

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

WRIT PETITION NO. 1019/2019

The Central Railway Divisional Office Employees Consumer Co-operative Society, Nagpur
..VS..

Rajesh S/o Babulal Tiwari & anr.

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

Court's or Judge's orders

Shri N.L. Jaiswal, Advocate for the petitioner
Ms. Shamsi Haider, AGP for the respondent no. 2

CORAM : Z.A.HAQ, J.
DATED : 18/02/2019

Heard.

The respondent no. 1 – employee had filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “the Act of 1971”) complaining that the present petitioner – employer indulged in unfair labour practice and illegally terminated his services without complying with the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947 (for short “the Act of 1947”).

The employer opposed the claim of the employee.

After conducting the trial, the Labour Court dismissed the complaint by the order dated 08/12/2014. The Labour Court recorded that the complaint before it was not maintainable as the employer was a Co-operative Society and

therefore, the dispute would lie before the Co-operative Court. The Labour Court further held that the employer – Society is under liquidation and therefore the Labour Court will not have jurisdiction to issue any directions to the Co-operative Society. The order passed by the Labour Court was challenged by the employee before the Industrial Court in revision which is partly allowed by the impugned order. The Industrial Court has held that the complaint filed by the employee was maintainable under Section 28 of the Act of 1971. The Industrial Court further held that the services of the employee were terminated without complying with the mandatory provisions of Section 25F of the Act of 1947. The Industrial Court found that the services of the respondent no. 1 – employee were illegally terminated, retaining the employees junior to the respondent no. 1 – employee and therefore the provisions of Section 25F of the Act of 1947 were also violated. The Industrial Court directed the employer to reinstate the respondent no. 1 – employee and to pay 50% backwages.

According to the employer, the finding recorded by the Industrial Court that the termination of the services of the respondent no. 1 – employee is illegal as employees junior to him were retained, is not in consonance with the facts on record. According to the employer, the respondent no. 1 – employee was appointed to work on the cycle stand run by the employer and as the contract of the cycle stand came to an end, all the employees working on the cycle stand were discontinued. According to the employer, the employees who are found to be junior to the respondent no. 1 – employee and who are continued in service had been working in the grocery shop run by the petitioner – employer.

There is nothing on record to show that the petitioner – employer maintained two different seniority lists ; (1) of the employees working in the grocery shop and (2) of the employees working on the cycle stand. As far as the finding recorded by the Industrial Court relying on Section 25F of the Act of 1947 is concerned, the petitioner – employer has not been able to point out any illegality or perversity which necessitates interference by this Court in the extraordinary jurisdiction.

As far as the maintainability of the complaint before the Industrial Court is concerned, the appointment of the liquidator on the petitioner – Society was subsequently quashed and therefore the petitioner – Society has not raised any challenge on that ground.

In view of the above, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari