



7094-2023

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

WRIT PETITION NO. 7094 OF 2023

(Municipal Council, Hinganghat, through its Chief Officer Vs. Sanjay s/o Padumanath Tiwari)

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

Court's or Judge's orders.

Shri M.I. Dhattrak, Counsel for the petitioner.
Shri S.G. Nigot, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
SEPTEMBER 12, 2024

The petitioner – Municipal Council, Hinganghat, is aggrieved by the judgment and order dated 13/7/2023 passed by the Member, Industrial Court No.4, Nagpur, in Complaint (ULP) No. 290/2016. The Industrial Court has revoked the order of suspension dated 22/10/2012 passed by the Chief Officer, Municipal Council, Hinganghat. One of the reasons for revoking the suspension order was that the Council has not conducted enquiry.

2] The learned Counsel for the petitioner submits that the Industrial Court had no jurisdiction to entertain the complaint. He has invited my attention to Section 79 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short “Act of 1965”), which provides for punishment of officers and servants. Sub-section (1) thereof provides various nature of punishment, which ranges from censure to dismissal. Clause (vi) thereof provides for suspension of officers/servants of the Council. The respondent was

suspended on the ground that he has misappropriated the amount of tax, rent and encroachment cess collected by him by not depositing the same with the Municipal Council. The total amount allegedly misappropriated was to the tune of Rs.7,03,403/-.

3] The order of suspension was then challenged by the respondent in terms of sub-section (6) of Section 79 of the Act of 1965 (Annexure P/4) stating therein that he is ready to deposit amount of encroachment cess of Rs.30,701/-. So far as rest of the amount is concerned, he averred that amount of Rs.10,000/- per month may be deducted from his salary until the amount of misappropriation is recovered. Thus, the respondent, in a way, admits charge of misappropriation.

4] Be that as it may, the General Body of the Council, vide Resolution dated 30/3/2013, resolved to lodge report with the Police Station on the count that the amount of misappropriation may be more than what has been found and refused to revoke the suspension.

5] This Resolution was tested by the respondent by filing proceedings under Section 308 of the Act of 1965 before the Collector, Wardha, who rejected the request made by the respondent to suspend the Resolution.

6] Thereafter, the respondent filed complaint before the Industrial Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "Act of

1971”). This complaint was filed on 19/8/2016, i.e., after about 3 years and 9 months. Section 28 of the Act of 1971 provides for filing complaint within a period of 90 days from the date of occurrence of unfair labour practice.

7] The learned Counsel for the petitioner submits that the respondent has neither filed complaint within stipulated time nor did he file application to condone the delay.

8] The learned Counsel for the respondent argued that application is not required because unfair labour practice continues and, thus, there is recurring cause of action.

9] Having heard both sides and having gone through the material placed before me, there appears more than one reason why should the order impugned be set aside.

10] First is that having unsuccessfully challenged the Resolution of the Council under Section 308 of the Act of 1965, the appropriate remedy available to the respondent was to file revision under Section 318.

11] Second is that the suspension order was issued on 22/10/2012. The cause of action arose on that day because the Council was found to be engaged in the alleged unfair labour practice on that day. Once the respondent is suspended, there is no question of recurrence of cause of action; the effect of suspension may, however, continue until it is set aside. In the

circumstances, the respondent was duty bound to show sufficient cause for not approaching the Industrial Court within stipulated time. The complaint itself, thus, was not maintainable.

12] Third is that the Industrial Court has not taken into account that the respondent himself has admitted of misappropriation of amount. Once that has been done, the Industrial Court ought to have rendered a finding whether in such circumstances, the Council was required to initiate departmental enquiry against the respondent.

13] For the above reasons, the petition is allowed. The judgment and order dated 13/7/2023 passed by the Member, Industrial Court No.4, Nagpur, in Complaint (ULP) No. 290/2016, is quashed and set aside.

(ANIL L. PANSARE, J.)

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