

IN THE INDUSTRIAL TRIBUNAL, MAHARASHTRA AT MUMBAI

REFERENCE (IT) NO. 14 OF 2017

Municipal Corporation of Greater Mumbai ...First Party

AND

Its Workmen represented by
Mahapalika Aagogyia Seva Karmachari
Sanghatana, Mumbai. ...Second Party

CORAM: M.R. KUMBHAR, PRESIDING OFFICER

Appearances: Shri. B.D. Birajdar, Advocate for the first party
Smt. Vidula Patil, Advocate for the *second party*

ORDER BELOW EXH.C-7
(Declared on:29.09.2021)

- 1) Read the application filed by the first party. Perused say of second party. By this application, first party prayed that to recast the issues as prayed for.
- 2) Shri B. D. Birajdar, Ld. Advocate for first party during the course of argument strongly submitted that this tribunal was pleased to frame issues below Exh.O-5 on 16.08.2018. He further submitted that it was brought to the notice of tribunal that the first party corporation has specifically contended in its written statement that number of complaints have been filed by the second party union directly or indirectly seeking reliefs as prayed in the above reference. He further submitted that it has also been contended that the staff nurses, the union and the 407 staff nurses themselves have filed a complaint of

ULP bearing no. 381/2015 wherein the said staff nurses who are concerned in above reference have sought same relief as prayed in the above reference. So also complaint was filed on behalf of 834 staff nurses bearing Complaint (ULP)No.278/2011 before the Hon'ble President, Industrial Court, Mumbai for permanency with retrospective effect which covered in demand no. 1 of the said reference. He lastly submitted that the reference is therefore barred by Section 59 of MRTU & PULP Act, 1971 either fully or partly and under Section 10 of CPC and similarly barred by principle of resjudicata. Therefore, the said issue requires to be added. Alternatively issues require to be recasted and prayed that to allow his application.

3) On the contrary, Smt. Vidula Patil, Ld. Advocate for second party union strongly submitted that the Complaint (ULP)No.381/2015 is before this Hon'ble Court and it is still to be heard. As Complaint (ULP)No.278/2011, the concerned staff nurses were not party in the said complaint. Therefore, the union could not file any complaint/reference. The judgment in Complaint (ULP)No.278/2011 was known to first party for last seven years and first party did not take opportunity to bring it before the court. Hence, application filed by first party may kindly be rejected.

4) Having heard the submissions of both the Ld. Advocates, I have gone through the entire material on record. After minutely perusing, it appears that Dy. Labour Commissioner, Mumbai by an order dated 25.04.2017 referred the reference alongwith schedule to this tribunal for adjudication. Thereafter it appears second party filed its statement of claim and first party filed the written statement.

Considering the pleadings of the parties, my Ld. Predecessor framed issued at Exh.O-5 dated 16.08.2018 and thereafter reference was posted for evidence of second party. Further perusing it appears that on behalf of second party, one Smt. Gracy Quadros filed affidavit in examination in chief at Exh.U-4 dated 22.10.2018. Thereafter matter was adjourned for cross-examination of the said witness. I further find that thereafter on 09.01.2019 first party filed the present application for adding issues/recasting issues without proceeding with cross-examination. After minutely perusing the record and undisputed facts from the pleadings of the parties, it appears that there is one complaint filed by second party union bearing no. 381/2015 and Complaint (ULP)No.278/2011. Therefore, it is contention of first party that the present reference is barred by Section 59 of MRTU & PULP Act, 1971. Therefore it is useful to refer here Section 59 of the MRTU & PULP Act which reads as under:-

Bar of proceeding under Bombay or Central Act – if any proceeding in respect of any matter falling within purview of this court is instituted under this Act then no proceedings shall at any time be entertained by any authority in respect of that matter under the Central Act or as the case may be, the Bombay Act and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act or as the case may be, the Bombay Act, then no proceeding shall any time be entertained by the Industrial or Labour Court under this Act.”

: 4 :

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5) In view of the provisions of the said Section, it is strong contention of first party that the issue involved in Complaint (ULP)No.381/2015 and Complaint (ULP)No.278/2011 and the present reference are one and the same and therefore the reference is barred by Section 59 of MRTU & PULP Act. On the contrary, according to second party union issues are totally different. To resolve the controversy whether second party has raised dispute which is already decided in Complaint (ULP)No.278/2011 or in 381/2015 and in the present reference in hand, it requires to lead evidence by both the parties to prove their contentions. Rather the issue raised by first party is a mixed question of law and facts, therefore, I find substance in the submissions made on behalf of first party for framing additional issues. Hence, application is liable to be allowed. With this I proceed to pass the following order.

ORDER

- 1) Application for framing additional issues stands allowed.
- 2) Following additional issues are framed.
 - (i) Whether the reference is hit by resjudicata as per Section 59 of the MRTU & PULP Act?

Date: 29.09.2021.

Sd/-
(M. R. Kumbhar)
Presiding Officer
Industrial Court, Mumbai

ams/-