

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

WRIT PETITION NO.4289 OF 2019

Mithu Kisan Lokare

... Petitioner

Versus

Vibhagiya Krushi Sah-Sanchalak & Ors.

... Respondents

...

Smt. P. R. Deshpande, Advocate for the Petitioner

Mr. S. W. Munde, AGP for the Respondents/State

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 7th September, 2022

PER COURT :-

1. The petitioner is aggrieved by the order passed by the Industrial Court, Latur in Complaint (ULP) No.74/2016, thereby dismissing the complaint filed by the petitioner.

2. By filing the complaint under Section 28 read with Item 5, 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (for short 'MRTU & PULP Act'), the petitioner claimed that by non-implementing the decision passed in favour of the petitioner in Reference (IDA) No.113/1993, the respondents have committed unfair labour practice and the respondents be directed to implement the said decision.

3. After hearing the parties, the Industrial Court has dismissed the complaint on merit, holding that after passing of the award in Reference (IDA) No.113/1993, on 23-07-1999, the petitioner has already instituted proceeding i.e. Complaint (ULP) No.281/2004 and has obtained the judgment under the provisions of MRTU & PULP Act. Remedies are prescribed to the petitioner for redressal of grievances towards non-implementation of the judgment passed under MRTU & PULP Act. However, second complaint would not be maintainable. Therefore, the Industrial Court has dismissed the complaint.

4. Heard the learned Advocate for the petitioner and the learned Assistant Government Pleader for the respondents/state. Perused the grounds raised in the petition, annexures thereto and affidavit - in-reply filed by the respondents.

5. In order dated 11-01-2022, it is recorded that, the petitioner has been reinstated pursuant to the order passed by this Court on 07-01-2020 and at present, he is discharging his duties in the office of respondent no.4. However, the order passed by the Labour Court still remains to be implemented since the back-wages from 01-10-1991 and continuity of service is awaited.

6. By the award passed in Reference (IDA) No.113/1993, the respondents were directed to reinstate the petitioner with continuity in service and full back-wages w.e.f. 01-10-1991.

7. By allowing complaint in (ULP) No.281/2004, it was declared that the respondents have indulged in unfair labour practice under Item 9 & 10 of Schedule IV MRTU & PULP Act. They were directed to cease and desist from such unfair labour practice by making payment of salary/back-wages to the complainant (petitioner) w.e.f. 01-10-1991 till his reinstatement in service within a period of two months.

8. The respondents by filing reply have contended that the petitioner has not joined the duty any time either after passing of award in Reference (IDA) No.113/1993 or after the decision of Complaint (ULP) No.281/2004. According to them, therefore, he is not entitled for any back-wages since he has not worked for the said period.

9. The petitioner has filed calculation of his back-wages, which according to him, from 01-10-1991 till the date of his reinstatement in January-2020 which comes to Rs.10,00,000/-. The respondents have seriously disputed this calculation by filing additional affidavit-in-reply and have contended that "in the year 1989, the petitioner has worked only for 51 days, in the year 1990, he has worked only for 124 days and in the year 1992, he has worked only for 34 days. Thereafter, he has never attended work in spite of Court's order".

10. In light of the peculiar facts of the present case, it was for the petitioner to seek execution of the award passed in the year 1999 and decision in Complaint (UPL) No.281/2004 dated 11-03-2005, however, the petitioner has failed to do so. The petitioner was ill-advised to file second complaint, in which, he has sought implementation of the award passed in Reference (IDA) No.113/1993.

11. The Industrial Court has rightly dismissed the said complaint being not maintainable, as the petitioner ought to have availed appropriate remedy available to him in law. There is no illegality or perversity in the order impugned in the present petition.

12. Considering the fact that the petitioner is reinstated and he has now resumed the duty in the year 2020 and in spite of two orders passed in favour of the petitioner, he has failed to file appropriate proceedings for implementation and/or execution of the said orders. The petitioner has availed wrong remedy.

13. The writ petition, being devoid of merit, is dismissed, with liberty to the petitioner to avail remedies permissible in law for redressal of his grievance towards non-implementation of the judgment passed in his favour.

[NITIN B. SURYAWANSHI, J.]