

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4351 OF 2016

Shri. Gajanan Tukaram Nimkhande

vs.

Division Controller, MSRTC, Akola Division, Dist. Akola & three others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. P. N. Verma, counsel for petitioner.

Shri. V. G. Wankhede, counsel for respondents

CORAM : MANISH PITALE J

DATED : 21/11/2019

By this writ petition, the original complainant has challenged order dated 15/02/2016 passed by the Industrial Court, Maharashtra, Akola Bench, whereby application for interim relief filed by the petitioner in the complaint before the Industrial Court, has been rejected.

2. The respondents representing Maharashtra State Road Transport Corporation (MSRTC), proceeded to institute a disciplinary enquiry against the petitioner, who is working as a Conductor. During the course of the enquiry, the petitioner submitted an application seeking permission to be represented by an office bearer i.e. President of the Union of which the petitioner is a member. The petitioner relied upon clause 5-(I) of the Discipline and Appeal Procedure applicable to the

employees of the respondents corporation. The said request made by the petitioner was rejected by the competent authority on its interpretation of the aforesaid clause of the Discipline and Appeal Procedure. The reason why the said application/request of the petitioner was rejected was that the office bearer of the Union chosen by the petitioner to represent him in the enquiry was a practicing lawyer.

3. The petitioner filed the aforesaid complaint before the Industrial Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (MRTU and PULP Act, 1971), claiming that by rejecting the aforesaid request made on behalf of the petitioner, the respondent had committed an unfair labour practice under Item 9 of Schedule – IV of the MRTU and PULP Act, 1971. In the said complaint, the petitioner moved an application for interim relief praying that it be held that the respondents had prima facie committed an unfair labour practice and further that by way of interim relief his request may be granted for representation by office bearer of the Union and alternatively the proceedings in the enquiry be stayed.

4. By the impugned order, the Industrial Court considered the relevant clause of the Disciplinary and

Appeal Procedure and found that prima facie case was not made out by the petitioner. On this basis, the application was rejected.

5. The present writ petition has been filed challenging the said order of the Industrial Court. While issuing notice on 12/08/2016, this Court granted ad-interim stay of the enquiry proceeding.

6. The learned counsel appearing for the petitioner invited attention of this Court to clause 5(I) of the Discipline and Appeal Procedure and submitted that the Industrial Court completely misinterpreted the same, while passing the impugned order. It was submitted that the aforesaid clause clearly permitted the delinquent employee to either engage another employee to represent him or to engage an office bearer of the Union, of which he was a member, to represent him in the enquiry proceeding. It was submitted that the person / office bearer of the Union chosen by the petitioner happened to be an advocate and this could not be a reason for rejecting the request made on his behalf. It was submitted that the Industrial Court committed a grave error in emphasizing on the aspect that office bearer of the Union chosen by the petitioner to represent him in the enquiry proceeding, was a practicing advocate. It was submitted that the said aspect was completely besides the

point and that the findings rendered on prima facie case and grave and irreparable loss likely to be suffered by the petitioner, were wholly unsustainable and that the Industrial Court ought to have granted interim relief as prayed by him till the contentions raised on his behalf in the complaint were decided on merits.

7. On the other hand, the learned counsel appearing for the respondents submitted that the Industrial Court was justified in passing the impugned order, because permitting the petitioner to engage the services of a lawyer would violate the Discipline and Appeal Procedure and it would lead to an unfair advantage in favour of petitioner during the enquiry proceeding. It was submitted that the petitioner could very well engage services of any other employee or office bearer to participate in the enquiry and that therefore, no interference was warranted in the impugned order passed by the Industrial Court.

8. Although submissions were made on behalf of the rival parties on Clause 5(I) of the Discipline and Appeal Procedure, this Court is of the opinion that if any findings are given by this Court while deciding the present writ petition, it would amount to deciding the complaint filed by the petitioner before the Industrial Court and eventually it would result in depriving either

party from exercising an avenue of challenge on the question of interpretation of the said clause. Therefore, this Court is restricting itself in the writ petition to examining whether a prima faice case was made out by the petitioner and in that context whether the impugned order passed by the Industrial Court could be sustainable.

9. A perusal of clause 5(I) of the Discipline and Appeal Procedure would show that the petitioner as the delinquent employee was entitled to engage either another employee or an office bearer of the Union of which, he is a member, to represent him in the enquiry proceeding. There is no dispute about the fact that the person chosen by the petitioner to represent him was the President of the Union of which petitioner was a member. The moment it is found that the person chosen by the petitioner was an office bearer of the Union and such a person could be prima face said to be permitted under clause 5(I) of the Discipline and Appeal Procedure to represent the complainant in the enquiry proceeding, there is no reason for the Industrial Court to have gone into the question of such an office bearer being an Advocate and the effect that this situation would have on the enquiry proceeding. There is no mention in the Discipline and Appeal Procedure in the aforesaid clause that an office bearer would be permitted except when such an office bearer is a practicing advocate. The

Industrial Court ought not to have been gone in that question, when it was considering as to whether a prima facie case was made out by the petitioner or not. The limited enquiry before the Industrial Court ought to have been as to whether prima facie the person chosen by the petitioner to represent him in the enquiry proceeding was in terms of clause 5(I) of the Discipline and Appeal Procedure. Instead of considering whether a prima facie case was made out or not, the Industrial Court went further into the details of the office bearer who was chosen by the petitioner.

10. Such further enquiry could not have been made by the Industrial Court, while considering only the application of the petitioner for interim relief. While deciding the application for interim relief, the Industrial Court was required to consider whether the prima facie case was made out by the petitioner in the context of clause 5(I) of the Discipline and Appeal Procedure and the prejudice that he may suffer if interim relief was not granted and the enquiry was permitted to continue. There can be no doubt about the fact that if the contentions raised on behalf of the petitioner are finally accepted and the rejection of his application by the Competent Authority is set aside, the nature of representation of the petitioner in the enquiry proceeding would be materially affected. If interim relief of at least

stay of the enquiry till the decision of complaint is not granted, the petitioner would clearly suffer grave prejudice and irreparable loss insofar as his right to choose a person to represent him in terms of clause 5(I) of the Discipline and Appeal Procedure, is concerned.

11. This Court is of the opinion that the petitioner had clearly made out a case for grant of interim relief on the touch stone of having made out prima facie case in his favour and the balance of convenience also being in his favour, since the petitioner would clearly suffer grave and irreparable loss, if interim relief was not granted.

12. In view of the above, this Court is of the opinion that impugned order passed by the Industrial Court cannot be sustained. The application for interim relief Exh.U-2 filed by the petitioner ought to have been partly allowed by the Industrial Court.

13. Hence, the Writ Petition is allowed. The impugned order is quashed and set aside and the application for interim relief filed by the petitioner [Exh.U-2] is partly allowed by directing that the enquiry proceedings instituted against the petitioner shall remain stayed till the complaint is decided by the Industrial Court on merits.

14. The Industrial Court is directed to decide the complaint within a period of three months from today. It is further directed if the complaint filed by the petitioner is dismissed, the interim stay to the enquiry granted by this Court shall continue for a period of **two weeks** from the order that may be passed by the Industrial Court.

15. Writ Petition disposed of in above terms.

JUDGE