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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9512 OF 2015

Union of India through Divisional
Railway Manager, Pune Division.
Central Railway, Pune.

..Petitioner.

V/s.

The Secretary,
Rail Kamgar Sena,
C/o. Central Railway, Pune

..Respondent.

Mr.T.J.Pandian with Navin Bagul for the petitioner.

Mr.R.R.Salvi for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 18, 2019

ORAL JUDGMENT

Heard respective parties.

2. A reference No.(IT)/4/2009 between the petitioner and respondent in the matter of grant of promotion and monetary benefits came to be answered against the petitioner vide award dated September 11, 2014 by the learned Industrial Tribunal, Pune.

3. Learned counsel for the petitioner would urge that the respondent-union through whom the dispute was referred is not a recognized under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU-PULP). That being so, it had no authority whatsoever to represent the claim of of the affected employee before the learned Labour Court. Support is drawn from the judgment of the Apex Court in the matter of *Maharashtra State Road Transport Corporation and Ors. V/s. Casteribe Rajya P.Karmchari Sanghatana*¹ particularly paragraph 36. According to him, though lawyer was engaged to represent the interest of the petitioner before the Industrial Court, the petitioner was unable to lead any evidence. The award impugned came to be passed without hearing the petitioner. Further submissions are, the contents in reply to the claim in the petition were brought before the Tribunal, however, same are not considered.

4. While countering the aforesaid submissions, learned counsel for respondent submits that sufficient chances were given to the petitioner. The observations in the order speaks of complete

¹ (2009) 8 SCC 556

non co-operation by the petitioner in adjudication process. According to him, the order impugned is based on earlier adjudication of the Assistant Labour Commissioner and the material evidence in the form of affidavit brought on record justifies the claim of the aforesaid employee. As such, dismissal is sought.

5. Considered rival submissions.

6. It is not in dispute that the employee in whose favour the award impugned came to be passed already stood superannuated. This Court on November 23, 2015 has observed that there shall be stay to the recovery. However, the order of promotion was not stayed.

7. In the aforesaid backdrop, this Court proceeds to analyse the submissions made.

8. The petitioner has drawn support from the provisions of section 33(1) of the Industrial Disputes Act, 1947 ('the Act' for short) on the issue of authority of respondent-union to represent the affected member. He has also drawn support from the judgment *Maharashtra State Road Transport Corporation and Ors. (supra)*.

9. As far as the aforesaid submission is concerned, upon perusal of the pleadings of the petitioner in the petition wherein the provisions of section 33(1) of the Act is referred. Upon verification, no such provision can be noticed in section 33 of the Act.

10. Apart from above, the Industrial Court while passing the award has recorded the finding about complete non co-operation by the petitioner in the matter of adjudication of the issue canvassed before it, which has prompted the Industrial Court to pass the award under challenge.

11. If the contentions of the petitioner are appreciated as regards the rights of unrecognized union, apart from the fact that no evidence to that effect was brought on record before the Industrial Court, same appears to be the position even before this Court. In view thereof, in absence of any material, it is difficult for this Court to infer at this stage that the respondent- union is unrecognized and had no right to represent the interest of its member. That being so, the said contentions are rejected.

12. So far as the next limb of submission of learned counsel for the petitioner about non entitlement of the benefits by

the affected employee to the promotional post is concerned, support is drawn from the communication dated August 24, 1998 which according to the petitioner was part and parcel of record of the Industrial Court. According to me, the petitioner-employer in categorical terms rejected the claim of the affected employee to the posts of promotional post of fitter with effect from 1989.

13. Even if such document is placed on record, the fact remains that the order of the Industrial Court is based on finding of fact recorded upon analysis of evidence brought by respondent before it. The important facts which were proved by respondent were:

- a) In the seniority list, the petitioner was senior-most Khalasi;
- b) The affected employee was senior most and juniors Chandrapal Kartar Singh and Bhimrao Dayanand Patole, who were juniors were promoted without considering the claim of the affected employee.

14. Apart from above, a finding of fact is recorded by the Tribunal that before the Assistant Labour Commissioner, it was agreed to grant seniority with effect from April 16, 1986 to the

affected employee.

15. As a consequences of the aforesaid agreement before the Assistant Labour Commissioner the affected employee is held to be entitled for the benefit of seniority from April 16, 1986.

16. All documentary evidence proved by the affected parties and the respondent by way of evidence in the form of an affidavit and documents remains unchallenged.

17. In the wake of above and having regard to the fact that even before this Court, there is no material to infer that the affected employee represented by the respondent was not entitled to the benefit as ordered under award. In my opinion, no case for consideration of showing any indulgence is made out.

18. The petition fails and is dismissed.

(NITIN W.SAMBRE, J.)