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

WRIT PETITION NO. 1193 OF 2019

Qamar Sultana Mojewala	)	
Chouhan Building, 1st Floor,	)	
R. No. 24, Gaonthan,	)	
Andheri (West), Mumbai – 400 058	)	**..Petitioner**

Vs.

1. Memon Co-operative Bank Ltd.	)	
(under liquidation)	)	
Patel & Sony Arcade, 1st Floor, 234,	)	
Bellasis Road, Nagpada,	)	
Mumbai – 400 008.	)	
2. The Liquidator	)	
(present liquidator being	)	
Shri Jayant Prabhakar Mandpe)	)	
Patel & Sony Arcade, 1st Floor,	)	
234, Bellasis Road, Nagpada,	)	
Mumbai – 400 008	)	
3. The Managing Director	)	
Bank of Baroda	)	
Baroda Corporate Centre	)	
C-26, G Block,	)	
Bandra Kurla Complex	)	
Bandra (East), Mumbai-400051	)	**..Respondents**

Mr. R. D. Bhat for the Petitioner.
Mr. Lancy D'souza for Respondent Nos. 1 & 2.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 09, 2023

<u>Oral Judgment :</u>

1. Rule returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. Challenge in this petition filed under Article 227 of the Constitution is to the judgment and order dated 28 September, 2017 passed by the Industrial Court, Mumbai in Complaint (ULP) No.121 of 2012. By the impugned judgment and order, the complaint in question as filed by the petitioner has been rejected on the ground that the petitioner had failed to prove that the respondents had engaged in unfair labour practice as contemplated under Item Nos. 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (for short, the "said Act").

3. The facts in brief are :-

The petitioner was an employee of respondent no.1-Memon Co-operative Bank Ltd. which is a multi-state bank, which is in liquidation since 2009. Respondent no.2-Shri Jayant Prabhakar Mandpe, was appointed as a liquidator by the Government of India and the Central Registrar of Cooperative Societies. In the year 1989, the petitioner had joined the services of respondent no.1-Bank as Clerk-cum-Cashier and had continued to work on the same position till the year 2009, when respondent no.1-Bank had received a direction from the Reserve Bank of India that an Official Liquidator was appointed in respect of the said bank. The Liquidator was given the responsibility to liquidate bank as well as to see the possibility of amalgamation with the nationalized bank.

4. It was the case of the petitioner that in regard to the amalgamation of respondent no.1-Bank, the screening committee came to be appointed to screen the employees of respondent no.1-Bank, to oversee that eligible employees were shifted or appointed in the Bank of Baroda (for short, "BOB") which would take over respondent no.1-Bank. A scheme of arrangement for transfer of specific assets and liabilities of respondent no.1-Bank to the Bank of Baroda came to be finalized, which was titled as "the Scheme for arrangement of the Memon Cooperative Bank Limited (Transfer of Specific Assets and Liabilities to Bank of Baroda) Scheme, 2010", issued under Section 18(b) of the Multistate Cooperative Societies Act, 2002. In so far as the absorption of the existing employees of respondent no.1 was concerned, Chapter III(5) of the Scheme provided that any proceedings initiated or pending against any person for any crime or delinquency shall not abate only because of implementation of the Scheme of transfer of specific Assets and Liabilities, but they shall be governed by the respective laws and regulations, as if the Scheme of transfer of specific Assets and Liabilities was not sanctioned at all. Chapter VI of the Scheme provided for rights and obligations of the employees of the transferor bank. It was provided that all the permanent/regular employees on the rolls of respondent no.1-Bank, except those mentioned in paragraph 2 under the said Chapter would be eligible to appear before the screening committee to be appointed by the transferee bank/B.O.B. by assessing the suitability of the said employees. The relevant clauses of the scheme in that regard are required to be noted which read thus:-

> "CHAPTER VI
> RIGHTS AND OBLIGATIONS OF THE EMPLOYEES OF THE TRANSFEROR BANK
>
> 1. All the permanent / regular employees on the roll of the Memon co-operative Lank ltd. (transferor bank); except those mentioned in para 2 below; on the effective date on which the scheme comes Into force shall be eligible to appear before a screening committee to be appointed by the transferee bank to assess the suitability of the employees of transferor bank based on the qualification, general awareness, banking knowledge, exposure, character and antecedents. The employees of transferor bank, who fail or neglect to appear before the screening committee on the pre-decided date, time & venue for screening, shall, be deemed to be not interested in the employment of transferee bank. No further opportunity or correspondence on this count shall be entertained from such employees. The employees of transferor bank found suitable by the screening committee shall be offered fresh appointment in services of the transferee bank, on humanitarian considerations and not on account of any obligation on the part of the transferee bank.

> Subject to being found suitable by the screening committee for appointment; the employees of transferor bank in officers' cadre except the under-graduates shall be offered appointment in officers' cadre, whereas the employees in officers' cadre with 'under-graduate qualification and the employees in clerical cadre shall be offered appointment in clerical cadre of the transferee bank. Subject to being found suitable, the employees of transferor bank in peon, driver, and watchman cadre shall be offered appointment in sub-ordinate staff cadre of the transferee bank.
>
> Taking into account the recommendations of the screening committee the transferee bank shall decide the fixation of pay in the cadre in which the employee is appointed in transferee bank.
>
> 2. However, the following category of employees, if any of the transferor bank shall not be offered opportunity to appear before the screening committee.
>
> A. Age is equivalent to or more than 60 years of age on the effective date.
>
> B. Absent from duty from the service of transferor bank for more than or equivalent to 30 days on the effective date.
>
> C. On temporary or casual employment, job-work assignment of transferor bank.
>
> D. Against whom disciplinary action pending. Yes."

5. Clause 2 under the said Chapter provided that an employee against whom disciplinary action is pending would not be eligible for absorption to appear before the screening committee.

6. In so far as the petitioner is concerned, the petitioner was not absorbed and the reason as assigned was to the effect that there were departmental proceedings pending against the petitioner. It is on such premise, the petitioner approached the Industrial Court by the complaint in question, alleging that respondent no.1 had engaged in an unfair labour practice under Item Nos. 9 and 10 of the said Act. The petitioner contended that respondent no.1 was not correct in its perception that the departmental proceedings were pending against the petitioner in as much as it was only a notice which was issued to the petitioner and no charge-sheet was issued to the petitioner, on the date the petitioner appeared before the screening committee. In the present case, a show cause notice was issued to the petitioner on 13 August, 2009. However, admittedly on the date on which scheme came to be notified i.e. on 12 January, 2011, as per the communication of the RBI of the even date, admittedly no charge sheet was issued against the petitioner. In the adjudication of the petitioner's complaint, the Industrial Court had proceeded to frame the following issues:-

	ISSUES		FINDINGS
1.	Whether the Complainant proves that, the Respondents have engaged in and are engaging in unfair labour practice as contemplated under Item 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 ?	:	"In the negative."
2.	Whether the Complainant is entitled for the reliefs as prayed for ?	:	"In the negative."
3.	What order ?	:	"As per order below."

7. In recording such findings, the Industrial Court appears to have proceeded on the basis that the issuance of the show cause notice would be as good as initiation of disciplinary proceedings. The fact however remains that a charge-sheet came to be issued after the scheme was notified on 12 January, 2011 i.e. on 24 November, 2011. Thus, it was not a case that on the date the petitioner became eligible to be considered by the screening committee, there were any disciplinary proceedings pending against the petitioner. It is a well settled principle of law as laid down by the Supreme Court in **Union of India vs. K.V. Jankiraman**[1] that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution are/is initiated against the employee. Admittedly, in the present case, on the appropriate date when the petitioner became eligible for consideration for absorption, no charge-sheet was issued. Thus, the findings as recorded by the Industrial Court in that regard that the petitioner was already charge-sheeted and that the charge-sheet which was issued even subsequent to the notified date i.e. 12 January, 2011 would be relevant, cannot be sustained.

1 1991 Supreme Court 2010

8. As such limited issue is involved, there is no need to delve on the merits of the rival contentions, except for the above observations.

9. In the light of the above discussion, in my opinion, the impugned order passed on the complaint filed by the petitioner, on such limited issue is required to be set aside and the parties are required to be relegated to the Industrial Court for the decision on the complaint on merits. Accordingly, the following order:-

ORDER

i. The impugned judgment and order dated 28 September, 2017 is quashed and set aside.

ii. The Complaint (ULP) No.121 of 2012 be adjudicated by the Industrial Court on its merits and in accordance with law within a period of six months from today. All contentions of the parties on merits of the proceedings are expressly kept open.

iii. Needless to observe that the petitioner would now be required to implead the Bank of Baroda, the amalgamated entity, as a party to the complaint in question.

iv. Rule is made absolute in the above terms. No costs.

[G.S. KULKARNI, J.]