
(1998) 02 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 654 of 1988

Sarsabai Kudale

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Industrial Court Regulations, 1975 — Rule 115
Labour Courts (Practice and Procedure) Rules, 1975 — Rule 115, 75
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2), 33, 44

Citation : (1998) 3 ALLMR 710 : (1998) 3 BomCR 352 : (1999) 2 LLJ 506

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : Mrs. Sangmitra Wadmare, for the Appellant;

Judgement

B.H. Marlapalle, J.—Heard Mrs. Wadmare learned Counsel for the petitioner and learned A.G.P. for R-State. Rule made returnable forthwith by consent.

2. The petitioner claims that she was working as Daily-rated labourer under the respondent No. 4 and her services came to be terminated orally on 4-11-1997. That gave rise to file Complaint (U.L.P.) No. 9/1998, before the Labour Court, Aurangabad on or about 27-1-1998 alongwith an application for interim relief u/s 30(2) of the M.R.T.U. & P.U.L.P. Act, 1971. The learned Judge of the Labour Court, without issuing any notice to the other side, allowed the application by his order dated. 28-1-1998 and issued notice returnable on 17-2-1998. By this order the learned Judge of the Labour Court directed the respondents to allow the complainant to report for duty forthwith on the post, on which, she was working previously.

3. On receipt of a copy of the said order dated 28-1-1998, the respondent-Department approached the Industrial Court, Aurangabad u/s 44 of the M.R.T.U. & P.U.L.P. 1971 and filed Revision Application (U.L.P.) No. 19/1998. By his ex parte order dated 9-2-1998, the learned member of the Industrial Court,

Aurangabad allowed the revision application and disposed of the same by quashing and setting aside the order dated 20-1-1998, passed by the Labour Court, Aurangabad on application Exh. U-2. The Industrial Court further directed the Labour Court to decide the application at Exhibit U-2 on 17-2-1998, after hearing both the parties. Mrs. Wadmare learned Counsel for the petitioner contends that, she had filed a caveat in the Industrial Court. Though she is not able to give registration number of the caveat application, it was not proper on the part of the learned member of the Industrial Court to pass order dated 9-2-1998, without issuing notice to the present petitioner. The learned Counsel, however is not able to state any reasons as to why she could not approach the Industrial Court on 9-2-1998 or any time thereafter till the date of filing of the present petition, for review of the ex parte order, by pointing out to the learned member of the Industrial Court that the present petitioner had filed a caveat and the order dated 9-2-1998 was passed without issuing notice or without hearing the advocate of the petitioner.

4. This Court (Division Bench) in the case of Kausalyabai Ganpat Jadhav v. State of Maharashtra and others, reported in 1998(II) C.L.R.9 had an occasion to deal with the powers of the lower courts to entertain the applications filed u/s Official of the M.R.T.U. & P.U.L.P. Act, 1971 and the Division Bench observed, inter alia, as under :--

"The learned member of the tribunal, without notice to the otherside, passed an ex parte interim order which in our opinion is wholly unjustified. It is well settled that ordinarily before any such interim order is made, the person who are likely to be affected be heard, and therefore, in such contingencies the Court can always without granting the interim relief, grant the Rule on such interim application and after hearing both the parties, pass appropriate orders in accordance with law. In the present case the learned member of the Industrial Court has disregarded this procedure and proceeded to pass the ex parte interim order."

In spite of this judgement of the Division Bench, the trial Courts were not following the method prescribed and, therefore, the learned Single Judge of this Court gave directions to the President of the Industrial Court to frame Rules u/s 33 of the M.R.T.U. & P.U.L.P. Act, 1971 laying down the procedure for exercising the powers u/s Official of the said Act, both by the Labour Courts as well as Industrial Courts and accordingly, the rules were amended by the Industrial Court sometimes in 1992. Accordingly Rule 75 in the Labour Courts (Practice & Procedure) Rules, 1975 and Rule 115 in the Industrial Courts Regulations, 1975, have been introduced. The learned Judge of the Labour Court ought to have referred to these Rules before passing the ex parte order dt. 28-1-1998. It is strange and rather surprising that, the alleged oral termination of 4-11-1997 was set aside by the learned Judge of the Labour Court, without hearing the respondent-Department by the ex-parte order passed on 28-1-1998. Such a course is unsustainable especially when the Division Bench of this Court, in

Kausalyabai's case, (cited supra) and also the Rules amended in 1992, put a bar against such practice being followed, which leads to multifarious litigation in the Labour Courts and Industrial Courts. Needless to mention if the Caveat filed by the present petitioner was registered, and if it was brought to the notice of the learned member of the Industrial Court, he could not have proceeded with to pass the impugned order ex parte. Notwithstanding this aspect, nothing had stopped the petitioner from approaching the Industrial Court with review application, pointing out to the learned member of the Industrial Court that the petitioner had filed the caveat application and the impugned order was required to be kept in abeyance and the petitioner was required to be heard afresh, before any order of interim relief was passed. The learned member of the Industrial Court by the impugned order has allowed the revision itself, without notice to the other side. The action of the learned member is most uncalled for and against the cannons of established procedure.

5. The trial Courts will be well advised to adhere to the Rules prescribed and in fact, nothing stops the trial courts from issuing a notice and directing the notice to be served through a bailiff so that the matter could not be heard on the next day or any earlier day after service to respondents. Alternatively, the trial courts may call upon the learned advocates of the respective parties to serve a notice to opposite side regarding hearing on application for interim relief on a given date at the earliest possible. If such a course of procedure is followed the multiplicity in litigations, which is uncalled for, could be avoided.

6. It is manifest, in the instant case, that both the courts below have committed gross errors by passing the impugned ex parte orders granting the whole relief at an interlocutory stage and it will be appropriate that the Labour Court is directed to hear and decide the application for interim relief, after giving an opportunity to both the parties, within a fixed period. The parties are directed to appear before the Labour Court, on 19th February, 1998. The Labour Court, Aurangabad, is directed to hear and decide the application at Ex. U-2 in Complaint (U.L.P.) No. 9 of 1998, as expeditiously as possible and in any case within a period of one month from today, after hearing both the parties. The orders passed by both the courts below are hereby quashed and set aside. The Rule is made absolute accordingly with no order as to costs.

7. Petition allowed.