

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.7459 of 2020 (O&M)
DATE OF DECISION : 25th MAY, 2022

Abhijit Mishra

.... Petitioner

Versus

**Union of India through Honourable Chief Labour Commissioner
(Central), Ministry of Labour and employment, Government of
India, Kendriya Sadan, Chandigarh & another**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Abhijit Mishra - petitioner in person

Ms. Gurmeet Kaur Gill, Sr. Panel Counsel
for respondent No.1-UOI.

Mr. Mandeep Singh Vinaik, Advocate and
Mr. Gurpreet Singh, Advocate for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

CM-6168-CWP-2021

This is an application filed under Section 151 C.P.C. for
placing on record the rejoinder to the reply filed by respondent No.2.

The application is allowed as prayed for and the rejoinder on
behalf of petitioner, as aforesaid, is taken on record.

CWP No.7459 of 2020

1. The petitioner has filed this petition under Article 226 of the
Constitution of India, praying for issuance of a writ in the nature of
mandamus directing respondent No.1 to initiate action against respondent
No.2 under the provisions of **Section 25T of the Industrial Disputes
Act, 1947** (in short, the I.D. Act); along with certain other prayers.

2. The petitioner, who is appearing in person, has submitted that his sole grievance, as of now, is that respondent No.2-employer had indulged in unfair labour practice. To protest against the said practice and for getting initiated an action against respondent No.2-employer the petitioner had moved representation to the appropriate Government. However, respondent No.1-authority has not initiated appropriate action against the respondent No.2-employer. Hence the present petition.

3. Arguing the case the petitioner has submitted that his case is covered by Section 25T of the I.D. Act, as has been held by the Supreme Court in the case of ***Hindustan Lever Ltd. vs Ashok Vishnu Kate & Ors, 1995 SCC (6) 326***. To carry forward his argument the petitioner has submitted that the provision of Section 25T of the I.D. Act prohibits from committing unfair labour practice by the employer or workman or a trade union irrespective of the fact whether the union is registered under the Trade Union Act or not. Hence, since the grievance of the petitioner is against the employer, therefore, he can raise the issue of violation of provisions of Section 25T of the I.D. Act by respondent No.2-employer. To cover himself under the Schedule, as mentioned in the Act, the petitioner has referred to entry No.14 in part I of Fifth Schedule of the I.D. Act. Relying upon the said entry, the petitioner has submitted that the petitioner had filed public interest litigation (PIL) before Hon'ble the Delhi High Court by way of WP(C) No.3693 of 2019, WP(C) No.5894 of 2019, WP(C) No.7007 of 2019, WP(C) No.7320 of 2019 and WP(C) No.4260 of 2019, all titled as ***Abhijit Mishra Versus Reserve Bank of India and others***. Respondent No.2 - employer had asked the petitioner to move applications in these PILs,

which had the potential of exonerating certain clients of the respondent-employer of their liabilities under various Acts. Since the petitioner had refused to file the said applications, therefore, the respondent-employer threatened the petitioner with loss of reputation, likelihood of loss of job and for destroying the career of the petitioner. This tantamounts to use of force. Hence the action of respondent-employer is covered by entry No.14 of the Schedule. Therefore, this petition deserves to be allowed. The respondent-employer deserves to be put on trial by directing the appropriate government to initiate the proceedings against the respondent-employer. To buttress his argument the petitioner has submitted that Section 25T uses the word 'shall', therefore, the said provision is mandatory and the appropriate Government does not have any discretion even not to initiate the proceedings against the employer; in case a complaint regarding the unfair labour practice is brought to the knowledge of the appropriate Government.

4. On the other hand, the counsel for the respondent No.2-employer has submitted that the petitioner is a mischievous kind of element. This aspect is amply clear from the conduct of the petitioner. One of the clients of the respondent-employer happens to be the Reserve Bank of India (RBI). The petitioner had initiated proceedings against the RBI as well, in his personal capacity, while in service of the respondent-employer. He kept on filing repeated litigations against various clients of respondent-employer like the above mentioned RBI. When the petitioner had indulged in intensive and multiple litigations, he had stopped performing as per the standards required by the company. Therefore, he was put under performance improvement plan. The said plan envisages

making all non-performing employees to improve their performance. The employees put under the plan are counseled and guided during the period of observation under the plan. Even during the period of observation under the improvement plan, the petitioner did not desist from his nefarious activities of initiating action/litigation/complaints against the functionaries of the respondent-employer, including the Directors and Chairman of the Company. On 05.06.2020 the services of the petitioner were terminated. However, before the order of termination of the service of the petitioner was passed, the petitioner had already filed the present petition against the respondent-employer. Not only the present petition, the petitioner had also filed three civil suits, out of which two are filed before the Delhi High Court and one before the District Court at Shahadra, Delhi. The grievance which is being raised in the present petition is also raised in the said civil suits pending before Delhi High Court. Hence, the petitioner is indulging in multiple litigation for the same grievance, as well. In the suit before Delhi High Court, the trial has already commenced by framing of the issues. Therefore the present petition deserves to be dismissed; being frivolous.

5. The counsel for the respondent has further submitted that there has; absolutely; been no threat of any kind to the petitioner, nor the same is manifest from anything on record. Never has ever been any use of force against the petitioner. Therefore, the case of the petitioner is not covered by entry No.14 of Fifth Schedule of the I.D. Act. Moreover, the entry No.14 is not to be read in isolation, the same has to be read *ejusdem generis* with the entries preceding entry No.14 contained in the said Schedule. A perusal of the said Schedule shows that the entry preceding

the entry No.14 deals with the grievance of workman. Even when in employment; the petitioner was not working in his capacity as workman, as defined under the I.D. Act. Rather, the petitioner has not even disputed the fact that he is not 'workman'. Even before this court the petitioner has conceded that he is not covered by the definition of workman. Therefore, he is not even entitled to raise any grievance regarding the alleged unfair labour practice. Qua the meaning of the word 'force' as used in entry No.14 of the Fifth Schedule, counsel for the respondent has submitted that the force, as used in this entry, means only physical force because the same is used in conjunction with violence. There is not even allegation by the petitioner that the physical force was even used against him. Hence, there is no scope for the petitioner to invoke entry No.14 only because of the respondent-employer, allegedly, asking him to file any application in any litigation; though the respondent-employer categorically denies having ever asked the petitioner to do anything against law.

6. Having heard the counsel for the parties and having perused the case file, this court does not find any substance in the argument raised by counsel for the petitioner. The I.D. Act is meant for a limited purpose of protecting the interest of 'workman' against the tactics, hegemony and any harassment by the employer. This fact is clear from the fact that the provisions of the Act contemplates making reference of the industrial disputes to the adjudicatory bodies by or on behalf of an employee only if he is covered by definition of workman. The Act prescribes punishment and consequences for violation of the provisions qua workman. However, the petitioner has even conceded that he is not covered by the

definition of workman. Therefore, his grievance is not being raised as ‘workman’.

7. The petitioner has relied upon the judgment of Supreme Court in the case of *Hindustan Lever Ltd. (supra)*, however, this court finds that the said judgment is not even relating to the I.D. Act as such. The issue involved in the said judgment is relating to other provisions under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the aspect whether under that Act workman could raise the issue of unfair labour practice before termination of his service. However, the legal provisions involved in that case; which were under consideration before the Supreme Court; have no parallel with the provisions involved in the present case. The said judgment, therefore, is not applicable as a precedent qua the present case. The said judgment is totally distinguishable.

8. The next question is; can the petitioner raise grievance qua an unfair labour practice against the respondent-employer in his capacity as an employee? For that purpose the court has to have a reference to the fact as to what can be raised as a dispute and between whom. The I.D. Act has defined the ‘industrial dispute’, which can be raised under Section 2(k) of the same, which reads as under:

“2. *Definitions : xxx... xxx... xxx...*

2(k) *“industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of*

employment or with the conditions of labour, of any person;”

9. A bare perusal of the definition of industrial dispute shows that it contemplates only a dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen. There is no category of employer and ‘employee’ contemplated for the purpose of an industrial dispute. Hence, the petitioner, as an employee, is not entitled to raise any dispute under the provisions of the I.D. Act. Being not a ‘workman’ and being not entitled to raise any dispute under the I.D. Act, the petitioner does not have any *locus standi* to raise the issue of unfair labour practice as enumerated in the Fifth Schedule of the I.D. Act against the respondent-employer.

10. To confer upon himself the *locus standi* to raise the dispute, the petitioner has referred to provision of Section 25T of the I.D. Act and has submitted that the said provision refers to three entities and not restricted to the workman. The provision of Section 25T reads as under:

25T. Prohibition of unfair labour practice.- No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.

11. However, even this argument of the petitioner is totally misconceived. A perusal of the provision of Section 25T the I.D. Act itself shows that this provision is framed in the nature of prohibiting certain entities from committing unfair labour practices. The entities which are prohibited from committing the unfair labour practices are

enumerated in the said Section as the employer, workman and the trade union. This Section does not even speaks of as to who can raise the issue of commission of unfair labour practice. This is merely a prohibition defining Section. This Section, by any means, does not confer any *locus standi* upon the petitioner, or for that matter upon any person, in itself. For determining the *locus standi* to raise any dispute of committing unfair labour practice by the entities enumerated in Section 25T of the I.D. Act, reference has to be made to the definition and applicability clauses of the Act. Hence, on the basis of Section 25T of the I.D. Act, the petitioner does not get any *locus standi*. So far as the applicability and definition clauses, are concerned, as mentioned above, neither the petitioner is a workman, nor is he or his grievance is covered by definition of the I.D. Act, as such. Hence, this court is of the considered opinion that the petitioner does not have any *locus standi* to raise the dispute of the respondent-employer having committed any unfair labour practice; as enumerated in Fifth Schedule of the I.D. Act.

12. Even if the petitioner is presumed to have a *locus standi*, the complaint raised by the petitioner is not covered by any entry enumerated in the Fifth Schedule. Although, the petitioner has referred to entry No.14 in the Fifth Schedule to buttress that he was forced for making certain applications in the litigations, filed by him in his personal capacity, against the clients of the respondent-employer, however, the assertions of the petitioner cannot be taken to have any merit. Even on its face value, the alleged action of the respondent-employer does not tantamount to use of 'force or violence' against the petitioner. The word 'force', as used in this entry, is having a reference to the physical force or

any physical act resulting into physical impact upon the body of person. This conclusion is supported by the fact that the another word, used in conjunction with the word 'force', is the word 'violence'. Hence it is obvious that both have been used as conjunctive phrases to convey the same nature of acts but of difference degrees. Any intangible act or alleged pressure to do an act of moving an application in a litigation, cannot be taken to be 'force' as contemplated in this entry. Moreover, since the petitioner, at the relevant time, was an employee of the respondent-employer, therefore, the respondent-employer was fully well within its right to ask the petitioner to take any step to stop damage to its business interest, which could have arisen from the PILs filed by the petitioner against clients of the respondent-employer. If the petitioner perceived the said action of the respondent as coercion upon him, the petitioner was free to leave the job with the respondent-employer and continue with his PILs against any entity, as deemed appropriate by him.

13. Even the conduct of the petitioner suggests that the respondent-employer was almost forced by the petitioner to take action of termination of his service. The action of the petitioner in initiating the multiple litigations, including the litigation against RBI and other clients of the respondent-employer; itself was sufficient for the employer to either instruct the petitioner to take steps to stop damage to its business interest or even to stop the litigation altogether, failing which the respondent-employer had a right to shunt the petitioner out of the job. It is a different matter that aspect of termination of service and its validity,

would have been within the right of the petitioner to question before appropriate body through legally permissible means.

14. In view of the above, finding no merit in the present petition, the same is dismissed.

25th MAY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No