



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

WRIT PETITION NO. 661 OF 2024

The Chief Officer, Municipal Council, Mul, Tal. Mul, District – Chandrapur
Vs.

Ayubkhan s/o Dildarkhan Pathan and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. D.M. Kale, Advocate for petitioner.
Mr. R.R. Dawda, Advocate for respondent No.1.
Mr. N.R. Rode, AGP for respondent Nos.2 & 3/State.

CORAM : N.R. BORKAR, J.

DATE : 24.09.2024.

This petition takes exception to the judgment and order dated 21.10.2023 passed by the learned Industrial Court, Chandrapur, in Complaint (ULP) No.08/2022.

2. The respondent No.1 herein had filed the complaint under Section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The challenge in the said complaint was to the order passed by the petitioner, by which recovery of excess amount paid to the respondent was ordered.

3. By the order impugned, the learned Industrial Court has allowed the said complaint. The learned Industrial Court has recorded the following findings :

“15. It is not a disputed fact in present case that, the complainant is class C employee and has retired from service on 31.03.2021. This falls under situations (1) and (2) as laid down by Hon’ble Supreme Court in case of Rafiq Masih referred above, wherein recoveries by the employers, would be impermissible in law, in the circumstances, where payments have mistakenly been made by the employer, in excess of their entitlement. In these circumstances, respondent No.3 is not entitled for recovery of alleged amount which is paid in excess to the entitlement of the complainant, as directed by Hon’ble Supreme Court in case of Rafiq Masih referred above. Natural consequences of these circumstances is that, impugned order dated 23.02.2022 has to be termed as illegal, being in violations of mandate of Hon’ble Supreme Court in case of Rafiq Masih referred above. Resultantly, by issuing impugned order dated 23.02.2022, which is illegal, is an act of the respondents, whereby they have engaged in unfair labour practice. In these circumstances, I am of the opinion that, the complainant has proved that, impugned order dated

23.02.2022 is illegal and by issuing impugned order dated 23.02.2022, the respondents are engaged in unfair labour practice. With these reasoning, I answer issue No.01 and 02 in the affirmative.”

4. It is not shown that the learned Industrial Court has wrongly relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih***, reported in AIR 2015 SCC 696, to quash the order of recovery, or that the said judgment is not applicable to the facts and circumstances of the present case. In that view of the matter, no interference is called for in the impugned judgment and order. Hence, the petition is dismissed.

(N.R. BORKAR, J.)