

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

WRIT PETITION NO. 242 OF 2019

Neena B. Rangnekar

..Petitioner

Vs.

Sharadashram Vidyamandir Trust & Ors.

..Respondents

Mr. Ramesh D. Bhat for Petitioner.

Mr. Manoj Gujar with Mr. Saurabh Nikalje i/b. Vidhii Partners for
Respondent Nos.1 and 2.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 13, 2023

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Respondents waive service.

By consent of the parties, heard finally.

2. This petition under Article 227 of the Constitution, challenges the judgment and order dated 12 June, 2018 passed by the Industrial Court, Maharashtra, at Mumbai, whereby Complaint (ULP) No. 181 of 2015 filed by the petitioner, has been dismissed to be not maintainable before the Industrial Court, with liberty to the petitioner to approach the Labour Court, if she so desires.

3. A short but interesting question which arises for consideration is as to whether the petitioner's case of her retrenchment would fall within or

outside the purview of Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, the “MRTU & PULP Act”) being determinative of the jurisdiction of either the Labour Court or the Industrial Court to adjudicate the petitioner’s Complaint against the respondent-employer of an unfair labour practice.

4. The factual matrix lies in a narrow compass:-

The petitioner joined the services of respondent no.1-Trust as a Junior Clerk on 01 February, 1989. Respondent no.1 multiple educational institutions. On 26 February, 2010, the petitioner was promoted as a Senior Clerk.

5. It is the case of the petitioner, that during the tenure of her services, respondents had imposed on her various penalties such as stoppage of one increment, reversion to Junior Clerk and recovery of Rs. 9,723/- from the salary of the petitioner which were between the period 16 June, 2014 to 03 March, 2015. It was her case that all these penalties were imposed without following principles of natural justice. On such backdrop, she approached the Industrial Court. On 18 April, 2015, she filed the complaint in question alleging unfair labour practices by the respondents. The petitioner contends that after a copy of the complaint was served on the respondents, the Petitioner’s services came to be terminated by the

respondents by their letter dated 20 April, 2015 inter alia recording that as per clause 16 of the appointment letter dated 14 August, 2001, her services were terminated with effect from 20 April, 2015. A payment of Rs. 34,414/- was made to her in lieu of one month's salary. The petitioner, hence, amended the complaint filed by her before the Industrial Court and assailed such termination, alleging that she was 'retrenched' from her employment, amounting to the respondents engaging in unfair labour practice in terms of Items 9 and 10 of Schedule IV of the MRTU & PULP Act. The respondents appeared in the said complaint and filed their written statement. The respondents initially filed an application challenging the maintainability of the petitioner's complaint on the ground that as the petitioner was serving with the respondents, which was a private school, the jurisdiction to seek redressal against the order of termination dated 20 April, 2015 was as provided under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "MEPS Act"). The Industrial Court accordingly framed a preliminary issue and decided the same after hearing the parties by its "judgment on preliminary issue dated 15 March, 2016", whereby such objection raised on behalf of the respondents was turned down. The Industrial Court held that it had jurisdiction to entertain the petitioner's complaint as it was not a case where the petitioner could seek

redressal of her complaint by invoking Section 9 of the MEPS Act. On this issue, the matter was not carried forward and has attained finality.

6. Thereafter the respondents filed their written statement to the petitioner's complaint. In the written statement, at the very outset, the respondents raised an objection that the Industrial Court did not have jurisdiction to try and entertain the complaint in relation to a case involving termination. The respondents contended that the exclusive jurisdiction to entertain complaint against termination would lie with the Labour Court as per the provisions of Section 7 of the MRTU & PULP Act, 1971.

7. On such backdrop, the Industrial Court proceeded to adjudicate the complaint. The parties were permitted to lead their evidence. In adjudicating the complaint of the petitioner, the Industrial Court framed the following issues and rendered its findings which read thus:-

<u>ISSUES</u>	<u>FINDINGS</u>
1) Does the complainant prove that, present complaint is maintainable in view of provisions of The Maharashtra Employees Private Schools (Conditions of Service Regulations) Act, 1977?	By Order dated 15.03.2016, it is decided that this Court is having jurisdiction.
2) Does the complainant prove that, present complaint is maintainable before the Industrial Court in view of Section 7 of the MRTU & PULP Act?	In the negative.

3) If yes, does the complainant prove that, the respondents have engaged in unfair labour practice under item 9 and 10 of Sch. IV of the MRTU & PULP Act?	Redundant.
4) Whether the complainant is entitled to the relief sought for?	Redundant
5) What order and relief?	Complaint dismissed.

(emphasis added)

8. Thus, as seen from the above issues, in answering issue no.2, the Industrial Court held that the complaint of the petitioner was not maintainable before the Industrial Court, in view of the provisions of Section 7 of the MRTU & PULP Act and accordingly, dismissed the complaint as not maintainable before the Industrial Court with liberty to the petitioner to approach the Labour Court.

9. It is assailing such order of the Industrial Court, the petitioner is before this Court in the present proceedings.

10. As noted above, the issue, which would fall for consideration of this Court, is as to whether the jurisdiction to adjudicate the petitioner's complaint would lie with the Industrial Court or the Labour Court considering their respective jurisdictions under Sections 5 and 7 of the MRTU & PULP Act. It would be required to be examined whether the Industrial Court is correct in its conclusion that the complaint of the petitioner, which according to the respondents, principally assailed

termination of the petitioner's services, was not maintainable before the Industrial Court and would lie before the Labour Court in view of the provisions of Section 7 of the MRTU & PULP Act.

11. Mr. Bhat, learned counsel for the petitioner in assailing the impugned order would contend that the findings, as recorded by the Industrial Court in deciding issue no.2, to hold that the Industrial Court has no jurisdiction, are required to be held to be perverse and illegal. This for the reason that the Industrial Court had failed to consider that in fact, the case of the petitioner was of retrenchment of the petitioner, when it assailed the respondents' action of purported termination vide its letter dated 20 April, 2015 referred to as termination 'in accordance with paragraph 16 of the letter of appointment'. Mr. Bhat contends that the complaint was not filed as a complaint under the provisions of Item 1 of Schedule IV of the MRTU & PULP Act and it was specifically filed invoking the provisions of Item 9 and 10 of Schedule IV. In supporting such contention, Mr. Bhat has drawn the Court's attention to the averments as made in the memo of the complaint. He submits that the averments as made in the complaint would demonstrate that it was a consistent plea of the petitioner, of her case falling under the provisions of Item 9 and Item 10 of Schedule IV. Mr. Bhat submits that it was clear from the reading of the complaint that it was a composite complaint

wherein not only the retrenchment of the petitioner was being assailed, but also the action of the respondents in imposing other penalties. It would be necessary to note the relevant paragraphs of the complaint as pointed out by Mr. Bhat, wherein the petitioner has made specific averments espousing cause of action falling under Item 9 and 10 of Schedule IV. The said paragraphs read thus:-

“3.31 The complainant submits that the provisions of Model Standing Orders are applicable to the complainant. The Respondent No.1 has framed Service Rules for employees of the Trust. The said Service Rules, however, not been notified under the provisions of Section 13-B of Industrial Employment (Standing Orders) Act, 1946. Not only the complainant has not committed any misconduct specified in the Model Standing Orders but further the penalties imposed upon the complainant are not specified in the Model Standing Orders. Hence, the 3 penalties viz. Withdrawal of one increment, demotion from Senior Clerk to Junior Clerk and recovery of purported penalty imposed by the Income Tax authorities from the salary of the complainant, are illegal. All the 3 penalties are major penalties and should not have been imposed without at least holding a prima facie enquiry by giving show-cause notice and considering the explanation given by the complainant. A perusal of the orders including show-cause notice makes it evident that the authorities who imposed the punishment had already come to conclusion that the complainant is guilty of the purported allegations which are entirely vague and incapable of specific reply. Hence, all the 3 penalties have been imposed upon the complainant in breach of service conditions applicable to the complainant. This amounts to unfair labour practice within the meaning of Item 9 of Schedule IV of MRTU & PULP Act.

3.32 Apart from the above, the orders imposing the penalties were issued without considering reply, if any, given by the complainant. All the 3 multiple penalties are imposed only in respect of alleged procedural irregularities on the part of the complainant i.e. e-filing of TDS Returns. Such action on the part of the Respondents is not only highhanded but also amounts to use of force on the part of the Respondents amounting to unfair labour practice in terms of Item 10 of Schedule IV of MRTU & PULP Act.

3.37 Hence, the termination of service is totally unjustified and in breach of service conditions of the complainant, amounting to

unfair labour practice in terms of Item 9 of Schedule IV of MRTU & PULP Act.

3.39 The complainant submits that the termination of services of the complainant abruptly amounts to retrenchment which is in breach of the provisions of Section 25F of I.D. Act and Rule 81 of Industrial Disputes (Bombay) Rules, 1957. No Seniority List was put up nor was retrenchment compensation paid to the complainant. The complainant is one of the senior-most employees of the Trust while all other juniors to her continue to work.

3.40 As stated hereinabove, the allegations are completely vague and incapable precise rebuttal. In any case, assuming without admitting that the complainant's performance had not come upto the expectation of her superiors, does not mean that the complainant has committed any misconduct. Even if there were some lapses on the part of the complainant which were only on account of the quantum of work which was more than what could be done by a full time Clerk and further added mental pressure put on the complainant by Respondent No.4. No employer can expect an employee to do such quantum of work which cannot be physically handled by one person working to the best of his or her ability. Under the circumstances, the action on the part of the Respondents is totally in breach of service conditions of the complainant and amounts to use of pressure and **coercion amounting to unfair labour practice under Item 10 of Schedule IV of MRTU & PULP Act.**"

12. Mr. Bhat submits that as seen from paragraph 3.39 of the complaint (supra), the petitioner has categorically contended that the abrupt termination of her services amounted to retrenchment, which was in the breach of provisions of Section 25F of Industrial Disputes Act and Rule 81 of the Industrial Disputes (Bombay) Rules, 1957. He submits that further in paragraph 3.40 of the complaint, it was contended that the action on the part of the respondents was totally in breach of service conditions of the petitioner by use of pressure and coercion amounting to unfair labour practice under Item 10 of Schedule IV of MRTU & PULP Act.

13. Mr. Bhat has drawn the Court's attention to the substantive prayers as made by the petitioner in the complaint which read thus:-

“(i) That this Hon'ble Court be pleased to hold and declare that the Respondents are engaged in unfair labour practice in terms of Items 9 & 10 of Schedule IV of MRTU & PULP Act.

(ii) That this Hon'ble Court be pleased to direct the Respondents to cease and desist from engaging in and continuing to engage in the unfair labour practices mentioned above.

(iii) By way of affirmative action this Hon'ble Court may be pleased to quash and set aside order of termination dated 20/04/2015 issued to the Complainant.

(iv) To direct the Respondents to restore one increment of the complaint as per order dated 16/06/2014 – Annexure -'J'.

(v) Pending hearing and final disposal -

(a) To direct the Respondents to temporarily withdraw order dated 20/04/2015 terminating the services of the Complainant.

(b) Ad-interim relief in terms of prayer clause (a) above.

(vi) For such other and further reliefs that this Hon'ble Court may deem fit and proper under the facts and circumstances of this complaint.”

14. Mr. Bhat would hence submit that it was necessary for the Industrial Court to consider the case of the petitioner as pleaded by the petitioner in the complaint and which according to him, ought to decide the jurisdiction of the Industrial Court. Mr. Bhat referring to the decision of the Constitution Bench of the Supreme Court in the case of **Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh & Ors.**¹, has submitted that

¹ 1990 (3) SCC 682

the petitioner's so called termination, in fact amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act (for short, "ID Act") as the Supreme Court has laid down that the termination by the employer of the service of a workman for any reason whatsoever takes within its ambit, except what is expressly excluded in Section 2(oo) of the Act. It is his submission that the petitioner's case, being a case of retrenchment, in regard to which specific pleadings are made in the complaint, was maintainable to be adjudicated by the Industrial Court as retrenchment is not an item of an unfair labour practice within the meaning of Item 1 of Schedule IV of the MRTU & PULP Act. To support such contention, Mr. Bhat has also placed reliance on the decision of **D. K. Yadav Vs. M/s. J.M.A. Industries Ltd.**² and the decision of the Division Bench of this Court in **R.K. Shinde and Ors. Vs. Shekoba Auto Pvt. Ltd. & Anr.**³ to submit that once the petitioner's case pertained to a retrenchment, it was the Industrial Court which would have jurisdiction under Item 9 of Schedule IV and not the Labour Court.

15. On the other hand, Mr. Gujar, learned counsel for the respondents would submit that the Industrial Court has appropriately dismissed the petitioner's complaint to be not maintainable before the Industrial Court. He would submit that the petitioner's case was clearly a case which assailed

² 1993 67 FLR 111

³ 2008 1 CLR 996

termination of her services effected by the respondents' letter of termination dated 20 April, 2015, hence, the petitioners' case clearly fell under Item 1 of Schedule IV, which takes within its ambit discharge or dismissal of an employee which would include all its facets, as incorporated under sub-clauses (a) to (g). Mr. Gujar in supporting such contentions, has placed reliance on the decision of a coordinate Bench of this Court in case of **Supertex (India) Corporation and another Vs. Radheyshyam K. Pandey and another**⁴ and on the case of **Pepsico India Holdings (Private) Ltd. vs. Noshir Elavia and another**⁵ to submit that it has been held that a complaint under Item 9 of Schedule IV of the MRTU & PULP Act challenging an order of termination of services, would not be maintainable before the Industrial Court and it would necessarily lie before the Labour Court.

Reasons and conclusion :-

16. I have heard learned counsel for the parties. With their assistance, I have perused the record as also the impugned judgment and order passed by the Industrial Court. At the outset, it is required to be observed and which appears to be not in dispute that the petitioner initially on 18 April, 2015 had approached the Industrial Court assailing three penalties which were in the nature of stoppage of one increment, reversion of Junior Clerk

⁴ 2002(1) L.L.N. 744

⁵ 2002(2) L.L.N. 515

and recovery of an amount of Rs. 9,723/- from the salary of the petitioner. The petitioner contended that all such penalties as imposed by the respondent were in breach of the principles of natural justice. It also appears to be not in dispute that when the complaint as filed before the Industrial Court came to be served on the respondents two days after its filing, that is on 20 April, 2015, the respondent issued to the petitioner a termination order dated 20 April, 2015, invoking clause 16 of her appointment order. It would be necessary to refer to the relevant extract of such termination order which reads thus:-

“ ...

The Governing Council meeting held on 07.03.2015 has authorized Office Bearer's to take appropriate action in case of Miss. Neena B. Rangnekar and accordingly in the Office Bearer's meeting held on 16.04.2015 has unanimously decided to terminate your services w.e.f. 20.04.2015.

As per clause no. 16 of your appointment letter dtd. 14.08.2001 your services are hereby terminated w.e.f. 20.04.2015 a.n. You are hereby paid Notice Pay of Rs. 34,414/- (Rupees Thirty Four Thousand Four Hundred Fourteen Only) as one month's salary.

You are requested to hand over all your work to Mrs. Shubhangi Amare, Accounts Officer, Mrs. Supriya Sawant, Spl. Assistant and Mrs. Shraddha Walawalkar, Sr. Clerk immediately.

You are hereby relieved from your services w.e.f. 20.04.2015.”

17. It is in such context, the petitioner had amended the complaint and specifically pleaded that the termination in fact, was retrenchment, without following the procedure in law. What is pertinent to be seen is that in the petitioner's complaint, the petitioner has consistently pleaded

that the respondents had engaged in unfair legal practice under Items 9 and 10 of Schedule IV of MRTU & PULP Act.

18. It was on such backdrop, the jurisdiction of the Industrial Court was assailed in the written statement by the respondents, contending that the case necessarily involved an adjudication falling under Item 1 of Schedule IV of the MRTU & PULP Act, which pertained to discharge or dismissal of an employee. Thus, before the Industrial Court on one hand, it was the case of the petitioner that the respondents had engaged in unfair labour practice under Item 9 and 10 of Schedule IV of MRTU & PULP Act and on the other hand by simplicitor focusing on the termination dated 20 April, 2015, the respondents contended that it was necessarily a case falling under Item 1 of Schedule IV of the MRTU & PULP Act. It is on such conspectus, the learned Labour Judge proceeded to adjudicate the complaint by framing the issues as noted above.

19. In so far as the jurisprudential principles in regard to the jurisdiction of the Courts are concerned, the law is well settled. The averments as made in the complaint akin to the averments as made in the plaint in a civil suit and not the defence of defendants/respondents would determine the jurisdiction of the Court. The decisions of the Supreme Court in such context are required to be noted.

20. In Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. & Ors.⁶, the Supreme Court held that the jurisdiction of the Court in which the action has originated, must be determined on the averments in the plaint or claim application and not on the defence taken by the adversary party. The Supreme Court observed thus:-

“24. But the jurisdiction of the Court in which the action is originated must be determined on the averments in the plaint or claim application and not on the defence taken by the adversary party. For example, if the plaintiff goes to court alleging that the defendant is a trespasser, the ordinary court will have jurisdiction and its jurisdiction will not be taken away merely because the defendant pleads tenancy. If, however, the defendant succeeds in proving that he is a tenant in respect of premises, possession whereof is sought, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact that the defendant was a trespasser.”

21. In Mani Nariman Daruwala alias Bharucha (Deceased) through LRS and Others Vs. Phiroz N. Bhatena & Ors.⁷ the Supreme Court observed that the law is well settled that the jurisdiction of the Court to entertain a suit or an application depends upon the averments contained in the plaint or the claim application and not on the defence taken by the adversary party. It was observed that if the averments on the basis of which the Court has assumed jurisdiction are not established, the Court would dismiss proceedings on ground of failure to prove the jurisdictional fact. The Supreme Court observed thus:-

⁶ (1990) 2 Supreme Court Cases 288

⁷ (1991) 3 Supreme Court Cases 141

“21. The law is well-settled that the jurisdiction of the Court to entertain a suit or an application depends upon the averments contained in the plaint or the claim application and not on the defence taken by the adversary party. If the averments on the basis of which the court has assumed jurisdiction are not established, the court would dismiss proceedings on ground of failure to prove the jurisdictional fact.”

22. In Mansukhlal Dhanraj Jain & Ors. Vs. Eknath Vithal Ogale⁸ the Supreme Court refused to look at the defence of the respondent on merits for resolving the controversy about the jurisdiction of the City Civil Court to entertain the suit in question. It was held that jurisdiction of the Court has to be decided on the averments in the plaint on demurrer, taking them to be true. The observations of the Court can be noted which read thus:-

“5. We are not concerned with the defence of the respondent on merits for resolving the present controversy about the jurisdiction of the City Civil Court to entertain such a suit. Jurisdiction of the Court has to be decided at this stage on the averments in the plaint on demurrer, taking them to be true.”

23. In Udham Singh Vs. Ram Singh & Anr.⁹, it was held that the averments and prayers made in the plaint, were relevant for the purpose of deciding the forum where the cause will lie. In a recent decision in **Ambalal Sarabhai Enterprises Limited vs. K. S. Infraspace LLP & Anr.¹⁰**, the Supreme Court held that the jurisdiction to try the dispute is to be reflected in the suit itself since in a civil suit the pleadings, namely,

⁸ (1995) 2 Supreme Court Cases 665

⁹ (2007) 15 Supreme Court Cases 529

¹⁰ (2020) 15 Supreme Court Cases 585

averments in the plaint would at the outset be relevant, to confer jurisdiction.

24. There is no reason as to why the above established principles are not applicable in adjudication of the disputes under the labour jurisprudence which is purely a species of a civil cause, however being adjudicated by the special forums within the contours of their specified jurisdiction. If the forums like Labour Court and Industrial Court were not to be created under the Industrial and Labour laws, necessarily for adjudication of such causes, the jurisdiction would have vested with the civil courts. Thus, the well settled principles that the averments in the plaint would be determinative of the jurisdiction of the Court, in my opinion, are not alien for adjudication of labour disputes by the Labour Court or the Industrial Court, which shall however be with the specific bifurcation of their jurisdictions as Sections 5 and 7 of the MRTU & PULP Act would provide.

25. The averments as made in the complaint in question therefore were of relevance when the Industrial Court took up the issue to determine whether it had jurisdiction to try and entertain the complaint in question. It is clearly seen that the petitioner's complaint was a composite complaint not only assailing prior three penalties and seeking a declaration that the

respondents had engaged in unfair labour practice under Item 9 and 10, however the petitioner had also pleaded a specific case of retrenchment, being a case not falling within the purview of Item 1 of Schedule IV of the MRTU & PULP Act. Thus, necessarily the Industrial Court ought to have adjudicated and decided the issue as to whether the petitioner's case of any unfair labour practice under Item 9 and 10 of Schedule IV was at all made out on merits, considering the rival contentions, more particularly when the parties had led evidence on all the issues. On a perusal of the issues as framed by the Industrial Court, it is clear that the Industrial Court was conscious that the petitioner's case was of the respondents having engaged in unfair labour practice under Item 9 and 10 of Schedule IV of the MRTU & PULP Act and in which context, issue no.3 came to be framed. However, the learned Member of the Industrial Court subjected this issue by answering the prior issues, in regard to the complaint whether being maintainable before the Industrial Court in terms of Section 7 of the MRTU & PULP Act. The Industrial Court, thus, having answered the prior issues against the petitioner, it did not answer issue no.3 whether the respondents had engaged in an unfair labour practice under Items 9 and 10 of Schedule IV of the MRTU & PULP Act.

26. At this stage, it is required to be noted that issue no.3 as framed by the Industrial Court was one of the issues to be determined by examining

the rival contentions and the evidence on record, at the final adjudication of the complaint. In this regard, the parties had led evidence on the merits of their respective contentions. In such context, perusal of the impugned order would, in fact, find discussion, touching the merits of the disputes. However, the entire discussion in the impugned order ultimately boils down to the Industrial Court taking a technical and a superficial view of the proceedings that the case of the petitioner was not of retrenchment, but of a termination simplicitor, merely looking at the termination order, thereby concluding that Item 9 of Schedule IV was not attracted, and thus required the petitioner to approach the Labour Court. The relevant observations in that regard are required to be noted which read thus:-

“29) To decide the complaint pertaining to termination the Labour Court is established and empowered to deal with item 1 of Schedule IV of the MRTU & PULP Act. This Court while dealing with present complaint, specifically asked to the complainant as to how the complaint is maintainable before the Industrial Court in respect of cause of termination. Therefore the Ld. Advocate for the complainant relied on certain judgments filed along with Exhibit U-45. I have carefully gone through all these authorities and with due respect would like to state that, these rulings are in respect of cause of termination and not in respect of jurisdiction of Industrial Court to decide the complaint with regards to the cause of termination. So the authorities relied by complainant shall not be helpful before this Court.

34) As stated above, the cause of termination in the subject matter of enquiry within the jurisdiction of Labour Court and not before the Industrial Court. Hence on all above discussed position I come to the conclusion that, the complainant failed to prove that, present complaint pertaining to cause of termination is maintainable before the Industrial Court in view of section 7 of the MRTU & PULP Act, 1971. Hence the findings of issue no.2 answered in the negative.”

27. In considering the submissions of Mr. Bhat, it would be imperative to note the relevant provisions of the MRTU & PULP Act, in regard to the jurisdiction of the Industrial Court and the Labour Court to adjudicate disputes falling under the MRTU & PULP Act. The provisions of Sections 3(2), 5, 7 and 32 of Schedule IV of the MRTU & PULP Act, 1971 read thus:-

“3(2) “Central Act” means the Industrial Disputes Act, 1947, XIV of 1947; Whenever the term “Central Act” is used, the reference is to the Industrial Disputes Act, 1947.

5. Duties of Industrial Court. - It shall be the duty of the Industrial Court – (a) to decide an application by a union for grant of recognition to it; (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act; (c) to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union; (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV; (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices; (f) to decide references made to it on any point of law either by any civil or criminal court; and (g) to decide appeals under section 42.

7. Duties of Labour Court. - It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

32. Power Of Court To Decide All Connected Matters. - Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.

[SCHEDULE IV]

Section 26

General Unfair Labour Practices on the part of employers

1. To discharge or dismiss employees –
 - (a) by way of victimisation;
 - (b) not in good faith but in the colourable exercise of the employer's rights;
 - (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
 - (d) for patently false reasons;
 - (e) on untrue or trumped up allegations of absence without leave;
 - (f) in utter or trumped up allegations of absence without leave;
 - (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee so as to amount to a shockingly disproportionate punishment.
2. To abolish the work or a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.
3. To transfer an employee *mala fide* from one place to another, under the guise of following management policy.
4. To insist upon individual employees, who were on legal strike, to sign a good conduct-bound, as a pre – condition to allowing them to resume work.
5. To show favouritism or partiality to one set of workers, regardless of merits.
6. To employ employees as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.
7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
8. To recruit employees during a strike which is not an illegal strike.
9. Failure to implement award, settlement or agreement.
10. To indulge in act of force or violence.”

28. Having noted the relevant provisions, it needs to be examined whether the incident of retrenchment would be alien to the provisions of MRTU & PULP Act and more particularly the provisions of Schedule IV Item 10 of the MRTU & PULP Act, merely because it is defined under Section 2(oo) of the ID Act. The answer to this question can be plainly derived from the recognition of the provisions of the ID Act (which is a Central Act) within the MRTU & PULP Act. The MRTU & PULP Act which is a 'State' legislation necessarily recognizes consequences falling under the ID Act. The pointers in that regard can be noted. Section 3(2) of the MRTU & PULP Act as noted above specifically refers to the Industrial Disputes Act. This indicates that the State legislature was conscious of the consequences of the prior legislation namely the ID Act and the provisions of the ID Act, which had a bearing, when the provisions of the MRTU & PULP Act were invoked, including as to the jurisdiction of the Industrial Court and the Labour Court to adjudicate the disputes between an employer and an employee. It is nobody's case that the MRTU & PULP Act, 1971, in so far as the provisions in relation to the jurisdiction of the Industrial Court and the Labour Court are concerned, is in any manner in conflict with the provisions of the ID Act. It is also not the case of the respondents that what is understood by 'retrenchment' under Section (2)(oo) of the ID Act, would be incongruent, alien and/or

in any manner in conflict with the provisions of Item 9 and 10 of the MRTU & PULP Act. It has also not been pointed out on behalf of the respondents by relying on any authoritative pronouncement, that Item 1 of Schedule IV of the MRTU & PULP Act would take within its ambit an act of retrenchment. It thus needs to be observed that the term “discharge or dismissal” as used in Item 1 of Schedule IV of the MRTU & PULP Act would be required to be understood *de hors* the incident of retrenchment falling within the meaning of Section 2(oo) of the ID Act. If the intention of the legislature was to include retrenchment within Item 1 of Schedule IV, there was sufficient legislative guidance available to the State legislature from the provisions of the ID Act which had defined retrenchment, so as to have its express inclusion, within the provisions of Item 1 of Schedule IV, and find a place along with discharge or dismissal. However, the legislature has categorically avoided to include ‘retrenchment’ within the ambit of Item 1 of Schedule IV. Considering such interpretation, which is required to be attributed to Item 1 of Schedule IV, the provisions of Sections 5 and 7 of the MRTU & PULP Act, it would be required to be held that as an act of retrenchment falls outside the purview of Item 1 of Schedule IV of the MRTU & PULP Act, it would necessarily be an incident falling under the other items under Schedule IV. In the present case, in such context, what was invoked by the

petitioner was Item 9 and item 10 of Schedule IV. Thus, in my opinion, it was not correct for the Industrial Court to discard the petitioner's specific case of a retrenchment being imposed on her, and by adopting an approach, *de-hors* the specific pleadings as made in the complaint, come to a conclusion, that the petitioner's complaint fell within Item 1 of Schedule IV, as it involved termination. Such approach on the part of the Industrial Court was certainly in the teeth of the provisions of Item 1 of Schedule IV. Thus, as the jurisdiction conferred on the Industrial Court under the provisions of Section 5 pertained to items other than Item 1 of Schedule IV of the MRTU & PULP Act, the Industrial Court necessarily had jurisdiction to entertain the complaint of the petitioner.

29. Mr. Bhat would be correct in placing reliance on the decision of the Constitution Bench of the Supreme Court in case of **Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh & Ors.** (supra) in which the Supreme Court has categorically held that the retrenchment as defined under Section 2(oo) of the ID Act, would mean termination by the employer of the service of a workman, not only as a surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the

definition. In paragraph 14 of the said decision, the Supreme Court observed thus:-

“14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in S. 2(oo) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.”

30. Similar view has been taken by the Supreme Court in **D. K. Yadav Vs. M/s. J.M.A. Industries Ltd.** (supra). Mr. Bhat's reliance on the decision of the Supreme Court in **R.K. Shinde and Ors. Vs. Shekoba Auto Pvt. Ltd. & Anr.** (supra) which holds that a complaint of an employee of retrenchment would fall under the provisions of Item 9 of Schedule IV of the MRTU & PULP Act is also well founded. Necessarily such interpretation of retrenchment would aid the submission as urged by Mr. Bhat to contend that the Industrial Court had the jurisdiction to adjudicate the petitioner's complaint.

31. Now coming to the decision in **Supertex (India) Corporation and another Vs. Radheyshyam K. Pandey and another** (supra), as also in **Pepsico India Holdings (Private) Ltd. vs. Noshir Elavia and another** (supra) as relied by Mr. Gujar, in my opinion, these decisions would not

forward the case of the respondents. It is required to be noted that although these decisions recognize the settled principles of law, on the question of dismissal or termination simplicitor, which was the issue which fell for consideration before the Court in such cases, in which case, it would certainly be the Labour Court which would have jurisdiction under the provisions of Section 7 of Schedule IV of the MRTU & PULP Act, and not the Industrial Court, however, these are not the decisions in which any issue of retrenchment was raised, as in the present case, where the Court was required to delve on an issue whether retrenchment would be one of the facets falling under Item 1 of the Schedule IV.

32. As a result of the above discussion, the petition needs to succeed. The petition is accordingly allowed in terms of prayer clauses (a) and (b) which reads thus:-

“(a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India calling for from the Hon’ble Industrial Court at Mumbai, the records and proceedings in Complaint (ULP) No. 181 of 2015 and after going through the propriety and legality and validity of the Impugned Judgment dated 12/06/2018 (copy at Exhibit - “Z” hereto), quash and set aside the same.

(b) That this Hon’ble Court be pleased to remand the matter to the Hon’ble Industrial Court to dispose of the said Complaint on merits in a time bound manner.”

33. The Industrial Court is directed to adjudicate the complaint of the petitioner on merits. As the complaint pertains to the year 2015, the

learned Industrial Court shall adjudicate the petitioner's Complaint within a period of eight months from today.

34. Disposed of in the above terms. No costs.

35. At this stage, Mr. Gurav has prayed for stay of this order. In the facts and circumstances of the case, the request of Mr. Gurav is not justified. It is accordingly rejected.

[G.S. KULKARNI, J.]