

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 742 OF 2022

Dr.Gosavi Hospital & Obstretics and Gynaec Nursing Home	.. Petitioner
Versus	
Mallappa Bapu Kamble	.. Respondent

...

Mr. Sandeep S. Mutalik for the petitioner.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 25th JANUARY, 2022

P.C:-

1 The petitioner, original respondent in Complaint (ULP) No.13/2020 is aggrieved by the interlocutory order dated 25/9/2020 passed by the Labour Court, Sangli, vide which Application Exhibit C-6, seeking framing of a preliminary issue, has been rejected by a lengthy order. The petitioner is also aggrieved by the judgment dated 23/2/2021 delivered by the Industrial Court, Sangli, vide which Revision (ULP) No.12/2020 filed by the petitioner has been rejected.

2 I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the petition paper book with his assistance.

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3 There can be no dispute in the light of the judgments delivered by the Hon'ble Apex Court in Vividh Kamgar Sabha Vs. Kalyani Steels Limited, (2001)2 SCC 381 and Cipla Limited Vs. Maharashtra General Kamgar Union, (2001) 2 SCC 381, that, if the employer-employee relationship is disputed or disputable, a ULP Complaint may not be maintainable before the Labour Court or Industrial Court.

4 However, it is noticed in several matters that the employers approach the Court simply with an application to dispute the relationship and are under the impression that by the mere filing of such an application, the Court would be divested of its jurisdiction in the light of Kalyani (supra) and Cipla (supra). The law is that there should be a specific pleading through a written statement in response to such cases and the employer must produce material before the Court to support its contention that the relationship was always disputed or is disputable.

5 Order XVI Rule 1 of the CPC provides for the settlement of issues and determination of the Suit on issues of law or on issues agreed upon. Though the CPC is not strictly applicable to the Labour and Industrial Courts, in principle, the Courts do fall back upon the provisions of the CPC when it comes to framing of the issues.

6 The Labour Court as well as the Industrial Court has refused to grant relief to the petitioner on the ground that without the filing of the written statement, an application C-6 was filed, alleging that the preliminary issue be framed. Both the Courts have rejected the Application on the ground that there is no written statement on record.

7 In view of the above and in light of the statement made by the learned Advocate for the petitioner that the written statement is now filed, it goes without saying that the learned Labour Court would now rely upon Order XIV Rule 1 of the CPC for framing of the issues in the light of the rival pleadings of the parties and the material available before it.

8 In view of the above, this Petition is dismissed.

RAVINDRA V. GHUGE, J