

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9917 OF 2019

Pampa Industries

..Petitioner

vs.

Sidram Revansidha Matnale

..Respondent

Mr. Suhas S. Inamdar for petitioner.

Mr. Dilip Bodake for respondent.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 7, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. Mr. Inamdar, learned counsel appearing on behalf of the petitioner-employer (hereafter "employer", for short) contended that the Courts below erred in holding that the Inquiry Officer's report is perverse. It is further submitted that though the Industrial Court exercised revisional jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (hereafter "the said Act", for short), except for indicating that the reasoning of the

Labour Court is correct, the Industrial Court has not adverted to any of the contentions raised by the employer in its challenge to the order passed by the Labour Court.

3. Mr. Bodake, learned counsel appearing on behalf of the respondent-employee submitted that both the Courts below have concurrently recorded that the findings of the Inquiry Officer are perverse. The Labour Court has assigned cogent reasons in paragraph Nos.24, 25 and 26 of the order in support of its conclusion that the findings of the Inquiry Officer are perverse. He submits that in any case it is always open for the employer to lead evidence in support of the charges and hence no prejudice is caused to the Management.

4. Having heard learned counsel for the parties and on perusal of the records and orders passed by the Courts below, in my opinion, the impugned order calls for an interference for the reasons hereinafter mentioned.

5. A complaint was filed by the employee under the provisions of the said Act alleging unfair labour practices on the part of the employer while dismissing the services of the

employee w.e.f. 29.09.2011. The charge against the employee is that he alongwith other employees participated in an illegal strike and it is the respondent who has instigated the other employees to participate in such illegal strike. The Labour Court in an earlier round of proceedings, framed following three issues :-

	Issues	Findings
1	Whether the inquiry conducted against the complainant is by way of following the principles of natural justice ?	Yes.
2	Whether the findings of inquiry are perverse ?	No.
3	What order ?	As per final order.

6. By an order dated 15.09.2012, the Labour Court declared that the inquiry is fair and proper and findings are not perverse. In Revision filed by the employee, the Industrial Court by an order dated 27.11.2014 quashed the findings of the Labour Court on preliminary issue No.2. The Industrial Court remitted the matter to the Labour Court for re-appreciation of evidence in respect of issue No.2 and for recording fresh findings on preliminary issue No.2 by giving an opportunity to parties to advance their arguments.

7. A reading of the order dated 27.11.2014 reveals that the Labour Court was expected to re-appreciate the evidence adduced in respect of issue No.2 and record a fresh finding on the issue No.2 i.e. "Whether the findings of the inquiry are perverse ?"

8. By an order dated 20.06.2015, the Labour Court for the reasons recorded held that the inquiry conducted against complainant is legal and fair and proper, but the the findings of inquiry are perverse. The conclusions are drawn for the following reasons which are found in paragraph Nos.24 to 26 of the Labour Court's order. Paragraph Nos.24 to 26 read thus :-

"24. It is also pertinent to note that, the other employees who have given apology were not examined as witness to prove their statement. These statements goes to the root of case, as on these statements, the findings of the enquiry are going to be decided. So they must have been examined by the respondent to prove that they were pressurized by the complainant to go on strike.

25. Mr. Aatnure was examined as witness by complainant in the cross examination. He deposed that he signed on the reply dt. 30.05.2011 as per say of Sidram Matnale. But he never stated that he was pressurized by complainant to sign on the reply. It is pertinent to note that, other five employees were also

present there, they also signed on the reply. It means that, there was uniformity amongst the employees. So it cannot be said that complainant Matnale have pressurized the employees to go on strike.

26. It is also pertinent to note that, the charge-sheet was issued to complainant after accepting the joining of the employees. Other employees who were also on strike, they were given opportunity to join the duty. But complainant was not given chance to join duty. Complainant was made victimization. So I held that findings of enquiry are perverse."

9. The Industrial Court in Revision, agreed with the Labour Court. While dismissing the Revision, the following reasons are assigned :-

"7. Para no.23, 24, 25 & 26 are the paragraphs in the judgment where the Ld. Trial Court given his reasons for holding the findings of the Enquiry Officer as perverse and the words and reasons used by the Ld. Trial Court are clear and apt. The Ld. Trial Court has rightly appreciated the evidence in the enquiry proceedings and has passed a well reasoned order. His findings about the co-employees of the Opponent workman not deposing before the Enquiry Officer and therefore the fact of the strike not being proved, is cogent and just.

8. His discussion on the fact that, based on the evidence before the Enquiry Officer, it could not be said that the Opponent workman has pressurized the co-employees to go on strike, is also just and proper. Though, under section 44 of the M.R.T.U. & P.U.L.P. Act, 1971 I am not to re-appreciate the evidence, but I have verified the evidence before the Enquiry Officer, and while reasoning out the said judgment I have

come to the conclusion that the parameters used by the Ld. Labour Court while deciding the issue of findings is perfectly legal and does not deserve any interference, and therefore in lieu of the above reasons, I am passing the following orders :-

:- ORDER :-

- (i) Revision (ULP) No.39/2015 is rejected.
- (ii) There is no order as to costs.
- (iii) The record and proceedings of Complaint (ULP) No.61/2011 with copy of this judgment be remitted to Ld. Labour Court, Solapur, immediately."

10. A reading of the order passed by the Labour Court indicates that the Labour Court was impressed by the fact that the other employees who had tendered apology were not examined as a witnesses to prove their statement. According to the Labour Court, these statement go to the root of case and therefore, they must be examined to prove that they were pressurised by the respondent-employee to go on strike. The other reason is as regards the reply dated 30.05.2011. It was signed by the employees which according to the employer is as per the say of respondent-employee. The Labour Court was of the opinion that Mr. Aatnure (one of the employee who signed the letter) never stated that he was pressurised by the respondent-employee

to sign the reply.

11. In my opinion, the Revisional Court ought to have approached the Revision from the perspective of what the Industrial Court had directed the Labour Court vide its order dated 27.11.2014, in that, the Labour Court was expected to re-appreciate the evidence in respect of issue No.2 and then record findings after giving an opportunity to the parties to advance their arguments. To come to the conclusion that the findings are perverse, the Labour Court appears to be impressed with the circumstance that none of the employees who are alleged to have been instigated were examined.

12. Having gone through the Inquiry Officer's report, I find that apart from the other materials, the Inquiry Officer has also adverted to the evidence of one Mr. Gangadhar Basappa Kalburgi, who states to have submitted a report that the respondent-employee was the one who instigated the employees to proceed on strike and that the respondent-employee indicated that he would ensure that none of the employee will be permitted to report for work.

Mr. Gangadhar Basappa Kalburgi has been cross-examined. The Labour Court has not adverted to the evidence of Mr. Gangadhar Basappa Kalburgi at all. Thus, the statement of Mr. Gangadhar was before the Inquiry Officer which was duly considered by him while arriving at a finding that respondent-employee is the one who instigated employees to proceed on strike. The statement/evidence of Mr. Gangadhar has not been adverted to at all by the Courts below.

13. Another aspect which I notice is that though the Labour Court has held that the findings of the Inquiry Officer are perverse, the entire reasoning is only as regards charge No.2 as to the respondent-employee instigating the other employees to proceed on strike. So far as charge no.1 about all the employees participating in strike is concerned, there is absolutely no discussion, except for a general observation that the findings of the Inquiry Officer are perverse.

14. In my opinion, the Revision (ULP) No.39/2015 has been decided by the Industrial Court in a cryptic manner.

In such view of the matter, the matter is remitted back to the Industrial Court for deciding the Revision (ULP) No.39/2015 afresh on its own merits and in accordance with law. Parties to appear before the Revisional Court on 19.09.2022. The Revisional Court is requested to decide the Revision expeditiously and preferably within a period of six weeks from 19.09.2022 on its own merits and in accordance with law. The Industrial Court not to be influenced by the observations made by me in this order.

15. The Writ Petition is disposed of.

(M. S. KARNIK, J.)