

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 516 OF 2020

Shri. Mahadev Shiva Kasle

..Petitioner

Vs.

State of Maharashtra & Ors.

..Respondents

Mr. Dhanesh Singh for Petitioner.

Mr. Manish Upadhye, AGP for State/Respondent No.1.

Ms. Shristi Shetty with Mr. Aanish Shetty i/b. M. V. Kini & Co. for
Respondent Nos.2 & 3.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 20, 2023

P.C.:

1. This petition filed under Article 226 of the Constitution challenges the judgment and order dated 06 June, 2019 passed by the learned Member, Industrial Court, Mumbai, whereby Complaint (ULP) No. 253 of 2017 filed by the petitioner, has been rejected. The petitioner had approached the Industrial Court in the said complaint alleging that the respondents have engaged in unfair labour practice under Item 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions And Prevention of Unfair Labor Laws Practices Act, 1971 (for short, "MRTU & PULP Act).

2. According to the petitioner, the cause of action to file the complaint in question, was non grant of the notional increment to the petitioner and the monetary loss which he suffered on that ground. It is not in dispute that the petitioner was working as a Writer in Ticket and Cash Department of respondent No.2 at Dindoshi Depot. His services were terminated for the misconduct of absenteeism as per Standing Order clause 26(1) & (4). The termination was effected from 17 June, 1986. The petitioner had initiated proceedings before the Industrial Court being complaint (ULP) No. 690 of 1992 under the MRTU & PULP Act. The said complaint came to be adjudicated and vide an order dated 23 February, 1994, the Industrial Court set aside the termination order and directed the petitioner to reinstate with continuity in service. The respondents had approached this Court assailing such order passed by the Industrial Court, however, the said petition was dismissed. Consequently, the petitioner was reinstated in service by the respondents by issuing a notice dated 23 June, 1994. A copy of the said order is placed on record (page 48 of the paper-book) in which it has been clearly stated that his basic salary be fixed at the same stage which he was drawing at the time of his abandonment of service and that he will be eligible for grant of annual increment on completion of 12 months service from the date of his

reinstatement. Such order of reinstatement was accepted by the petitioner. It also appears to be not in dispute that the petitioner was to retire from the services of respondent no.2 on 31 August, 2017 and just few days before his retirement, he filed the complaint in question alleging that he needs to be paid notional increments for the period 17 June, 1986 to 25 April, 1994 and as such notional increment was not granted to the petitioner by the respondents, it amounted to unfair labour practice under Item 9 of Schedule IV of MRTU & PULP Act.

3. The respondents appeared and contested the proceedings by filing their written statement and denied the case of the petitioner that there was any unfair labour practice. It was contended that the case of the petitioner was in fact, a false case. It was contended that it was also filed after 22 years of reinstatement without assigning any explanation for the delay. The learned trial Judge after permitting the parties to lead evidence, proceeded to adjudicate the complaint by framing an issue as to whether the petitioner had proved that the respondents had engaged/indulged in act of unfair labour practice under Item 5 and 9 of Schedule IV of MRTU & PULP Act. The Industrial Court considered that the case of the petitioner is not maintainable, in as much as the order passed on the petitioner's complaint (ULP) No. 690 of 1992 dated 28 April, 1994 had

attained finality as the orders passed by the Industrial Court were confirmed by the High Court which did not grant any relief to the petitioner in regard to any notional increment. It was also observed that the reinstatement granted to the petitioner vide letter dated 23 June, 1994 of the respondents also clearly had stated that his basic salary would be fixed at the 'same stage' which he was drawing at the time of his abandonment of services and accordingly, the Courts had come to a conclusion that the petitioner had failed to prove that the respondents had engaged in unfair labour practice under Item 5 and 9 of Schedule IV of the MRTU & PULP Act.

4. In so far as the reliefs as prayed for in the complaint are concerned, the Industrial Court has observed that certainly the petitioner was not entitled to such a relief which was a prayer made almost after 22 years of his reinstatement and if such a relief is granted, it would be contrary to the prior adjudication and finality of the order passed by this Court as noted above.

5. Learned counsel for the petitioner in assailing the impugned order, submits that as the petitioner was reinstated, a notional increment ought to have been granted, however, he is not in a position to support as to how

the observations as made by the Industrial Court in the impugned order are in any manner perverse and as to how the petitioner would get over the legal consequence of his acceptance of reinstatement at the basic salary being fixed at the same stage on reinstatement. Learned counsel for the petitioner is also not in a position to explain the petitioner's delay of 22 years in demanding notional increment.

6. On the other hand, learned counsel for the respondents has drawn the Court's attention to the various observations which are made in the impugned order. He has also drawn the Court's attention to the respondent no.2's letter dated 23 June, 1994 granting reinstatement to the petitioner and the specific clause therein which according to him, would completely dis-entitle the petitioner for claiming any notional increment and as rightly rejected by the Industrial Court.

7. Having heard learned counsel for the parties and having gone through the impugned order as also the record, in my opinion, as rightly held by the Industrial Court the petitioner could not make out any case of unfair labour practice on the part of the respondents in denying the notional increment for the period from 17 June, 1986 to 25 April, 1994. In fact, it appears that the petitioner was precluded from claiming such a

relief having taken advantage of the order of reinstatement dated 23 June, 1994, which was consequent to the adjudication of the complaint (ULP) No. 690 of 1992. Neither under the said adjudication nor under the reinstatement order, such a relief could have been claimed by the petitioner after 22 years of his reinstatement.

8. As a result of the above discussion, there is no perversity in the findings as recorded by the Industrial Court. The petition is devoid of any merit. It is accordingly rejected. No costs.

[G.S. KULKARNI, J.]