



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

Writ Petition No.3002/2024

(Sunil V Akola District Central Co-operative Bank Ltd, Akola)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.D. Meghe, Advocate for the petitioner.
Mr. V.P. Marpakwar, Advocate for respondent.

CORAM : N.R. Borkar, J.

DATE : 17-10-2024.

This petition takes exception to the order dated 31-01-2024 passed by the learned Industrial Court in Revision (ULP) No.27/2016.

ii. The petitioner was working as a Clerk with the respondent. After conducting departmental inquiry, he was dismissed from service. Against the said order of dismissal he has filed the complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, before the Labour Court, Akola.

iii. By order dated 30-01-2016 the learned Labour Court decided the preliminary issue in respect of the inquiry. The learned Labour Court has held that the inquiry was not

fair and proper. Against the said order the respondent had filed the revision before the Industrial Court.

iv. By the order impugned, the learned Industrial Court has quashed the order passed by the learned Labour Court and remanded the matter back for deciding the said preliminary issue afresh.

v. The learned Counsel for the petitioner submits that the learned Industrial Court erred in entertaining the revision against the order of the learned Labour Court on preliminary issue. It is submitted that the same is not permissible in view of the decision of this Court in *Arun Shrikrishna Katole vs the Divisional Controller and others*, in Writ Petition No.4464/2013 decided on 17-01-2014.

vi. On the other hand, learned Counsel for the respondent submits that petition may not be entertained against the order of remand.

vii. This Court in *Arun Shrikrishna Katole vs the Divisional Controller and others* (supra) has held-

"06. The question before this Court is whether the Industrial Court should have entertained the Revision Applications in the light of para 22 of the landmark judgment in the case of Cooper Engineering? Para 22 of the said Judgment reads thus:-

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

07. It is clear from the reading of the Labour Court order that sound reasons have been furnished by the Labour Court for answering the preliminary issue in

favour of the workman and permission to lead the evidence before the court as claimed by the employer has been granted. This is, therefore, a case where the employer itself asked for a permission to lead evidence in case preliminary issue is decided against the employer. In the light of aforesaid para 22 of the Supreme Court Judgment, the employer was expected to wait for the final decision in the complaint on merits, instead of challenging the same in Revision under Section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act. That was all the more so because this Court had remanded the matter to the Labour Court in order to give an opportunity to MSRTC to produce documents in support of the charges levelled and allegedly proved against the employee. Apart from the facts in this case, the pronouncement of law in para 22 of the Supreme Court judgment is loud and clear and it is unfortunate that the Industrial Court has not referred to the said decision, nor the parties before Industrial Court, but then it was expected of the Industrial Court to know the celebrated decision in the case of Cooper Engineering. There was one more factor, namely that the complaint [ULP] is pending before Labour Court from 1995, and, therefore, that was another reason the Industrial Court should not have entertained a revision against an order on the preliminary issue. It is, thus, clear that the Industrial Court committed a serious error of law in not following the para 22 of the Supreme Court Judgment in the aforesaid decision.

viii. In view of the above decision of this Court and the decision of the Hon'ble Supreme Court in *Cooper Engineering Ltd vs Shri P.P. Mundhe*, reported in *(1975) 2 SCC 661*, the order impugned cannot be allowed to stand and the same is set aside.

ix. The petition is allowed in the aforesaid terms. However, it would be open to respondent to challenge the order of the learned Labour Court dated 30-01-2016, if final award adverse to the respondent is passed.

(N.R. Borkar, J.)