

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2282 OF 2023**

Shivaji Vidyapith Shikshak Sangh	...	Petitioner
versus		
Baburao Ramchandra Vadam	...	Respondent

Mr. C.G.Gavnekar, Senior Advocate with Mr. Ashutosh Gavnekar, Mr. Rohit Parab,
for Petitioner.
Mr. V.P.Vaidya with Ms. Shraddha Chavan i/by Mahendra Agavekar for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 25 APRIL 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition assails the legality, propriety and correctness of judgment and order dated 30 November 2022 passed by the learned Member, Industrial Court at Kolhapur in Revision Application (ULP) No.97 of 2017, whereby the Revision Application preferred by the Petitioner against an order passed by the Labour Court on an application (Exhibit C-13) in Complaint (ULP) No.110 of 2015 dated 7 August 2017 rejecting the application for framing preliminary issue, came to be rejected.
3. The Petitioner is a Trade Union registered under the Trade Unions Act, 1926. The Respondent was working as a Clerk in the office of the Petitioner. On account of alleged misappropriation and misconduct, a charge sheet was served on Respondent on 1 April 2015. Inquiry Officer submitted a report on 28 October 2015

and the Respondent was found guilty of the misconduct.

4. The Respondent filed a complaint alleging unfair labour practice under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act of 1971) before the Labour Court at Kolhapur. The Respondent preferred an application (Exhibit U-2) for interim relief. By an order dated 19 December 2015, the said application for interim relief came to be rejected. The Respondent preferred Revision Application (ULP) No.243 of 2015. In the said Revision Application, an application for interim relief (Exhibit U-2) was filed and by an order dated 6 June 2016, the said application came to be allowed by setting aside the order dated 19 December 2015 passed by the Labour Court and the Petitioner was directed not to terminate the services of the Respondent without following due process of law, till the decision of the Revision Application and to protect the wages of the Respondent till the disposal of the Revision Application.

5. The Petitioner carried the matter in Writ Petition No.9225 of 2016. By an order dated 26 October 2016, the order passed by the Industrial Court was set aside and the Revision (ULP) No.243 of 2015 was remitted back to the Industrial Court for disposal expeditiously. In the meanwhile, the undertaking given by the Petitioner that the wages of the Respondent would be protected, was accepted.

6. Eventually, by a judgment and order dated 30 December 2016, the Revision Application (ULP) No.243 of 2015 came to be allowed, setting aside the

order on interim application (U-2) passed by the Labour Court and the matter was remanded back to the Labour Court.

7. Upon remand, in Complaint (ULP) No.110 of 2015 the Petitioner preferred an application (Exhibit C-13) asserting that the dismissal order passed by the Petitioner on 30 December 2015 came into force from 31 December 2016 and, thus, the complaint become infructuous and not maintainable in the eye of law. Hence, a preliminary issue as to whether there was a cause of action to maintain the complaint and the Labour Court had jurisdiction to hear and decide the matter be framed.

8. By an order dated 7 August 2017, the Labour Court rejected the application, holding that the factum of dismissal of the Respondent was not brought to the notice of the Industrial Court while deciding Revision Application (ULP) No.243 of 2015. The Labour Court was of the view that setting aside of the order dated 19 December 2015 on the application for interim relief (Exhibit U-2) (whereby the Labour Court had declined to protect the services of the Respondent) itself implied that the Respondent-Complainant was entitled to be in service. Consequently, the employment of the Respondent-complainant was protected.

9. In Revision Application, the learned Member, Industrial Court did not find any ground to interfere with the aforesaid order and, thus, dismissed the Revision Application by the impugned order. The Petitioner has again invoked the writ jurisdiction.

10. Mr. Gavnekar, learned Senior Advocate for the Petitioner, strenuously submitted that during the pendency of the proceeding, the services of the Respondent-complainant came to be terminated by an order dated 30 December 2015. With the dismissal of the Respondent-complainant, by an order dated 30 December 2015, the entire complexion of the dispute between the parties changed. The maintainability of the complaint before the Labour Court under the provisions of the Act, 1971 itself became debatable. In the circumstances, the Petitioner was justified in seeking framing and determination of the preliminary issues.

11. Inviting the attention of the Court to the observations of this Court in the order dated 26 October 2016 in Writ Petition No.9225 of 2016 that, on 30 December 2015, the services of the Respondent-complainant came to be terminated, Mr. Gavnekar would urge that the Labour Court as well as the Industrial Court were in error in observing that the factum of termination of the services of the Respondent-complainant was not brought to the notice of the Industrial Court.

12. Mr. Vaidya, learned Counsel for the Respondent would support the impugned order. It was urged that the stand of the Petitioner that the protection which was granted to the Respondent by the Industrial Court during the pendency of the Revision Application (ULP) No.243 of 2015 stood vacated by order dated 30 December 2016, is wholly incorrect and unconscionable.

13. I have given careful consideration to the submissions. It seems that the

multiplicity of the proceedings ensued on account lack of clarity in the orders passed in Revision Application (ULP) No.243 of 2015, dated 6 June 2016 and 30 December 2016. The question as to whether the termination order dated 30 December 2015, which was allegedly passed by the Petitioner, was brought to the notice of the Industrial Court, may not be of determinative significance. It is the claim of the Petitioner that upon ad-interim relief which was in operation till 29 December 2015 coming to an end, the Respondent – complainant was terminated on 30 December 2015 and, on that count, the tenability of the complaint before the Labour Court was sought to be questioned.

14. In the light of the aforesaid nature of the controversy, in my view, it would be in the fitness of things to permit the Petitioner to raise the said grounds of tenability of the complaint and also the jurisdiction of the Labour Court to entertain and decide the complaint on the ground of the alleged termination of the Respondent-complainant by an order dated 30 December 2015, during the pendency of the complaint. However, the said issues need not be tried as preliminary issues. Those issues can also be considered along with other issues which arise for determination while finally adjudicating the complaint.

15. Thus, the Petition stands disposed with a direction to the Labour Court to permit the Petitioner to raise the grounds of tenability of the complaint and the jurisdiction of the Court in view of the alleged termination order dated 30 December

2015 and decide those issues along with other issues while finally adjudicating the complaint.

16. Mr. Gavnekar expressed an apprehension that while deciding the application to frame the preliminary issues, certain observations have been made by the Courts below, which may cause prejudice to the Petitioner in prosecuting the aforesaid grounds of objection.

17. It seems those observations have been made primarily to decide the question as to whether the preliminary issues are required framed and decided. In any event, it is clarified that while adjudicating the complaint, including the aspect of tenability of the complaint and the jurisdiction of the Labour Court, the Labour Court shall not be influenced by the observations made in the impugned order and the order dated 7 August 2017 passed on application (C-13).

(N.J.JAMADAR, J.)