

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11397 OF 2018

Maharashtra State Road Transport Corporation,
Divisional Office, Latur,
Through Divisional Controller
Tq. and Dist. Latur and anotherPetitioners

Versus

Hashmi Sayyad Shamin Rashid ...Respondent

....

Mrs. Ranjana D. Reddy, Advocate for the petitioners
Ms A. N. Ansari, Advocate for respondent

...

WITH

CIVIL APPLICATION NO. 3323 OF 2021

IN

WRIT PETITION NO. 11397 OF 2018

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 02-03-2023

PER COURT :

1. Heard learned counsel appearing on behalf of the parties.

2. The petition takes an exception to the order dated 30.01.2018 passed by the Industrial Court, Latur, in Complaint (ULP) No.38 of 2015.

3. The facts of the case are; the respondent was working on the post of Driver at Udgir Depot. A charge-sheet was issued to the respondent in the year 2015 on the ground of absenteeism. It was

the case of the respondent that while he was performing duties, he fell ill on 07.06.2014 and he had to undergo operation twice and as such, he could not attend work and subsequently he has not been allowed to resume his duties and has been shown as absent.

4. The respondent challenged the issuance of the charge sheet in Complaint (ULP) No. 38 of 2015 invoking the provisions of Section 28 read with Item 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The evidence was led by the parties and the Complaint came to be partly allowed by the Industrial Court vide its Judgment and Order dated 30.01.2018.

5. The learned counsel appearing on behalf of the petitioner submits that the Complaint (ULP) No. 38 of 2015 came to be allowed and it was declared that the petitioner-Corporation has engaged in unfair labour practices under Item 10 of Schedule IV of M.R.U.T. & P.U.L.P. Act, 1971. She further submits that, Item 10, which relates to an act of force or violence, is inapplicable to the facts of the present case. She would further submit that an affirmative action by way of direction to take a decision about the service tenure and to pay wages to the respondent within a period of two months and to permit the respondent to resume the duties forthwith and pay

wages regularly, came to be issued.

6. Per contra, the learned counsel appearing for the respondent submits that in spite of the order of the Industrial Court to take decision, the petitioner has not proceeded with the enquiry. She would further submit that the Civil Application has been preferred before this Court being Civil Application No.14622 of 2019 and by order dated 12.12.2019, this Court had permitted the respondent to join his duties with the petitioner Corporation. She would further submit that the petitioner did not permit the respondent to join the duties and instead, sent him for medical check up, which declared him unfit to work as a driver. She would urge that in view of the policy of the petitioner-Corporation, the respondent is entitled to an alternate post and for the said purpose Civil Application No. 3323 of 2021 has been instituted.

7. Considered the submissions advanced on behalf of both the parties.

8. As against the issuance of the charge sheet, the Complaint (ULP) No.38 of 2015 was filed invoking the provisions of Section 28 read with Item 9 and 10 of the M.R.T.P and P.U.L.P Act, 1971. In this context, it is necessary to reproduce Item 9 and 10 of

Schedule - IV of the MRTP and PULP Act, which reads as under:

“9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.”

9. The charge sheet was issued on the ground of absenteeism from duty and as such departmental inquiry was contemplated. After rejecting application for interim relief direction was given not to proceed with departmental enquiry as the complainant wanted to challenge order in High Court. The enquiries were kept pending in view of the directions issued by the Industrial Court to the effect, not to proceed in domestic inquiry.

10. The finding of the Industrial Court is that the enquiries were not proceeded with and were pending till the date of the impugned order. The Industrial Court, in the facts and circumstances, found that the respondents are at liberty to proceed with the enquiry if they choose so. It is apparent that there has been a denial of the relief sought by the respondent as regards the quashing of the charge sheet.

11. It was directed by the Industrial Court that the Corporation to take a decision to complete the enquiry expeditiously. After holding so, the Industrial Court, in an unprecedented manner, has directed the Corporation to take a decision about the service

tenure and to pay wages to the respondent within a period of two months from the date of this order. Further the Industrial Court has held that the Corporation has engaged in an unfair labour practice under Item 10 for the reason that it has failed to complete the enquiries in a time bound manner.

12. Item 10 of Schedule IV of the M.R.T.U. & P.U.L.P Act as reproduced above indicates that the unfair labour practice contemplated therein is an act of force or violence on the part of the employer. In the present case, it is not clear as to how such an unfair labour practice can be attributed to the Corporation, particularly in the absence of any finding by the Industrial Court in that regard. The Industrial Court has observed in the impugned order that the directions were issued to the Corporation to the effect, not to proceed in the domestic inquiry in respect of the charge sheet for a period of six weeks. Considering the admitted position on record, the declaration by the Industrial Court that the petitioners-Corporation have engaged in unfair labour practices under Item 10 of Schedule IV of the M.R.T.P and P.U.L.P Act, is clearly unsustainable and is liable to be quashed and set aside and as such the further directions which had been issued, which are required to be issued to ensure an affirmative action on part of the employer-Corporation, is also required to be quashed and set aside.

13. In light of the above, the petition succeeds and the impugned order dated 30.01.2018, is hereby quashed and set aside. As regards the Civil Application, which has been filed by the respondent herein seeking an alternate job in accordance with the policy of the Corporation, in my opinion, the said issue cannot be agitated by way of civil application in the present writ petition. Respondent is at liberty to institute his independent petition challenging the orders of the Corporation rendering him medically unfit to work as the driver and to implement the policy of Corporation of giving an alternate job, in such a situation.

14. Petition stands allowed in the above terms.

15. In view of the dismissal of the writ petition, the Civil Application does not survive and same stand dismissed.

(SHARMILA U. DESHMUKH, J.)

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