

(1994) 09 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 5708 of 1986

Pralhad Atmaram Jadhav

APPELLANT

Vs

Managing Dir., Kulkarni Black and Decker Ltd.

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Trade Unions Act, 1926 — Section 30(3)

Citation : (1995) 70 FLR 746 : (1995) 2 LLJ 886

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an order dated 4th April, 1986, and another order dated 12th August, 1986, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The petitioner was working in the employment of the Respondent and was dismissed from service. The Trade Union of workmen known as "Kulkarni Black and Decker Workers" Union", acting on behalf of the Petitioner, filed a complaint, being Complaint (ULP) No. 5 of 1982, under the provisions of the Act before the Labour Court, Kolhapur. The Labour Court, Kolhapur, tried the complaint and by its order dated 3rd May, 1985, held that the petitioner's discharge from service with effect from 15th December, 1981 was an unfair labour practice and directed his reinstatement with continuity, but dismissed the claim for back wages. Naturally, the petitioner was aggrieved by the denial of backwages. For some reason the Union which had filed the complaint originally did not chose to challenge that portion of the order of the Labour Court, Kolhapur, by which backwages were denied to the petitioner. The petitioner, filed a Revision Application (ULP) No. 23 of 1985 in which he impugned the denial of backwages by the Labour Court, Kolhapur, by its order dated 3rd May, 1985. During the pendency of this application one M. S. Mane purportedly appeared for the

petitioner and withdrew the said Revision Application (ULP) No. 23 of 1985 which came to be dismissed as withdrawn by the Industrial Court, Kolhapur, by its order dated 4th April, 1986. It is the case of the petitioner that he had not instructed any one, including M. S. Mane, to withdraw the proceedings before the Industrial Court and that when he learnt that the Revision application (ULP) No. 23 of 1985 has been dismissed, he obtained a copy of the order from which he was surprised to see that the Revision Application has been withdrawn. The petitioner, therefore, filed another application, styled by the Industrial Court as Miscellaneous Application (ULP) No. 14 of 1986, in which he prayed for setting aside the order of the Industrial Court dated 4th April, 1986, and restoration of his Revision Application (ULP) No. 23 of 1985. This Application was also dismissed by the Industrial Court by holding that the original Revision Application was itself not maintainable as it had been filed by a person who was not party to the original complaint before the Labour Court and further on the ground that there was no provision under the CPC for restoration of an application dismissed as withdrawn. Being aggrieved by these two orders the petitioner is before this Court.

3. In my view, this is a classic instance of procedure being treated as the mistress instead of handmaid of justice. Instead of being overawed by the technicalities of the argument before the Industrial Court, if the learned Judge of the Industrial Court had gone by first principles, there would have been no difficulty.

4. The contention that the petitioner was not a party to the original proceedings and, therefore, he could not have filed the Revision Application appears to arise because of misconception of the exact provision of law under which the application was made. Strictly speaking, the Industrial Court does not exercise all powers under the CPC while trying a complaint under the Act, though a limited provision for exercise of some powers is made in section 30(3) of the Act. There is no revisional power as such conferred upon the Industrial Court. The so-called Revisional power is u/s 44, which is really the power of judicial superintendence over orders of the Labour Court. A similar provision under the Bombay Industrial Relations Act, 1946 in section 85 is also identically worded as the present section 44 of the Act. Noticing the striking similarity between the language used in section 44 of the Act and the language used in Article 227 of the Constitution of India conferring the power of judicial superintendence on the High Court, the view has been taken by this Court in *Mahila Griha Udyog v. Kamgar Congress* 1983 (46) FLR 244 and *Hindustani Prachar Sabha and Others Vs. Dr. (Miss) Roma Sengupta and Another*, as also in *Pest Control (I) Pvt. Ltd. v. Pest Control (I) Pvt. Ltd. Employees*" All India Union & Ors. 1993 1 CLR 230, that section 44 of the Act must be read as conferring the power of judicial superintendence over orders of the Labour Court on the Industrial Court. A practice has, therefore, frown up of entertaining applications challenging Non-Appealable orders by styling them as Revision Applications, though, in stricto sensu, there is no revisional power as such vested in the Industrial Court. The power of judicial

superintendence can be exercised suo moto or on the application of some one bringing to the notice of the Court the requisite facts. In the instant case, since the Union was perhaps unwilling to act on behalf of the petitioner, the petitioner being aggrieved about the denial of backwages to him, brought the facts to the notice of the Industrial Court, in what he styled as a Revision Application, and invoked its power of judicial superintendence. The Industrial Court was, therefore, in error in taking the view that this power could not have been invoked except by the party who had originally filed the complaint. After all, when a Trade union files a complaint for obtaining relief to its member-workman, the relief is granted to the workman and not to the Trade Union. Conversely, if the relief is denied fully or in part, it is the concerned workman who is aggrieved. To hold that such an aggrieved workman has no remedy u/s 44 is to take a very unrealistic and pedantic view of the matter. This contention which seems to have appealed to the learned Judge of the Industrial Court and was reiterated here by Mr. Bodake, learned Advocate for the Respondent, leaves me unimpressed.

5. Though the Industrial Court took the view that an application which was dismissed by it as withdrawn could not be restored, here also, the situation does not appear to be free from doubt, because the petitioner did make allegation in his application that his Revision Application had been withdrawn without any instructions from him and without his knowledge. However, it is unnecessary for me to go any further into this aspect of the matter. Whatever the limitations might have been on the powers of the Industrial Court. This Court's power if untrammelled and this Court can do all that is necessary to do complete justice between the parties.

6. I am, therefore, of the view that the Industrial Court erred in permitting the withdrawal of the Revision Application (ULP) No. 23 of 1985 without giving opportunity to the petitioner to put forward his grievances against the impugned order of the Labour Court.

7. In the result, petition is allowed and rule is made absolute. The impugned orders of the Industrial Court dated 4th April, 1986 and 12th August, 1986, are hereby quashed and set aside. Revision Application (ULP) No. 23 of 1985 is restored to file and remanded to the Industrial Court for trial and disposal according to law, as expeditiously as possible.

8. There would, however, be no order as to costs.

9. Certified copy expedited. Writ to be despatched early.