



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

57 WRIT PETITION NO. 3518 OF 2023

Shrihari Dattatray Lomte

VERSUS

Osmanabad Janta Sahakari Multistate Co Operative Ltd Through Its
Chief Executive Officer

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Mr. Anand Vinayakrao Patil (Indrale), Advocate for the Petitioner.

Mr. A. N. Irpatgire, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 25th FEBRUARY 2025

PC :-

1. Heard the learned Advocates for the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.
3. A challenge in this petition is to an order passed by the learned Member, Industrial Tribunal, Latur dated 12th January 2023 in Complaint ULP No.61 of 2019. By way of impugned order, the Court has dismissed the complaint on a preliminary issue about maintainability of the ULP complaint. In the ULP complaint, the petitioner had made

following prayers.

“(1) Therefore, it is prayed to kindly declare that the respondent has indulged in Unfair Labour Practices under Item No.9 and Item No.10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

(2) Hence, again prayed to kindly direct the Respondent to cease and desist from these Unfair Labour Practices as mentioned in this Complaint.

(3) Therefore, it is prayed to kindly direct the Respondent to pay claim of Rs.8,13,266/- (Eight Lacs Thirteen Thousand Two Hundred Sixty Six Only) on account outstanding unpaid wages as legal dues payable to the complainant and also prayed to kindly direct to pay 10% interest from 25.07.2018 till the realization of the amount of the claim.

(4) Hence, it is prayed to kindly grant this Complaint with cost of Rs.10,000/- and also prays for any other just and equitable relief, in favour of the Complainant, in the interest of justice and as this Hon. Court may deem fit and necessary.”

4. In view of the prayers, the respondent filed an application for framing preliminary issue stating that already complaint was filed by the present petitioner that was decided out of recovery proceeding. The proceeding has attained finality and now the recovery proceeding is also decided by the Court and against that now writ petition is pending in this Court bearing Writ Petition Nos.5139 of 2018 filed by the respondent.

5. The learned Member, Industrial Court, Latur has considered the application filed by the respondent and framed preliminary issue of *res-judicata*. The learned Member observed that the bank has already deposited the amount of Rs.31,80,442/- and directed issue recovery certificate to District Collector by way of arrears of land revenue from the respondent and an amount of Rs.4,53,330/- etc. The learned Member thus dismissed the complaint.

6. The learned Advocate for the petitioner vehemently argued that the order passed by the learned Member is totally against law. The Court has expected to decide all the issues once for all. No preliminary issues could have been framed by the learned Member of the Industrial Court. He relied upon the judgment in the case of ***D. P. Maheshwari Vs. Delhi Administration***.¹ The Hon'ble Apex Court in the said case has held that once the complaint is filed, it should be decided for all the issues. It is observed that, if the preliminary issue is framed and decided, the matter is filed to the High Court and thereafter to the Supreme Court and that needs for time. It is therefore necessary to decide all the questions once

1 1984 AIR(SC) 153

for all. He further submits that, the earlier complaint was in respect of different subject matter whereas the present complaint is filed only to claim the outstanding unpaid wages as legal dues payable to the complainant. He thus submits that the subject matter of the earlier complaint and the present complaint is totally different. He thus prays for quashing and setting aside the impugned order.

7. The learned Advocate Mr.Irpatgire for the respondent vehemently opposed the petition. He submits that there is no dispute about the proposition that all the issues should be decided together as the General Rule. In the present case, the application was filed challenging the very maintainability of the complaint on the ground of *res-judicata*. When such applications are filed, it is necessary to decide such objections as preliminary objections to save the time of Courts and litigants. No litigants should be made to face unnecessary litigation. The trial court has rightly decided the issue in favour of the respondent. He thus prays for rejection of the writ petition.

8. Having heard the submission one thing is clear that the petitioner

filed earlier proceedings challenging the termination order in which consequential reliefs were also prayed for like backwages. The said complaint was decided in favour of the petitioner. The said judgment is attained finality. Thereafter, the petitioner filed recovery proceeding which is also decided by the trial Court and now the petitions as numbered above are pending in this Court. from looking to the prayer No.(3) of ULP complaint, it is seen that the petitioner has prayed for “outstanding unpaid wages as legal dues”. This Court finds that certainly the petitioner could have prayed this amount in the earlier recovery proceeding filed by him. There is nothing to show that he was for some reason prevented from claiming these amount in the recovery proceeding. Looking from this angle it is certainly seen that filing of another ULP is certainly barred by *res-judicata*. This Court does not find any illegality in the order passed by the learned Member, Industrial Court. However, at the same time, it is necessary to protect the interest of the petitioner. The petitioner is therefore at liberty to claim the amount which is claim in ULP Complaint No.61/2019 in the recovery proceeding which is presently pending before this Court. The respondent

shall not object to such amendment and such prayer. It is open to contest the prayer on merits.

9. With this writ petition stands disposed off. No order as to costs.

[KISHORE C. SANT, J.]