

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 428 OF 2024

Shalini Dilip Gamre	}	..Petitioner
V/S.		
The Registrar, Bombay Hospital	}	..Respondent

Mr. Shailesh K. More, *for the Petitioner.*

Mr. Sudhir Talsania, *Senior Advocate with Mr. Netaji Gawade i/by. Sanjay Udeshi & Co., for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 15 APRIL 2024.

P.C. :

1) The challenge in the present petition is the Judgment and Order dated 30 August 2023 passed by the Member, Industrial Court, Mumbai dismissing Complaint (ULP) No. 311/2018 by the Industrial Court, Mumbai.

2) I have heard Mr. More, the learned counsel appearing for the Petitioner and Mr. Talsania, the learned counsel appearing for the Respondent.

3) Perusal of the Order passed by the Industrial Court would indicate that one of the reasons why the complaint is dismissed, is failure on the part of the Petitioner to implead the recognised union, who according to the learned Member of the Industrial Court, alone can prosecute a complaint

under Item-6 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). Undoubtedly, the Labour Court has also held that Petitioner has failed to produce any documentary evidence to prove completion of 240 days of service in a calendar year. However, once the Industrial Court held that the complaint was not maintainable on account of it not being filed through a recognised Union, as per Section 21 of the MRTU & PULP Act, in my view, the Industrial Court ought to have avoided recording of findings on merits of the complaint. Mr. More would submit that an opportunity be granted to the Petitioner to prosecute the complaint through recognised Union. He would submit that Petitioner has rendered 27 years of service that she needs to be given an opportunity to prosecute the complaint through recognised Union by producing necessary evidence to show completion of 240 days of service each calendar year.

4) On the contrary, Mr. Talsania would submit that the complaint filed by the Petitioner was clearly barred by limited as the same was filed after 21 long years from the alleged date of her initial engagement. He would submit that the Petitioner has merely worked as a Badli employee and that therefore there is no question of she completing 240 days of service in any calendar year.

5) Be that as it may. One of the main reasons why the complaint filed by the Petitioner is dismissed is failure on the part of the Petitioner to implead recognised Union as provided under Section 21 of the MRTU & PULP Act. Now that the Petitioner desires to prosecute the complaint

through recognised Union, in my view, an opportunity needs to be extended to her to do so. While prosecuting the complaint through recognised Union, the Petitioner would be at liberty to file an application before the Industrial Court for leading additional evidence. At the same time, it would be open for the Respondent-Hospital to raise all defences, including the defence of complaint being barred by limitation.

6) Accordingly, the Order dated 30 August 2023 passed by the Industrial Court in Complaint (ULP) No.311/2018 is set aside. Complaint (ULP) No. 311/2018 shall stand restored on the file of the Industrial Court, Mumbai. Petitioner shall be at liberty to file an application for impleadment of recognised Union to the complaint. Petitioner shall also be at liberty to file an application for production of additional evidence in support of her claim. All defences raised by the Respondent-Hospital would be at liberty to raise all defences, including the defence of limitation. The Industrial Court shall proceed to decide the complaint afresh on its own merits, without being influenced by any of the observations made in the present order.

7) With the above observations, the Writ Petition is partly allowed and **disposed of**.

[SANDEEP V. MARNE, J.]