



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO. 4308 OF 2020

Kadu Bhagaji Kangare

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

.....

Mr. P. V. Barde, Advocate for the Petitioner.

Mr. D. B. Bhange, AGP for the State.

Ms. M. V. Narwade, Advocate for Respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 12th DECEMBER, 2024.

PER COURT :

1. This Petition takes exception to the order dated 27.12.2018 whereby the Assistant Commissioner of Labour refused to refer the dispute between Petitioner and Respondent No. 3 to the appropriate Court under the provisions of Industrial Disputes Act.

2. The facts in the present case are not in dispute to say that the Petitioner was employed with Respondent No. 3 Zilla Parishad as Compounder with effect from 01.03.1986. On account of absentism, an inquiry was conducted against him and he was dismissed from service. The said dismissal order came to be challenged in reference IDA no. 13/2009. This reference was

answered against the Petitioner/workman by award dated 02.05.2015. This award was challenged before the Court by filing Writ Petition No. 12150/2015. Though this Court has rejected the Petition, however, in paragraph No. 22 of the judgment following observations are made :-

“22. Considering the phraseology of Rule 47, the same cannot be interpreted to mean a form of punishment. It is purely an effect of the provision applicable to the employees, by which, forfeiture of their past service would flow from Rule 47(1). However, the petitioner can take recourse to Rule 47(2), whereby, he could make a representation to the petitioner for commuting the interruption, notwithstanding the result of this petition.

3. In view of said liberty granted by this Court, Petitioner/workman approached to the authority under Industrial Disputes Act for raising reference to the appropriate Court. This application, however, was rejected by impugned order. Hence, this Petition.

4. Learned counsel for Petitioner submits that the Assistant Commissioner of Labour who was acting as Conciliation Officer under the provisions of Section 12 of the Act has exceeded

jurisdiction by adjudicating upon the dispute. He drew attention of the Court to the order impugned wherein it is stated that no dispute exists between the parties and that his rights have come to an end by order dated 29.11.2001. It is his submission that the said authority has ignored the order passed by this Court in Writ Petition No.12150/205 and pursuant to the said order, dispute exists between the parties.

5. Learned AGP as well as learned counsel for Respondent No. 3 supported the impugned order by contending that the issue of dismissal of workman from service has attained finality with rejection of Petition by this Court.

6. There cannot be any dispute with regard to the preposition of law that the Conciliation Officer or the Assistant Labour Commissioner is not an adjudicating authority to any dispute between workman and employer. It is only expected from that authority to prima facie see as to whether there exists any dispute between the parties. If the dispute is industrial dispute, there is no other option for the said authority to refer the dispute to the competent Court for its adjudication.

7. This Court, though rejected Writ Petition No. 12150/2015, however, permitted the Petitioner to take recourse of Rule 47(2) and permitted him to make representation to the employer for commuting interruption in service. Pursuant to the said opportunity granted by this Court, the Petitioner/workman had approached Respondent No. 3. Since said request is rejected. Petitioner claims this to be a dispute between employer and employee and it amounts to industrial dispute within meaning of Section 2(k) of the Act.

8. At this stage, it would be relevant to take note of definition of industrial disputes under Section 2(k) of the Act, which reads as thus :-

(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

A bare perusal of this definition indicates that it is wide enough to cover any dispute between employer and employee connected to employment, non-employment, terms of employment or

condition of labour. It would be for the competent Court to decide whether there exists industrial dispute between Petitioner and employer, pursuant to the order passed by this Court as recorded above. On the face of it, when representation made by employee is rejected by employer, it becomes dispute relating to the non-employment and conditions of service in this case. Suffice it to say that representation by employee and its rejection by employer constituted apparent dispute between them.

9. Section 10 of the Act provides for reference of dispute by appropriate Government to the Court, which is preceded by procedure contemplated by Sections 11 and 12. A combine reading of these provisions show that on existence of dispute and it being not settled through conciliation, reference thereof is required to be made to competent Court. In any case, it is not open for these authorities to decide any dispute between parties.

9. Perusal of order impugned shows that the said authority has failed to take into consideration the liberty granted by this Court while deciding Writ Petition No. 12150/2015. On the face of it, dispute arises between the parties with regard to commuting

interruption caused in service. Hence, the authority has completely erred in adjudicating the said dispute and refusing to refer the same to the competent Court. Hence, order dated 27.12.2018 is set aside. The Assistant Labour Commissioner is directed to refer the dispute between the parties to the appropriate Court in accordance with law. It shall be open to such Court to decide the effect of order of this Court as well as existence of industrial dispute and to adjudicate upon the same.

(R. M. JOSHI)
Judge

dyb