout, closure, stoppage etc. are made appealable.

10. Sub-section (b), (c) and (d) in section 84 of Maharashtra Industrial Relations Act and sub-section (a), (b) and (c) of Section 17C of Mathadi Act are identical. Thus, there cannot be any order other the orders mentioned in (a), (b), (c) and (d) of Section 84 of the Maharashtra Industrial Relations Act appealable. Similarly, under the Mathadi Act, no other order except mentioned under

section 17C of Mathadi Act is appealable. Thus, Section 84 and section 17C are quite similar. Section 17C lays down a specific provision for appealable orders from Labour Court to Industrial Court and when such Appeals are preferred under Mathadi Act as per Section 17D, the Industrial Court will have the same powers as the powers vests with the Industrial Court for the purpose of Mathadi Act.

11. Thus, for dismissal of the complaint, the Appeal is not a remedy under the Act. Therefore, the Appeal filed before the Industrial Court was not maintainable. On this count alone, the order passed by the Industrial Court is hereby set aside. However, it is made clear that the complainant has right to challenge the said order of dismissal of complaint before the appropriate forum for which liberty is granted, as the complainant cannot be rendered remedyless.

12. Writ Petition is allowed in above terms.

(MRIDULA BHATKAR, J.)