

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

LETTERS PATENT APPEAL NO. 50 OF 2009

IN

WRIT PETITION NO.1011 OF 2007 (D)

- 1] M.S.E.B. Kamgar Sena,
Registered Trade Union through its
President / Secretary, M.S.E.B.
Colony, Khaparkheda,
District – Nagpur.
- 2] Suresh S/o Wasudeorao Patil,
aged about 41 years, Occ. Service,
R/o. Plot No.12, Old Thaore Colony,
Jaripatka, Nagpur.

... **APPELLANTS**

...VERSUS...

- 1] The Managing Director,
Maharashtra State Power
Generation Company Ltd.,
Prakashgad, Plot No. G-9,
Bandra (E), Mumbai – 51.
- 2] The Establishment Officer (HR-1)
Maharashtra State Power
Generation Company Ltd.,
Prakashgad, Plot No. G-9,
Bandra (E), Mumbai – 51.
- 3] The Chief General Manager
(Gen O & M), Maharashtra State Power
Generation Company Ltd.,

Khaparkheda Thermal Power Station,
Khaparkheda, Tah. Saoner,
Distt. Nagpur.

- 4] Mrs. T. N. Mudholkar, Dy. C.A.O.,
Maharashtra State Power
Generation Company Ltd.,
Khaparkheda Thermal Power
Station, Khaperkheda, Tah. Saoner,
Distt. Nagpur.

... **RESPONDENTS**

Shri M. V. Mohokar, Advocate for Appellants.

Shri A. D. Mohgaonkar, Advocate for Respondents.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 14.12.2020

ORAL JUDGMENT (PER: Z. A. HAQ, J.) :-

1. Heard.

2. The appellant No.2 was working with the Maharashtra State Power Generation Company Limited. He was transferred from Khaperkheda to Tillari by the order dated 28.12.2005. According to the respondents, the appellant No.2 was relieved on 03.01.2006 which the appellants dispute. Undisputedly, the appellants had filed complaint before the Industrial Court under Section 28 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair

Labour Practices Act, 1971, challenging the transfer order on the ground that it was malafide. Initially, the Industrial Court had granted ex-parte interim order in favour of the appellants, which was confirmed by the Industrial Court. The interim order was challenged by the respondents before this Court in Writ Petition No.1357 of 2007, which was allowed by the judgment dated 01.08.2006. This Court had set aside the interim order passed by the Industrial Court but had directed the Industrial Court to dispose the complaint filed by the appellants within six months. The Industrial Court proceeded with the matter and by the order dated 06.12.2006, dismissed the complaint filed by the appellants. Being aggrieved with the order passed by the Industrial Court, the appellants had filed Writ Petition No.1011 of 2007 before this Court, which came to be dismissed by the impugned judgment.

3. At the time of hearing, it is submitted by the learned Advocate for the respondents that the services of the appellant No.2 came to be terminated on 03.07.2007 on the ground of misconduct, against which the appellants have filed the complaint before the Labour Court, which is pending. It is further submitted that during the pendency of this appeal, the appellant No.2 has surpassed the age of superannuation on 31.07.2019. These two facts are not controverted by the learned Advocate appearing for the appellants.

The learned Advocate for the appellants however, stated that the appellant No.2 has made representation to the employer for re-employment which is pending for consideration, and if his request is considered favourably, he would be entitled for posting at Khaperkheda from where he came to be transferred.

4. In our view, as the services of the appellant No.2 came to be terminated on 03.07.2007 and then as he has surpassed the age of superannuation on 31.07.2019, the challenges raised in this appeal have become infructuous. The submission made on behalf of the appellants about pendency of his representation for re-employment and depending on its outcome, his right to continue at Khaperkheda, to say the least is fallacious and cannot be accepted in law. In the present Letters Patent Appeal, the issue is only about the legality of the impugned judgment and of the transfer order and these challenges have lost their efficacy due to lapse of time and subsequent events.

5. In view of the above, the Letters Patent Appeal is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE