

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5450 OF 2019

Mula Pravara Electric Co-operative Society Ltd.,
Through its Managing Director
Shri. Jijabhau Govind Karpe ...Petitioner

VERSUS

Mula Pravara Vij Kamgar Sangathana & Ors. ..Respondents

Mr. Ashwin Hon, Advocate for the petitioner.
Mr. Parag Barde, Advocate for Respondents No. 1 and 2.
Mr. P.P. Patni h/f. Mr. A.S. Bajaj, Advocate for Respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th AUGUST, 2022

ORDER :

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner impugns the order dated 29.08.2018, passed by the learned Member, Industrial Court, Ahmednagar in Complaint (ULP) No. 78 of 2005.

2. Facts in nutshell are as follows:

The petitioner a co-operative society was given license for purchasing bulk electricity and supply it to its members. The said license was not renewed from the year 2011 onwards and respondent No. 2 has taken over the work of electricity supply of the petitioner.

3. Respondents No. 1 and 2 filed Complaint (ULP) No. 78/2005 in Industrial Court, Ahmednagar under section 28(1) and items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (for short 'the said Act'), claiming that the petitioner has committed unfair labour practice. They contended that father of respondent No. 2 late Baburao Sarode was working with the petitioner as lineman helper. While on duty, he met with an accident on 18.10.2003. He expired on 21.12.2003. Entire family was dependent on him. The petitioner did not give any employment to the legal heirs of deceased Baburao in terms of award in Reference (IT) No. 3/1984. Respondent No. 2 is the elder son of deceased and he is eligible for compassionate appointment. Other family members of the deceased have no objection if compassionate appointment is given to respondent No. 2. He is 10th standard pass and belongs to Scheduled Caste. The petitioner has given employment to the similarly situated persons at earlier point of time, however, compassionate appointment is denied to respondent No. 2. Hence, the compassionate appointment was claimed by respondent No. 2 w.e.f. 31.12.2003 with seniority and consequential benefits.

4. The petitioner resisted the complaint by filing a detail written statement. The Industrial Court rejected the complaint by holding that there was no relationship of employer and employee between complainant No. 2 with respondent No. 1. This order was challenged in Writ Petition No. 4376/2014 before this Court. While setting aside the order passed by the Industrial Court, this Court made following observations:

"3. There is no dispute that the Petitioner's father died while in service on 21.12.2003 and the Petitioner has made an application for compassionate appointment on 06.04.2004 when he was 20 years old. This application was made on the basis of the award applicable to the parties, delivered in Reference (IT) No. 3/1984, which was proved before the Industrial Court at Exhibit U-6. By the said award, a provision has been made for effecting compassionate appointment in the event any permanent employee dies while in service.

4. The Petitioner had approached the Industrial Court on the ground that the award, which binds Respondent No. 1/Establishment, gives him the benefits as a legal heir of the deceased and hence, the

right flowing from the award can be asserted. The violation of such right would amount to violation of the award which would be covered by Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

7. *It is, therefore, apparent that the impugned judgment of the Industrial Court, refusing to exercise the jurisdiction on the ground that there was no employer-employee relationship between the Petitioner and Respondent No. 1 herein, is unsustainable. The complaint, therefore, can be remitted to the Industrial Court for reconsideration and without going into the aspect of employer-employee relationship, since the pleadings are complete and the oral and documentary evidence has already been led by all the sides.*

8. *However, Shri. Barde, learned Advocate for the Petitioner, submits that considering the passage of time and the fact that Respondent No. 1 has lost its licence to conduct its business, it would be a matter of speculation as to whether, the Petitioner would succeed in getting the compassionate appointment when Respondent No. 1/Establishment is not conducting its business. He, therefore, submits that this Court may consider*

Section 30(1)(b) of the MRTU & PULP Act, 1971 and quantify reasonable compensation to undo the effects of the legal injury caused to the Petitioner by the conduct of Respondent No. 1.

3. Considering the above, this petition is partly allowed. The impugned judgment and order dated 30/01/2013, is quashed and set aside and Complaint (ULP) No. 78/2005, is remitted to the Industrial Court, Ahmednagar, on the following conditions:

(a) Since, the issue of employer and employee has been settled by this Court, that issue has been put to rest.

(b) Considering the statement made by the learned counsel for the petitioner, on instructions that the petitioner would be only seeking compensation in lieu of compassionate appointment and consequential benefits, the Industrial Court shall accordingly deal with the said Complaint to the extent of the prayer put forth by the petitioner as is recorded.

(c) The litigating sides would appear before the Industrial Court on 09/03/2018. Formal notices need not be issued by the Industrial Court.

(d) The oral and documentary evidence already recorded would be considered.

(e) In the event any of the litigating sides

desire to lead further oral evidence, leave is so granted.

(f) Complaint (ULP) No. 78/2005, shall be decided by the Industrial Court expeditiously and in any case on/or before 21/10/2018.

(g) The litigating sides shall not seek adjournments on unreasonable and trivial grounds.

5. After remand, the Industrial Court, by the impugned order allowed the complaint and directed the petitioner to grant respondent No. 2 compensation including full back wages payable to a peon appointed on 01.04.2004, so also, gratuity, notice pay and retrenchment compensation as if he has rendered services from 01.04.2004 and he was terminated on 31.01.2011. The other consequential benefits are also directed to be paid. The petitioners are aggrieved by this order.

6. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the documents placed on record, so also, additional affidavit filed by the petitioner.

7. It is not in dispute that respondent No. 2 was eligible and entitled for compassionate appointment as per the award applicable to the parties delivered in Reference (IT) No. 3/1984 which by this Court is held to be proved before the Industrial Court at Exhibit U-6. This Court has further observed that the violation of such right would amount to violation of the award which would be covered by Item 9 of Schedule IV of the MRTU & PULP Act, 1971. Admittedly, therefore, the matter was remitted back to the Industrial Court only for deciding compensation in lieu of compassionate appointment and consequential benefits.

8. It is also an admitted position that from February-2011 licence of the petitioner is given to respondent No. 3 and the Petitioner has become defunct. In this view of the matter, the Industrial Court has passed a unseasoned and erroneous order by directing payment of full back wages payable to the peon to respondent No. 2 for the period from 01.04.2004 and 31.11.2011 and the compensation would include gratuity, notice pay and retrenchment compensation as well as other consequential benefits like bonus etc. There is absolutely no reason assigned by the Industrial Court for granting the same to respondent No. 2. The Industrial Court has assumed that

respondent No. 2 should have been appointed on compassionate ground on the post of peon on 01.04.2004, on the date on which he applied for compassionate appointment and, compensation is liable to be paid to respondent No. 2 for the period till the Petitioner become defunct on 31.01.2011. The entire approach on the part of Industrial Court in awarding said compensation is unreasonable and irrational. The Industrial Court has based its judgment on assumptions and presumptions, surmises and conjectures. The findings recorded by the Industrial Court are perverse and cannot be sustained. The impugned order therefore cannot be sustained.

9. While arriving at a figure of compensation to be paid, the Industrial Court ought to have taken into consideration the fact that Petitioner has become defunct from the year 2011 and then ought to have calculated reasonable amount of compensation to be paid to respondent No. 2, by considering the peculiar facts of the case.

10. For the aforesaid reasons, this Court is of the view that the following order would meet the ends of justice.

ORDER

- i) The writ petition is party allowed.
- ii) The impugned order dated 29.08.2018, passed by the learned Member, Industrial Court, Ahmednagar in Complaint (ULP) No. 78 of 2005, is hereby quashed and set aside.
- iii) The petitioner shall pay compensation of Rs. 2,50,000/- to the respondent No. 2, within a period of 12 weeks from today.

[NITIN B. SURYAWANSHI, J.]