



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4143 OF 2020

Sonyabapu Patilba DahiphalePetitioner

VERSUS

The State of Maharashtra & othersRespondents

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Mr. P. S. Mantri, Advocate holding for Mr. P. V. Barde, Advocate for the Petitioner.

Mr. S. N. Kendre, AGP for the State.

Mr. B. R. Survase, Advocate for Respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 25th JULY, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed by Assistant Labour Commissioner/Conciliation Officer refusing to refer the dispute to the Labour Court in respect of alleged illegal termination of Petitioner by Respondent No. 3.

3. Petition is filed on the ground that the Conciliation Officer has no jurisdiction to adjudicate upon the dispute and once

the dispute is raised there is no other option with the Conciliation Officer but to refer the dispute to the concerned Court for its adjudication.

4. The facts as they appear from the record indicate that the Petitioner's services came to be terminated by letter dated 17.06.2005 with effect from 24.06.2005. He did not challenge the said termination but filed complaint ULP No. 23/2007 seeking pensionary benefits. Similarly, he filed Application IDA No. 12/2011 under Section 33(c)(2) of the Industrial Disputes Act claiming arrears of wages from 1997 to 2005. The Petitioner was unsuccessful in both the proceedings. A Writ Petition filed against the order passed by the concerned Court also came to be rejected. Thereafter the Petitioner had raised a demand notice dated 06.02.2017 alleging his termination to be illegal. The proceedings were initiated before the Conciliation Officer. The Conciliation Officer/Assistant Commissioner of Labour refused to refer the dispute for adjudication to the Labour Court on the ground that the Petitioner has not challenged the orders passed in the earlier proceedings.

5. Learned counsel for Petitioner submits that the Conciliation Officer has no authority to refuse to refer the dispute to the Labour Court. It is his contention by referring to the orders passed in Writ Petition No. 1411/2010 and 5417/2015 that the issue of validity/legality was never raised by Petitioner in the earlier proceedings. He referred to the judgment of this Court in Writ Petition No. 4308/2010 to support his submissions.

6. Learned counsel for Respondents supported the impugned order by contending that the Petitioner had already taken exception to termination by seeking relief of pension as well as arrears of wages. It is his further contention that termination has been effected in the year 2005 whereas the dispute is said to be raised now.

7. The record indicates that though the Petitioner was terminated from service vide letter dated 17.06.2005, he did not challenge the said termination till raising of the present dispute. Complaint ULP No. 23/2007 was in respect of pensionary benefits and Application IDA No. 12/2011 was for seeking arrears of wages from 1991 to 2005. It is thus clear that termination was never

challenged and it is for the first time the said termination is sought to be challenged by the Petitioner.

8. Even if the contention of learned counsel for the Respondents is accepted that termination is sought to be challenged belatedly, the real question is as to whether it will be open for the Conciliation Officer to refuse to refer the dispute to the Labour Court. A candid answer thereto is in negative.

9. At this stage, it would be relevant to take note of definition of industrial disputes under Section 2(k) of the Act, which reads as under :-

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

A bare perusal of this definition indicates that it is wide enough to cover any dispute between employer and employee connected to employment, non-employment, terms of employment or

condition of labour. It would be for the competent Court to decide whether there exists industrial dispute between Petitioner and employer, pursuant to the order passed by this Court as recorded above. On the face of it, the Petitioner has raised dispute about his termination to be illegal and when representation made by employee is rejected by employer, it becomes dispute relating to the non-employment and conditions of service in this case. Suffice it to say that demand by employee and its rejection by employer constitutes industrial dispute between them.

10. Section 10 of the Act provides for reference of dispute by appropriate Government to the Court, which is preceded by procedure contemplated by Sections 11 and 12. A combine reading of these provisions show that on existence of dispute and it being not settled through conciliation, reference thereof is required to be made to competent Court. In any case, it is not open for these authorities to decide any dispute between parties or refuse reference thereof to the competent Court.

11. The Assistant Labour Commissioner/Conciliation Officer has refused to refer the dispute on the ground that the Petitioner has

not challenged the order passed by this Court in earlier proceedings. On the face of it, earlier proceedings has nothing to do with the issue raised of the legality of termination of Petitioner. The Conciliation Officer, therefore, has committed error in not referring the dispute to the Labour Court. Hence, order dated 26.06.2018 stands set aside. The Assistant Labour Commissioner is directed to refer the dispute between the parties to the appropriate Court as per law.

(R. M. JOSHI)
Judge

dyb