

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1893 OF 2019

Dilip s/o Bhikaji Londhe,
Age : 54 years, Occu.: Nil,
R/o. Omkar Row Housing Society
Near Motha Maruti, Bolhegaon
Ahmednagar, Tq. & Dist. Ahmednagar.

PETITIONER

VERSUS

1. Ajinkya s/o Arun Firodiya,
Age : 38 years, Occu.: Business,
The Managing Director,
Kinetic Engineering Limited,
Nagar Daund Road, Ahmednagar.
R/o : C/o Kinetic Engineering Limited,
D-1 Block, Plot No.18/2, Chinchwad, Pune.
2. Shashikant s/o Shivanand Gulve,
Age : 55 years, Occ : Service, The Deputy
General Manager, Kinetic Engineering Limited,
Nagar Daund Road, Ahmednagar,
R/o : C/o Kinetic Engineering Limited,
Nagar Daund Road, Ahmednagar.

RESPONDENTS

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Advocate for Petitioners : Mr. Kiran M. Nagarkar
Advocate for Respondent No.1 : Mr. N.V. Gaware
Advocate for Respondent No.2 : Mr. V.S. Bedre

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CORAM : MANGESH S. PATIL, J.

Reserved on : 25.02.2021

Pronounced on : 20.04.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The facts as are necessary to appreciate the matter in

controversy are to the effect that the petitioner claiming to be entitled to benefit of permanency, having worked for 240 days in the Company by name Kinetic Engineering Limited (hereinafter referred to as the Company) filed ULP No.589/1995 under Section 28 read with Schedule IV Items 5 and 9 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU and PULP Act). It was allowed by the Industrial Court, Ahmednagar on 23.07.2008. Being aggrieved and dissatisfied by the order the Company preferred Writ Petition No.8262/2009 which was dismissed by this Court on 14.03.2011. The Company preferred Letters Patent Appeal bearing LPA No.83/2015 which was also dismissed on 16.02.2018 and the decision of the Industrial Court dated 23.07.2008 reached finality.

3. In the meanwhile, since the Company had not obeyed direction of the Industrial Court, the petitioner preferred Complaint under Section 48(1) of the MRTU and PULP Act bearing Criminal Complaint (ULP) No.14/2015 against the present respondents who are the Managing Director and Deputy General Manager of the Company. The General Manager of the Company by name Shri Hemant Dike was also arrayed as an accused No.2. The learned Member of the Industrial Court directed the process to be issued by his order dated 03.01.2019. Being aggrieved and dissatisfied the respondents preferred separate Revisions under Section 44 of the MRTU and PULP Act and by the impugned common judgment and order, the Industrial Court has allowed the Revisions, recalled the order of issuance of process passed by the Labour Court and dismissed the Complaint.

4 (a) It is necessary to note that primarily the Revisions have been allowed on the ground that even before filing of present complaint the petitioner seeking a similar relief under Section 48 (1) of the MRTU and PULP for not implementing the self same order by the Company had preferred a Criminal ULP No.14/2011 against the Manager of the Company. The complaint was dismissed by holding that the petitioner had failed to prove about having put in continuous service of 240 days in an year.

(b) Simultaneously, the petitioner had preferred Contempt Petition No.537/2012 in Writ Petition No.8262/2009 which was then pending in this Court (supra). The Contempt Petition was dismissed by this Court with the observations that he would be at liberty to take appropriate steps under the MRTU and PULP Act. It is thereafter that the present complaint has been filed against the respondents who were not the accused in the earlier Criminal Complaint ULP No.14/2011. It has been thus held that a fresh complaint for the same cause against different persons would not be maintainable.

5. The learned advocate Mr. Nagarkar for the petitioner would submit that since, admittedly, decision of the Industrial Court passed in a proceeding under Section 28 read with Schedule IV Items 5 and 9 has reached finality and when, admittedly, the order has not been implemented there was no error in directing the process to be issued in a successive proceeding under Section 48 of the MRTU and PULP Act. He would submit that it would be too technical to even refuse to proceed against the respondents who are the Managing Director and the Assistant General Manager of the Company merely because they are being arrayed as accused in the present complaint but were not arrayed as accused in the earlier complaint. It is a matter of continuous running of cause of action till the time the order of the Industrial Court is not implemented. The learned advocate would further refer to the decision of this Court in the case of **Vijay Laxmanrao Vahadne Vs. Ajinkya Arun Firodiya ; 2018 ALL MR (Cri) 499**.

6. Per contra, the learned advocates for the respondents would submit that the judgment and order passed in the earlier Criminal Complaint ULP No.14/2011 having reached finality, the present complaint which has been filed on the same set of facts, for non-implementation of the self same order would not be maintainable and the learned Industrial Court has rightly quashed the order directing issuance of process.

7. The learned advocates rely upon the following decisions of this

Court :

- i) **ICICI Bank Ltd. and Ors. Vs. The State of Maharashtra and Anr.; Criminal Writ Petition No.1986/2009 with connected matters.**
- ii) **United Helicharters Pvt. Ltd. and Ors. Vs. S.P. Aspirngekar, Inspector, Security Guards Board for G.R. Mumbai and Anr.; Criminal Writ Petition No.173/2012.**
- iii) **Employees' State Insurance Corporation, Chandigarh Vs. Gurdial Singh & Ors.; 1991 Supp (1) SCC 204.**
- iv) **Akhtar Husain Vs. A.K. Vashishtha and Ors.; (2008) 119 FLR 525 (All).**

The learned advocates would submit that the respondents being the Managing Director and the Assistant General Manager cannot be made liable vicariously for the acts of the Company for not implementing the order passed in a proceeding under Section 28 read with Schedule IV Items 5 and 9.

8. As can be appreciated, as far as facts which are referred to herein above are concerned there is no dispute. Therefore the only question that needs to be addressed is as to whether dismissal of earlier Criminal Complaint ULP No.14/2011 by the Labour Court by the judgment and order dated 06.10.2012 would preclude the petitioner from initiating another complaint against the present respondents.

9. Admittedly, earlier complaint was preferred by the petitioner under Section 48(1) of the MRTU and PULP Act, arraying one R.S. Choudakki who was the Manager of the Company with the allegations about he having failed to implement the order of the Industrial Court passed in Complaint ULP No.589/1995. The respondents were not arrayed as accused in that complaint and the complaint was dismissed with the following observations:

“13. Looking at the gist of Industrial Court's order, the complainant was entitled for permanency as soon as he completes 240

days continuous service in a year. But the complainant had no such evidence. The evidence of accused is that there was condition precedent before granting status of permanency. Also involved provisions of Industrial Employment Standing Orders Act, clause 4 (c) which is clear cut provision.

14. Though benefits were to be given to the complainant as per Industrial Court's order, he has not fulfilled the condition. Hence, non-compliance of same cannot be treated as breach of order. There is no substance in the allegations of complainant and arguments advanced at bar by his Advocate. No offence u/s 48(1) of MRTU and PULP Act, 1971 is made out."

10. At the first blush, the stand of the respondents does appear to be attractive. Even the learned Member of the Industrial Tribunal while passing the impugned order seems to have swayed away by the fact that the present complaint is the second attempt on the self same facts seeking implementation of the self same order and from the charge for non-compliance of which the then Manager has already been acquitted.

11. However, a careful attention to the facts referred to herein above and the provisions of the MRTU and PULP Act would make it abundantly clear that the offence which is made punishable under Section 48 would be a continuous act of a person of failing to comply with the order of the Industrial or Labour Courts. There is no question of any double jeopardy. The order directing the petitioner to be reinstated has reached finality and it is the obligation of the Company and the persons managing its affairs to obey it. Therefore, so long as the order is not implemented/obeyed, it would always be open for the person like the petitioner to seek to proceed against the persons who according to him are responsible for execution and to obey the order but have failed to do so. Even if like in the present case the petitioner has failed to prove the charge as against the then Manager, he can still insist for implementation and execution of the order directing him to be given benefit of permanency which order has reached finality right up to the stage of Letters Patent Appeal.

12. If the petitioner now alleges that in spite of he having approached the respondents seeking obedience to the order passed in Complaint ULP No.589/1995 and is able to demonstrate that it is the respondents who are supposed to implement the order but have failed to do so, it would always be open for him to prove these facts at the trial. He cannot be prevented from seeking obedience of the order which has reached finality.

13. Whether and if he would be able to establish the charge is a matter which cannot be gone into at this stage. In the complaint he has specifically alleged that by sending a letter by Registered Post AD dated 02.05.2015 he had called upon the respondents but they failed to obey the order of the Industrial Court.

14. It is equally pertinent to note that the fact about filing of the earlier complaint has also been disclosed in the present complaint. It has also been mentioned that the earlier Manager Mr. R.S. Choudakki has since retired and therefore the petitioner had called upon the present respondents to obeyed the order of the Industrial Court but they have failed to do so. There are thus allegations to make out *prima facie* case sufficient to proceed against the respondents.

15. So far as the decisions cited on behalf of the respondents (*supra*) are concerned, I have carefully gone through all the decisions. However, as can be gathered these have been rendered in the peculiar facts and circumstances and the law applicable to those cases. In my considered view those are not applicable to the fact situation of the matter in hand.

16. To sum up, the order passed by the Industrial Court in a proceeding under Section 28 read with Schedule IV Items 5 and 9 of the MRTU and PULP Act having reached finality and the respondents having failed to obey the direction, there is a *prima facie* material sufficient enough to direct the process to be issued as was rightly done by the learned Judge of the Labour Court. The learned Member of the Industrial Tribunal has

apparently overlooked the fact that the petitioner would be entitled to insist for implementation of the order which had reached finality in his favour and when he alleges that the respondents being the Managing Director and the Assistant General Manager have not obeyed it and it is a case where the process was bound to be issued by the Labour Court.

17. It must be observed that the powers of revision to be exercised under Section 397 of Cr.P.C. have its limitation. It is trite that a revisional court can intervene only if the decision under challenge is either perverse, arbitrary or capricious. The order passed by the Labour Court does not suffer from any such vice and could not have been interfered with. The learned Member of the Industrial Tribunal has failed to appreciate these facts and circumstances. The order passed by him is clearly erroneous and is liable to be interfered with and reversed.

18. The Writ Petition is allowed. The impugned order is quashed and set aside. The Rule is made absolute in the above terms.

19. The observations made herein above are restricted to the decision of this Writ Petition.

(MANGESH S. PATIL, J.)