
(2013) 11 BOM CK 0101

In the Bombay High Court

Case No : Writ Petition No. 6396 of 2012

Jalindar Ganpat Lawate

APPELLANT

Vs

Pravara Medical Trust

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 4 ALLMR 58 : (2014) 5 MhLj 213

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : P.V. Barde, for the Appellant; V.D. Hon, for the Respondent

Judgement

Ravindra V. Ghuge, J.—Heard learned Advocates for the respective parties. Rule. By consent, Rule is made returnable forthwith and the petitions are heard finally. Both the petitions are taken up together for decision.

2. The question raised before me, in both the petitions is, as to "whether the Industrial Court can refuse to register a Revision (ULP) filed u/s 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971?"

ABOUT WRIT PETITION NO. 6396 OF 2012

3. The petitioner in this petition is taking exception to the impugned order dated 7.7.2012, passed by the learned Industrial Court, Ahmednagar in Rejected Application No. 6 of 2012.

4. The grievance of the petitioner is that the Revision Petition filed before the Industrial Court, Ahmednagar is refused registration by the Industrial Court on the ground that the impugned order in the Revision Petition is an interlocutory order passed by the Labour Court. The Revision Petition seeks to challenge such an order in relation to the fairness of the enquiry and the findings of the Enquiry Officer, which can be termed as Part-I order.

5. In Complaint (ULP) No. 110 of 2001, the petitioner had challenged his

dismissal, awarded to him by the respondent-employer by way of punishment. Domestic enquiry was held in to the charges levelled upon the petitioner and he was dismissed from service in accordance with law. After the pleadings of the parties were completed, the Labour Court framed preliminary issue as to whether the domestic enquiry conducted against the petitioner is fair and proper.

6. After hearing the parties, the Labour Court came to a conclusion on 27/06/2007 that the charge sheet is vague and therefore, the enquiry stands vitiated.

7. This order dated 27.6.2007 was challenged before the Industrial Court by the employer in Revision (ULP) No. 61 of 2007. Said Revision Petition was allowed by the present Industrial Court, which has subsequently refused to register the Revision filed by the petitioner. The present learned Member of the Industrial Court entertained the revision and passed the following order dated 07.10.2010:-

ORDER

1. Revision is allowed.
2. The order passed by the learned Labour Judge on 27.6.2007 in Comp. ULP No. 110 of 2001 on preliminary issue is hereby quashed and set aside. The enquiry conducted against the opponent is hereby held to be fair, proper and in accordance with the principles of natural justice.
3. The complaint to proceed further on merits.
4. No order as to costs.
5. The R & P be sent to the Labour Court forthwith.

Ahmednagar Date: 7.10.2010

(P.S. Shinde) Member Industrial Court, Ahmednagar

8. The petitioner had challenged the said judgment dated 7.10.2010, passed by the Industrial Court, in Writ Petition No. 341 of 2011. The observations of the Industrial Court in the said judgment were set aside.

9. The petitioner submits that the matter was then remanded back to the Labour Court at Ahmednagar for conducting a de novo enquiry. The petitioner moved an application for discarding the evidence filed by the respondent. The Labour Court rejected the said application, concluding that when the enquiry is held to be vitiated or findings are perverse, the employer has to prove the charges before the Court. As such, the application filed by the petitioner dated 22.3.2012 was rejected by the Labour Court, vide its order dated 13.6.2012.

10. The petitioner had challenged the said order dated 13.6.2012 before the Industrial Court, Ahmednagar by filing Revision (ULP) Petition, which was termed as Rejected Application No. 6 of 2012. However, the Industrial Court, vide its order dated 7.7.2012, concluded that the Revision is not entertainable against an

interlocutory order and held as under:-

ORDER

Perused the application along with the Orders passed and produced along with list.

Considering the fact that, the learned Judge, Labour Court, held the enquiry to be not fair and proper, considering the settled legal position and the observation of Hon"ble High Court in Writ Petition No. 341 of 2011 in my opinion since the enquiry is vitiated, duty is cast upon the employer to prove the charges before the Court. The present applicant has got liberty to cross examine the witnesses to establish the vagueness of the charges for that matter neither the Labour Court nor this Court can restrain the employer from adducing evidence for proving the misconduct. As well the order under challenge is a Order of interlocutory nature. In the circumstances, the Revision is not entertainable hence, filed.

Sd/- 07.07.2012

ABOUT WRIT PETITION NO. 7167 OF 2012

11. The petitioner in this petition, upon being dismissed from service on account of two mis-conducts, filed Complaint (ULP) No. 33 of 2005 before the Labour Court at Ahmednagar. The respondent in this petition is the same establishment as like in Writ Petition No. 6396 of 2012.

12. In the said proceedings, Labour Court framed preliminary issues and by two different orders dated 20.8.2010 and 29.3.2013 held that the enquiry conducted against the petitioner is fair and proper and there are no perversities in the findings of the Enquiry Officer.

13. The petitioner, being aggrieved by the said findings filed Revision (ULP) before the Industrial Court, Ahmednagar, which was noted as Rejected Application No. 1 of 2012. The same Industrial Court refused registration and held that the revision is not maintainable by passing the following order on 18.4.2012:-

ORDER

This is a revision against the preliminary point i.e. perversity or otherwise of the findings. Hence, considering the over all view of Hon"ble Apex Court, this revision is not maintainable The applicant in the pleading no where highlighted any point on the basis of which it can be said that the Revision deserves admission. No perversity is highlighted. Hence, the revision is not maintainable therefore filed.

Sd/- 18.4.2012.

14. In the light of the above stated facts, the learned Advocate for petitioners in both these petitions has posed an issue for consideration of this Court, as

referred above in paragraph 3 of this judgment.

15. The petitioners have placed reliance upon few judgments/orders passed by this Court, which are as under:-

(a) In the case of Maharashtra State Road Transport Corpn. Vs. Abdul Usman Meboob Shaikh, , it was held in paragraph No. 3 as under:-

..... It is seen from the impugned judgment that the Tribunal has not considered the various points raised on behalf of the petitioner, on the other hand it has merely recorded its approval to the finding reached by the Labour Court generally. This is surely not a satisfactory way of deciding the revision application by the Industrial Court. What is expected of the Industrial Court, even while exercising its Revisional Jurisdiction, is to record the rival contentions and adjudicate the same on merits by recording a clear finding with regard to each contention raised by the parties, in my view, the Industrial Court has not properly exercised its jurisdiction, for having failed to adjudicate the rival contentions on merits in detail. This Court, therefore, has no option but to remand the matter to the Industrial Court to re-examine the same in accordance with law.....

(b) In the case of Yuvraj Kalu Patil Vs. Dhule and Nandurbar Zilla Parishad Karmachari Sahakari Patpedhi Maryadit, Dhule and Another, this Court has concluded that a revision application ought not to have been dismissed on the ground that remedy is available to the complainant to raise a challenge to the preliminary issue at an appellate stage.

This judgment of this Court was challenged in LPA before the Division Bench of this Court. Vide order dated 3.7.2012 the view taken by the learned Single Judge was upheld and the LPA was dismissed.

(c) In Writ Petition No. 4526 of 2012 (Namdeo Deoram Lakade Vs. Ahmednagar Zilla Dekh-Rekh Sahakari Sanstha) decided on 27.7.2012, learned Single Judge of this Court has considered the grievance of the petitioner that the Industrial Court had refused to register the Revision Petition since the order of the Labour Court upholding the enquiry to be fair and proper and findings of the Enquiry Officer not being perverse were challenged in the Revision Petition. Paragraph No. 4 of the said order reads as under:-

4. In view of the reasons recorded above, the order passed by the Member, Industrial Court Ahmednagar on 2.5.2012 is un-sustainable and deserves to be quashed and set aside. Revisional Court shall register the revision application and proceed to decide the same in accordance with the provisions of law. Rule is accordingly made absolute. There shall be no order as to costs.

The writ of this Court was issued on 30/10/2012 to the said Industrial Court.

(d) In Writ Petition No. 4693 of 2012 (Mohan Eknath Upasani Vs. Shri Saibaba Sansthan) decided on 21.8.2012, learned Single Judge of this Court noted that

the same Industrial Court had declined to register the Revision Petition filed by the petitioner. This Court has observed in paragraph Nos. 5, 6 and 7 as under:-

5. With the assistance of learned counsel I have gone through the judgments. The Division Bench of this Court and the learned Single Judge of this Court in the judgments referred supra have consistently held that the revision against the preliminary issue dealing with the legality and fairness of an enquiry is maintainable.

6. In view of the judgments referred supra, it will have to be held that the revision is maintainable.

7. In the light of above, the impugned judgment and order passed by the Industrial Court holding that the revision is not maintainable and not registering the revision is quashed and set aside. The revision filed by the petitioner challenging the order dated 12.04.2012 passed by the 02nd Labour Court, Ahmednagar in Complaint ULP No. 30/2009 be registered, if it otherwise complies with all other legal requirements.

The writ of this Court was issued on 21.11.2012 to the said Industrial Court.

(e) In Writ Petition No. 6080 of 2012 (Shri Sai Arihant Nagari Vs. Lalitkumar Deepchand Parekh) decided on 26.9.2012, once again the issue of the same Industrial Court concluding that the Revision is not maintainable was considered and this Court has observed in paragraph No. 6 as under:-

6. In Writ Petition No. 4693/2012 vide judgment dated 21.8.2012, I have already held that Revision filed against the decision on a preliminary issue regarding the validity and the fairness of the inquiry is maintainable if the same is under the provisions of MRTU and PULP Act.

The writ of this Court was issued on 15/10/2012 to the said Industrial Court.

(f) In Writ Petition No. 4950 of 2012 (Bhausahab Tulshiram Shinde and others Vs. The President, Administrative Committee) decided on 13.9.2012, challenge was to the dismissal of Revision Petition being untenable and this Court has observed in paragraph No. 4 as under:-

4. This Court in Writ Petition No. 4693 of 2012 vide Judgment dated 21/08/2012 relying on the Judgment delivered by the Division Bench and the learned Single Judge of this Court in the case of Suryabhan Maruti Avhad V/s Mahindra and Mahindra Ltd., so also The Dhule and Nandurbar Zilla Parishad V/s Yuvraj Kalu Patil delivered in L.P.A. No. 109 of 2012 and the Judgment of the learned Single Judge of this Court in the case of Maharashtra State Road Transport Corpn. Vs. Abdul Usman Meboob Shaikh, has held that the Revision filed by party being aggrieved by the decision against the preliminary issue about the fairness of the enquiry under the M.R.T.U. and P.U.L.P. Act is maintainable

The writ of this Court was issued on 06.12.2012 to the said Industrial Court.

(g) In Writ Petition No. 5041 of 2012 and another (Garware Marine Industries Ltd. Vs. Prakash Chandrashekhar Atitkar) decided on 6.9.2012, challenge to the rejection of two Revision Petitions on the ground of maintainability was considered and this Court has observed in paragraph No. 5 as under:-

5. The Division Bench of this Court in a case of Suryabhan Maruti Avhad Vs. Mahindra and Mahindra Ltd., so also in a case of The Dhule and Nandurbar Zilla Parishad Vs. Yuvraj Kalu Patil delivered in L.P.A. No. 109/2012 and the learned Single Judge of this Court in a case of Maharashtra State Road Transport Corpn. Vs. Abdul Usman Meboob Shaikh, had considered the said aspect and has held that in case of ULP if an order is passed on preliminary issue dealing with the fairness of enquiry, then the revision is maintainable.

The writ of this Court was issued on 26.09.2012 to the said Industrial Court.

16. Shri Barde, learned Advocate for the petitioners makes a serious grievance about the said Industrial Court, Ahmednagar, either refusing to register the Revision Petition or taking up the Revision Petition for hearing on maintainability and rejecting it without considering it on its merits and without issuing notice to the respondents.

17. Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for the sake of brevity, hereinafter referred to as "the Act of 1971") reads as under:-

44. INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS.-

The Industrial Court shall have superintendence over all Labour Courts and may,-

- (a) call for returns;
- (b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;
- (c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and
- (d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

18. It is trite law that any order passed by the Labour Court under Chapters VI and VII of the Act of 1971 can be challenged before the Industrial Court u/s 44 of the Act of 1971. There is no provision as regards the jurisdiction vested in the Industrial Court to consider whether a revision petition can be admitted or not? There is no scope for the Industrial Court to refuse to register a Revision Petition as long as it is filed in accordance with the scheme provided under the Act of 1971 and so far as it challenges an order passed by the Labour Court dealing with a complaint u/s 28(1) and an application for interim relief u/s 30(2) of the

Act of 1971.

19. Learned Advocate for the respondents made a valiant effort to support and justify the impugned orders in these two petitions. However, when called upon to point out, as to whether there is any provision under the Act of 1971 which empowers or unable the industrial Court to resort to this methodology, he was unable to locate any such provision.

20. I find that several such orders, as like the impugned orders in the present petitions, passed by the same Industrial Court, Ahmednagar were challenged before this Court. All such orders challenged have been quashed and set aside and the matters have been remanded back to the Industrial Court with a direction to register the said Revision Petitions and decide them in accordance with law. I am able to draw this conclusion since many of the orders referred above have been placed before me by the learned Advocate for the petitioners.

21. So far as the merits of these two petitions are concerned, in the light of the judgments/orders cited before me supra, the impugned order dated 7.7.2012 passed in Rejected Application No. 6 of 2012 and the impugned order dated 18.4.2012 passed in Rejected Application No. 1 of 2012 are hereby quashed and set aside. Both these petitions are allowed.

22. The Industrial Court is hereby directed:-

(a) To register the two Revision Petitions filed by the petitioners Jalindar Ganpat Lawate and Isaq Ahmed Shaikh.

(b) To hear and decide both the Revision Petitions in accordance with law and the scheme of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

(c) To note that this Court has not considered the merits involved in the two Revision Petitions and has left all points/contentions open to be considered by the Industrial Court in accordance with law.

(d) To take due cognizance of the observations made by this Court in the orders referred supra.

23. Rule is made absolute in above terms with no order as to costs. Registry is directed to place, under acknowledgment, copies of this judgment and order along with the complete text of the judgments and orders of this Court, passed earlier from time to time and referred and quoted in this judgment, before the concerned Member, Industrial Court, Ahmednagar.