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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10650 OF 2022

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Nirmala Rampal Kalyani & Anr. ... Petitioners

V/s.

Nashik Municipal Corporation & Anr. ... Respondents

Mr. Yogendra M. Pendse for the petitioners (through
V.C.)

Mr. Rohit Sakhadeo for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 28, 2024

P.C.:

1. The challenge in this writ petition is to the order dated 14 November 2019 passed by the Industrial Court, Nashik in Complaint (ULP) No.88 of 2013 thereby dismissing petitioners' complaint on the ground of maintainability holding that the petitioner having already retired, the relief of grant of pensionary benefits cannot be granted as past employees are not covered under Section 28 of the Maharashtra Registered Trade Unions and Prevention of Unfair Labour Practices Act, 1972 ("the said Act" for short).

2. Facts and circumstances giving rise to the present writ petition are that the petitioner was appointed on 1 April 1985 as Safai Kamgar. After completion of 26 years, she submitted an

application for voluntary retirement. The application was allowed on 27 August 2011. Based on the recommendations of the Lad Committee, petitioner No.1's son was appointed in her place. After retirement, the petitioner No.1 received provident fund amount only. She, therefore, filed complaint for recovery of Rs.2,67,975/- unauthorisedly deducted by the respondents. She also challenged orders dated 21 May 2013 and 17 August 2013 calling upon petitioner No.1 to repay the amount.

3. The respondents contested the complaint by filing reply. One of the contentions raised on behalf of the respondents is maintainability of the complaint in the absence of petitioner No.1 being existing employee.

4. The Industrial court framed necessary issues and based on issue No.2 dismissed the complaint holding that on the date of complaint there was relationship of employer-employee and, therefore, the complaint is not maintainable. The petitioners, therefore, have filed present writ petition.

5. Learned advocate for the petitioners invited my attention to the judgments of this Court in **P.L. Mayekar & Anr. v. Amichand Narayan & Ors.** reported in 1955 (57) Bom.L.R. 1000, **Ilyas Yusuf Naikwadi v. State of Maharashtra** reported in 2007 (2) Bom. C.R. 734, and **Arun Ambadasji Chawade v. Chief General Manager, Bharat Sanchar Nigam Ltd. & Ord.** reported in 2015 (7) Bom. C.R. 386 to submit that Section 28 of the said Act is wide enough to cover the disputes between past employee and employer. It is submitted that

in the facts of the case, the petitioner had not resigned and, therefore, the relationship of master and servant did not extinguish.

6. Per contra, learned advocate for the respondents submitted that the Industrial Court has rightly dismissed the complaint in the absence of existence of employer-employee relationship between the petitioner and respondent. He submitted that on the date of complaint in the absence of relationship of employer-employee, the Industrial Court has rightly dismissed the complaint. She submitted that the proviso to Section 28 has not been considered and, therefore, even if the matter is directed to be decided on merits by the Industrial Court, the applicability of proviso to Section 28 needs to be adjudicated by the Industrial Court.

7. Having heard learned advocates for the parties and having considered the material on record, following factual scenario emerges: (i) the petitioner was past employee of the respondent; (ii) she opted for voluntary retirement which was accepted by the respondent; and (iii) there is no resignation tendered by the petitioner No.1.

8. Based on aforesaid factors, in my opinion, it would be relevant to refer to the judgment in **P.L. Mayekar** (supra) where the Division Bench of this Court held that the complaint at the instance of past employee is also maintainable. The said view is reiterated in the case of **ICI India Ltd. v. Presiding Officer, National Industrial Tribunal & Ors.** reported in 1994 II CLR 494 wherein the Division Bench of this Court held that the

expression “any person” in Section 2(s) must be interpreted liberally so as to include past and present workmen. It is futile to suggest that a dispute about revision of pensionary benefit cannot be raised by the existing workmen and which dispute takes in its sweep the benefit which is available even to a retired employee.

9. A learned Single Judge of this Court in **Piramal Spinning & Weaving Mills Ltd., Mumbai v. Rashtriya Mill Mazdoor Sangh, Mumbai** reported in 2002 (Supp) Bom. C.R. 496 considered earlier judgment and held that the consistent view taken by this Court is that the expression “any person employed” would include an employee who was previously in service and whose services have been terminated or have otherwise come to an end.

10. In the light of exposition of law laid down by this Court, it is evident that the complaint at the instance of past employee is maintainable. The Industrial Court was, therefore, in error in dismissing the complaint on the ground of lack of relationship of employer-employee between the petitioner and the respondent. Hence, the impugned order cannot be sustained. Hence, following order:

- a) The impugned order dated 14 November 2019 passed by the Industrial Court, Nashik in Complaint (ULP) No.88 of 2013 is quashed and set aside;
- b) The proceedings are remanded back to the Industrial Court for decision afresh on merits including applicability of proviso to Section 28 of the said Act;

c) Considering the pendency of the present writ petition and the issue involved, the Industrial Court, Nashik shall decide the complaint within six months from the date of appearance of the parties;

d) The parties shall appear before the Industrial Court, Nashik on 8 April 2024 at 10.30 a.m.

11. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)