



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3725 OF 2023

**(Gajanan @ Vijay s/o Kanhaiyalal Maliye Vs. Superintendent Engineer, Mechanical Circle,
Ajni & Ors.)**

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

Court's or Judge's orders.

Mr. V.A. Lohiya, Counsel for the petitioner.
Mr. A.M. Kadukar, A.G.P for respondent nos. 4 and 5.

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CORAM : ANIL L. PANSARE, J.
DECEMBER 10, 2024

Challenge is to the judgment and order dated 14/3/2023 passed by the Member, Industrial Court, Akola, in Complaint U.L.P. No. 195/2015, to the extent of findings recorded in paragraph nos. 7, 8 and 9 of the said judgment, which read thus :

“07] As To Issue Nos. 1, 2 & 3 :- First and foremost, the complainant has invoked Items 5, 9 and 10 of the M.R.T.U. and P.U.L.P Act, 1971. The complainant has not proved in his affidavit of examination-in-chief nor has taken any contentions in this complaint to show any allegations to invoke Item 5, Schedule IV of the M.R.T.U. and P.U.L.P Act. The complainant could not show any partiality and victimization of colorable exercise of power against him by the respondents. Similarly, the complainant have not produced any evidence to show allegations of Item 10 of the M.R.T.U. and P.U.L.P Act.

08] With respect to Item 9 of M.R.T.U. and P.U.L.P Act there has to be a undisputable Employer-Employee relationship between the complainant and the respondents to invoke Item 9. It can be seen that there is no Employer-Employee relationship between the complainant and the respondents. More so, it can be seen that the complainant is in Akola

and the relief is sought from this Court, against the respondents which are in Amravati and Nagpur. Territorial jurisdiction of this Industrial Court is only restricted to the District of Buldhana, Washim and Akola and this Court cannot pass any judgment for the Districts of Amravati or Nagpur, as these respective Districts are having their own Industrial Court. So, this complaint cannot be allowed on this important fact, that this Court does not have territorial jurisdiction to decide any issue in the City of Amravati.

09] Further, assuming for some moment that the complainant resides in Akola City and the benefits of the Social Legislation to be given to him but even then the demands of the complainant with respect to Items 5, 9 and 10 are undeniable in the eyes of law as the complainant has failed to show that the respondents have indulged in act of unfair labour practice in the same.”

2] As could be seen, in paragraph 7, the Industrial Court has observed that the petitioner – complainant has not proved, in his affidavit of examination-in-chief, the ingredients that would permit him to invoke Item 5 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short “Act of 1971”).

3] In paragraph 8, the Industrial Court has observed that to invoke Item 9 of Schedule IV of the Act of 1971, there has to be an undisputable relationship of employer – employee between the petitioner – complainant and the respondents, which relationship was found to be absent. The Court has then noted that the petitioner – complainant is resident of Akola but the relief sought is against the respondents, who are located at

Amravati and Nagpur. Accordingly, the Court held that it lacks territorial jurisdiction.

4] In paragraph 9, the Industrial Court has rendered a finding on merits that the petitioner – complainant has failed to show that the respondents have indulged in an act of unfair labour practice to attract Item nos. 5, 9 and 10 of Schedule IV of the Act of 1971.

5] After noting findings on merits, the Industrial Court has given liberty to the petitioner to approach appropriate forum but is differently worded. The Court held thus :

“10] The Representative of the complainant has prayed for liberty to approach the appropriate Industrial Court to seek relief. I am in no position to grant such liberty; but in case the complainant chooses to file a complaint before another Industrial Court, the period of litigation before this Court is duly condoned and liberty to file a fresh complaint within 90 days from the date of this judgment is granted to the complainant. It is made clear that the decision to entertain the complaint or not is solely upon the appropriate forum, before which the complainant chooses to file his fresh complaint. Hence for the reasons mentioned herein above, the following orders are passed.

ORDER

- i. Complaint ULP No. - 195 of 2015 is hereby dismissed.*
- ii. Complainant is at liberty to file afresh complaint before an appropriate forum.*
- iii. No orders as to costs.”*

6] The learned Counsel for the petitioner submits that the petitioner is willing to approach appropriate forum, however, the findings, recorded on merits, will affect his case.

7] There appears substance in the aforesaid submissions inasmuch as once the Industrial Court has taken a view that it lacks jurisdiction to grant relief, it ought not to have commented upon merits of the case. The findings, so recorded, therefore, are unsustainable.

8] The learned A.G.P, though made an attempt to justify the order, failed to show that the Industrial Court, Akola, had jurisdiction to decide the case on merits.

9] Resultantly, the Writ Petition is partly allowed. The judgment and order dated 14/3/2023 passed by the Member, Industrial Court, Akola, in Complaint U.L.P No. 195/2015, is quashed and set aside to the extent of findings recorded on merits. The petitioner is at liberty to approach appropriate forum in terms of what has been recorded in paragraph 10 of the said order. Period of 90 days shall start from today.

10] The Writ Petition is disposed of in above terms. No costs.

(ANIL L. PANSARE, J.)

Sumit