

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5896 OF 2018

Sant Gadgebaba Amravati University, Amravati, through its Registrar and another
.Vs. Mr. B.S. Sawai

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Ghate, Advocate for the petitioners.

Shri V.P. Marpakwar, Advocate as Amicus Curiae.

CORAM : ANIL S. KILOR, J.

DATED : 04/07/2023

1. Heard.

2. The present petition arises out of the judgment and order passed by the Member, Industrial Court, Amravati dated 08.08.2017 allowing the complaint and thereby, directing to pay the wages from the date of discharge, till the date of providing the work as usual.

3. The respondent/union filed a complaint before the Industrial Court under Section 33-A read with Sections 33 and Section 31(1) of the Industrial Disputes Act, 1947 on behalf of the members of the Union. The names of the members were mentioned in the Annexure-I, filed along with the complaint.

4. The learned counsel for the petitioners submits that, the complaint before the Industrial Court was not maintainable on the ground that, the said complaint was not filed in any pending proceeding as required under Section 33 of the I.D. Act.

5. It is further submitted that, the complaint was filed by the Union and not by the individual employee. He, therefore, submits that the complaint itself was not maintainable and the learned Industrial Court ought not to have entertained such complaint.

6. Shri Marpakwar, learned Amicus Curiae, appointed as the Union was continuously absent in this matter. He has pointed out that, any complaint under Section 33 of the I.D. Act, needs to be filed in a pending proceeding of any conciliation proceeding. Before a Conciliation Officer or a Board or of any proceeding before an Arbitrator or Labour Court or Tribunal or National Tribunal in respect of an industrial dispute. He has further pointing out that, only an employee can file such complaint and the Union is not permitted to file such complaint.

7. He has drawn attention of this Court to Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

(hereinafter referred to as “the MRTU and PULP Act”) to compare the language of Section 28 of the MRTU and PULP Act, and the language of Section 33 of the I.D. Act. Section 28 of the MRTU and PULP Act, says that, wherein any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under Section 5, or as the case may be, under section 7 of this Act. Whereas, under Section 33 of the I.D. Act, the language used permits only an employee to file such complaint.

8. In the circumstances, I have no hesitation to hold that, the complaint itself was not maintainable as it was not filed firstly in any pending conciliation proceeding of arbitration proceeding as stipulated under Section 33 of the I.D. Act and secondly, by an individual employee but it was filed by the Union.

9. In the circumstances, I find substance in the submission of the learned counsel for the petitioners that, the present petition needs to be allowed.

10. Before parting with the matter, I record word of appreciation for the assistance provided by Shri Marpakar, Amicus Curiae, in this matter. Accordingly the writ petition is **allowed**. The order dated 08.08.2017 passed by the Member, Industrial Court, Amravati in Complaint (I.T.) No.1 of 2007, is hereby quashed and set aside.

JUDGE