

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1892/2022

The Chief Executive Officer, Zilla Parishad, Civil Lines, Nagpur – 440 001.

...Versus...

Shri Vijay s/o Jangluji Kokode and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri B.P. Maldhure, Advocate for petitioner
Shri S.P. Bhandarkar, Advocate for respondent no.1
Mrs. M.A. Barabde, AGP for respondent nos.2/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 05/08/2022

1. Heard Shri Maldhure, learned counsel for the petitioner. The petition challenges the judgment dated 24/01/2022 passed by the learned Industrial Court, Nagpur on a complaint filed by the respondent no.1, challenging his transfer order, by which judgment, it has been held that the petitioner has committed unfair labour practice under Items 3 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "the MRTU and PULP Act, 1971 hereinafter) and directed the respondent no.1 to be posed at Nagpur. The respondent no.1 by an order dated 31/07/2020 (pg.32) was transferred from Zilla Parishad, Nagpur to Panchayat Samiti

Bhiwapur. The respondent no.1 also stood relieved from 03/08/2020 (pg.34). The transfer was challenged before the learned Divisional Commissioner, Nagpur, who by the order dated 09/11/2020 (pg.41) rejected the challenge. The proceedings before the learned Industrial Court were therefore filed by the respondent no.1 being Complaint (ULP) No.108/2020. By way of an interim order dated 12/03/2021 the transfer was stayed by the Industrial Court, Nagpur (pg.55) against which Writ Petition No.1591/2021 came to be filed which was allowed on 20/07/2021 (pg.66) in which the interim order dated 12/03/2021 was set aside and the learned Industrial Court was directed to decide the complaint within three months. That is how the impugned judgment dated 24/01/2022 has been passed.

2. Shri Maldhure, learned counsel for the petitioner submits that the respondent no.1 was not covered by the Government Resolution dated 15/05/2014 (pg.25), as according to him, the Maharashtra State Extension Officers' Union of which the respondent no.1 was the President was registered under the Trade Unions Act, 1926 and not under the MRTU and PULP Act, 1971. He submits that such a requirement was spelt out from the communication dated 10/10/2018 (pg.30) issued by the Under Secretary, State of Maharashtra and also the communication dated 17/11/2018 (pg.31) by the same authority.

3. What is material to note is that Chapter-V Clause 4 of the Government Resolution dated 15/05/2004 (pg.28) indicates that if an employee is the President, Secretary, Treasurer or working President of a recognized State or District level union then he would be entitled to be retained at the District level for a period of 10 + 5 years. In the instant case, the respondent no.1 has been at Nagpur from 10/06/2008 and the period of 15 years is yet to expire. That apart, it is also not disputed that the respondent no.1 is the President of the Maharashtra State Extension Officers' Union, which is registered under the Trade Unions Act. The submission of Shri Maldhure, learned counsel for the petitioner placing reliance upon communications dated 10/10/2018 and 17/11/2018 that such a union for the purpose of Chapter-V Clause 4 of the Government Resolution dated 15/05/2014 is necessarily required to be registered under the MRTU and PULP Act, 1971, is misconceived for the reason that the communications dated 10/10/2018 and 17/11/2018 are merely opinions of the Law and Judiciary Department to which the question was referred, as to which union would be included in the Government Resolution dated 15/05/2014. However, what is material to note is that the Government Resolution dated 15/05/2014 and specifically Chapter-V Clause 4 merely makes the use of expression "approved" and does not indicate the requirement of the recognition under the MRTU and PULP Act, 1971. In case such

a requirement was felt necessary, it was permissible for the State to have issued a corrigendum and inserted the said requirement in the Government Resolution dated 15/05/2014. That however is not the case, considering which, the opinions given in the communications dated 10/10/2018 and 17/11/2018 are merely opinions and nothing else, as such the reliance by the petitioner upon these communications is clearly not justified. That being the position, under the Government Resolution dated 15/05/2014, the respondent no.1 was indeed required to be retained at Nagpur for the period as contemplated in Clause 4 of Chapter-V of the Government Resolution dated 15/05/2014, which period is yet to expire and therefore, would be entitled to its benefit.

4. Insofar as the contention that the respondent no.1 was not a protected employee under Section 33 of the Industrial Disputes Act, 1947 r/w Rule 66 of the Rules framed thereunder, in light of *Santhakumar, P s/o Late Purshothaman, Bengaluru Vs. Hindustan Aeronautics Ltd. rep. by is General Manager (HR), Bengaluru & Anr., 2022 II CLR 394* there may be substance in this argument, however, even if that argument is upheld, the result would be the same, considering which, I am not inclined to go into that issue. I therefore do not find any merit in the present petition. The writ petition is dismissed accordingly. No order as to costs.

5. It is made clear that consequent to expiry period as contemplated in Clause 4 of Chapter V of the Government Resolution dated 15/05/2014, the respondent no.1 would be entitled to take appropriate steps as permissible and appropriate to him.

6. At this juncture, Shri Maldhure, learned counsel for the petitioner seeks to keep in abeyance the present order for a period of 15 days.

7. It is an admitted position that the respondent no.1 is presently posted at Bhiwapur, considering which, the request is accepted. The effect and operation of the judgment of the learned Industrial Court is stayed for a period of 15 days from today.

(AVINASH G. GHAROTE, J.)

Wadkar