

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

WRIT PETITION NO. 1299/2018

SHRIKRISHNA TUKARAM BIJVE AND OTHERS

VS

MAHARASHTRA STATE ROAD TRANSPORT CORP., AMRAVATI AND ANR

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

Court's or Judge's Order

Mr. C.V. Jagdale, Advocate for the petitioners
Mr. A.D. Sonak, Advocate for the respondent nos. 1 and 2

CORAM : A. S. KILOR, J.

DATED : 21/06/2023

Heard.

2. The petitioners by way of Complaint ULP No. 98/2008 approached to the learned Industrial Court, Amravati under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the "MRTU and PULP Act") claiming benefits of time scale w.e.f. 24.10.1980, 21.08.1973, 02.07.1988, 19.07.1997, 28.12.1989 and 01.04.1980 as per settlement between the Maharashtra State Road Transport Corporation and the Union. The said complaint came to be dismissed vide judgment and order dated 25.07.2017 on the ground that the claim of the petitioners is stale claim and no sufficient evidence has been produced to show that the posts were vacant and sanctioned on the relevant dates.

3. The Division Bench of this Court of this Court in the case of ***Regional Manager, Maharashtra State Road Transport Corporation, Nagpur and anr. Vs. Regional Secretary, Maharashtra State Transport Kamgar Sanghatana, Karanja***¹ has held thus:

"9. In order to elucidate the continuous nature of cause of action it is necessary for us to refer to Section 30 of Act No. 1 of 1972 which empowers the Court to grant reliefs. Section 30 (1) reads as under:

"(1) Where a Court decides, that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

(a) Declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist....."

The words "has engaged in" and "is engaging in" used in this section clearly connotes two types of occurrences of unfair labour practice. The words "has engaged in" contemplates an occurrence of unfair labour practice once for all and only the effect continues to flow therefrom; whereas the words "is engaged in" speak of occurrence of unfair labour practice which is of a continuing or recurring nature. The order passed by the Industrial Court also indicates that the appellants were directed to desist from continuing the unfair labour practice thereby suggesting that the reliefs claimed by the respondent was for an unfair labour practice of a continuing nature and accordingly the occurrence of such unfair

1 1984 LAB. I.C. 1721

labour practice would recur so long as the relevant term of the settlement remains unimplemented. Undoubtedly, the respondent has invoked Item 9 of Schedule IV of the Act No. 1 of 1972, which entry relates to failure of implementing the settlement which according to both the parties is still in force and binding upon them. Therefore, in our opinion the unfair labour practice will continue to recur so long as the settlement remains unimplemented.”

From the above referred observations, it is evident that the failure of implementing the settlement which in force and binding upon both the parties, unfair labour practice will continue to recur so long as the settlement remains unimplemented.

4. Admittedly, the above referred legal position has not been considered by the learned Industrial Court while holding that the case filed in the year 2008 for the relief from 24.10.1980, 21.08.1973, 02.07.1988, 19.07.1997, 28.12.1989 and 01.04.1980, is a stale claim. The said findings is contrary to the above referred law laid down by this Court in the case of ***Regional Manager, Maharashtra State Road Transport Corporation*** (supra).

5. On merit also, the findings recorded by the Industrial Court are cryptic and thus on both the counts, I am of the opinion that the matter needs to be remanded back to the learned Industrial Court to decide the same afresh. Accordingly, I pass the following order:

(I) The writ petition is partly allowed.

(II) The judgment and order dated 25.07.2017 passed by the learned Industrial Court, Amravati in Complaint UPL 98/2008 is hereby quashed and set aside.

(III) Complaint ULP No. 98/2008 is remanded back to the learned Industrial Court, Amravati for deciding the same afresh, after hearing both the parties.

(IV) Both parties shall appear before the learned Industrial Court, Amravati on **05.07.2023**.

6. Accordingly, the writ petition is disposed of with no order as to costs.

JUDGE