

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (W) 1023/2019 IN WRIT PETITION NO.1041/2014

Rajesh Ambadas Bhagat

Vs.

Maharashtra State Seeds Corporation Ltd. and another.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M.L.Chouhan, Advocate with Ms V.S.Mohod, Advocate for
petitioner/applicant.

Shri S.B.Gandhe, Advocate with Shri S.G.Loney, Advocate, for respondent
no.2.

CORAM : A.S.CHANDURKAR, J.

DATED : August 29, 2019

In the present writ petition the complainant has challenged the order passed by the Revisional Court dated 21.01.2014. By that common judgment, the revision application preferred by the original complainant challenging the findings recorded by the Labour Court in its order dated 24.10.2007 has been dismissed and the revision application preferred by the Employer has been allowed.

The services of the complainant came to be discharged by order dated 20.03.2002. He therefore filed complaint under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. The Labour Court decided the preliminary issue by its order dated 24.10.2007 and held that the complainant was a workman. Being aggrieved the Employer preferred a revision application (Revision ULP No.55/2007) and by its order dated 11.02.2009 the Industrial Court dismissed the said revision application and expedited hearing of the complaint. It observed that the Employer could challenge the findings recorded on the preliminary issue when the complaint was finally adjudicated. Accordingly, both the revision applications were decided by the

Industrial Court on 21.01.2014. The revision application preferred by the Employer challenging the findings on the preliminary issue was allowed and it was held that the complainant was not a workman. The Industrial Court however did not record any finding on the question as to whether the complainant had tendered his resignation which was thereafter accepted by the Employer. Being aggrieved, the present writ petition has been filed.

The petitioner has filed the aforesaid civil application with a prayer that point no.2 which was not decided by the Industrial Court be directed to be so decided in view of the fact that the Labour Court had decided the entire complaint by considering all issues on merits. It is stated that if the impugned judgment of the Revisional Court is set aside, the proceedings would have to be remanded for recording a finding on the other points that have not been decided by the Industrial Court. Since the discharge from the services is in the year 2002, it is prayed that point no.2 be directed to be decided by the Industrial Court while keeping the writ petition pending.

On behalf of the respondent, it is submitted that at this stage it is not necessary to call for any finding on the issues not decided by the Industrial Court. It is only if the writ petition is allowed that such finding would be necessary. Hence it is submitted that the application deserves to be dismissed.

It is seen from the record that the Labour Court had initially framed a preliminary issue and it held the complainant to be a workman. In the revision application filed by the Employer challenging that adjudication the Industrial Court refused to consider the challenge at that stage and kept the said question open for being decided along with other issues on merits. The Labour Court has thereafter allowed the complaint by its order dated 20.08.2011. However, the Industrial Court has not recorded any finding on point no.2. The same could have been done without prejudice to the findings recorded on point no.1 as framed. This would have prevented

possible remand of the proceedings on consideration of the order passed by the Industrial Court.

In view of the fact that the services of the petitioner were discharged in the year 2002, the interests of justice would be met by directing the Industrial Court to decide point no.2 as framed by it in Revision Application (ULP) No.57/2013. Needless to state that this adjudication would be without prejudice to the findings recorded on point no.1. To enable such adjudication the record and proceedings be sent to the Industrial Court. The parties shall appear before the Industrial Court on 09.09.2019. The Industrial Court shall record its finding on point no.2 expeditiously and preferably by the end of December, 2019. After said finding is recorded, the record and proceedings be returned to this Court. Civil Application is allowed in aforesaid terms and disposed of.

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Stand over to 06.01.2020 for further consideration.

JUDGE

Andurkar.