



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

Writ Petition No. 6413 of 2023

1. Indira Gandhi Medical College
& Hospital, Central Avenue Road,
Nagpur Through its Dean. The State of Mah.

2. State of Maharashtra,
Department of Medical Education &
Medicine Gokuldas Tejpal Hospital,
New GTR Building,
9th Floor, Mumbai
Through its Upper Chief Secretary.

3. Director of Medical Education & Research,
c/o Dental College & Medical College,
4th Floor, St. George's Hospital Compound,
D'mello Road, Fort, Mumbai-1.

... Petitioners

- Versus -

Mala d/o Bajirao Kale
Aged – 60 years, occu. Service,
R/o Ganjipeth, Near Juna Jailkhana Road,
Kachipura, Nagpur,
Present Address-
Plot No. 119, “Sukh Shanti”,
Naik Nagar, Manewada Ring Road,
Nagpur.

... Respondent

Ms. K. P. Marpakwar, AGP for the petitioners

Mr. N. S. Warulkar with Mr. M. S. Sukhdeve, Advocates for respondent

CORAM : ANIL L. PANSARE, J.

DATED : 05-02-2025

ORAL JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Mr. N. S. Warulkar, learned counsel waives service of notice for the respondent. With consent of learned counsels for the parties, the petition is taken up for final hearing.

3. Having heard both sides and having gone through the material placed before the Court, it appears that the respondent had made grievance of unfair labour practice and accordingly filed Complaint ULP No. 75/1994 before the Industrial Court, Nagpur. The Industrial Court vide judgment and order dated 5-10-2013 found substance in the complaint made by the respondent and declared that the petitioners – original respondents were engaged in unfair labour practice under Item 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short ‘the MRTU & PULP Act’) and were directed to cease and desist from committing such unfair labour practice. They were further directed to give the respondent status and privileges of permanent employee with all consequential monetary benefits.

4. The petitioners, however, did not comply with the aforesaid judgment and, therefore, the respondent filed complaint under Section 48 of the MRTU & PULP Act. The said complaint, however, came to be dismissed as not prosecuted. Thereafter, the respondent filed yet

another complaint being Complaint (ULP) No. 343/2016 seeking declaration that the petitioners – original respondents have engaged in unfair labour practice by acting in breach of judgment and order dated 5-10-2013 passed by the Court in earlier complaint. The Industrial Court vide judgment and order dated 14-10-2021 allowed the complaint as well. The petitioners have challenged both the judgments.

5. Learned Assistant Government Pleader has rightly argued that the second complaint as filed under Section 28 read with Section 30 of the MRTU & PULP Act was not maintainable. The Industrial Court, however, proceeded to decide the complaint, may be because the objection as regards maintainability of complaint was not raised, nonetheless, the necessary details of earlier complaint were available before the Industrial Court. In fact, in the prayer, the unfair labour practice was alleged only on account of breach of judgment passed in earlier complaint case. If that be so, the appropriate remedy was under Section 48 of the MRTU & PULP Act, which was availed by the respondents. The said fact, however, was not disclosed to the Industrial Court in subsequent complaint. To my mind, this suppression of fact itself is sufficient to dismiss the complaint.

6. As such, the counsel for respondent made an attempt to justify filing second complaint by inviting my attention to another

prayer made by the respondent wherein he claimed monetary benefits in terms of Pay Scale as per 4th, 5th and 6th Pay Commission. This relief is, however, consequential relief. There are no averments in the second complaint as regards non payment of emoluments in terms of the Pay Commission. The grievance was focused only on breach of judgment dated 5-10-2013.

7. In that view of the matter, the petitioners succeed to the extent that second complaint filed by the respondent, being Complaint (ULP) No. 343/2016 was not maintainable.

8. As regards challenge to the judgment and order dated 5-10-2013 passed by the Industrial Court in earlier complaint, it however, suffers from delay and latches. No justified reason is put forth by the petitioners to approach this Court after ten years. In the circumstances, I am not inclined to interfere with the said judgment in extraordinary jurisdiction.

9. The petition is accordingly partly allowed. The judgment and order dated 14-10-2021 passed by the Industrial Court No. 4, Nagpur in Complaint (ULP) No. 343/2016 is quashed and set aside. Rest of the prayers stand refused.

10. At this stage, learned counsel for respondent seeks liberty to pursue the remedy as available in law. Liberty is granted subject to legal impediment, if any.

11. Rule is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

wasnik