

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

COMPLAINT (ULP) NO. 201 OF 2025

Shri. Sunil Soma Dalvi
C/o. Rashtriya Mill Mazdoor Sangh
Mazdoor Manzil, G.D. Ambekar Marg,
Parel, Mumbai-400 012.

...Complainant

Versus

1) M/s. India United Tata Mill No.5
NTC Ltd. (WR)
A.G. Pawar Lane, Byculla (East)
Mumbai.

2) The General Manager
M/s. India United Tata Mill No.5
NTC Ltd. (WR)
A.G. Pawar Lane, Byculla (East)
Mumbai.

...Respondents

CORAM: V. G. RAGHUWANSHI, MEMBER.

Appearances: Shri. A. M. Koyande, Advocate for Complainant.
Shri. M.V. Bhat, Advocate for Respondents.

ORDER BELOW EXH.U-2
(Dated:01.08.2025)

1) This is a complaint of unfair labour practices under Section 28 read with Items No. 5, 9 and 10 of Schedule IV of MRTU & PULP Act 1971. Complainant is in employment of respondent no. 1 in mechanic department having ticket no. 21 on the post of Carpenter with satisfactory service record. Complainant received a

letter on 01.07.2025 that he has attained the age of retirement and his services would be terminated as per clause 20(a)/11(a) of the Standing Orders with effect from 03.08.2025. Complainant replied the said letter on 03.07.2025. Respondents/employer did not pay any heed to his letter. Complainant claims that he is physically and mentally fit. He attached a certificate (Annexure-C) issued by Dr. H. M. Jain showing that he is physically and mentally fit. Standing orders were framed and settled under Section 36 of B.I.R. Act 1946. As per clause 20(a)/11(a) of Standing Orders, the operative / clerks are entitled to be continued in service upto the age of 63 years if they continue to be efficient.

2) Complainant submitted that his efficiency was never assessed or challenged by respondents. No opportunity of being heard was given to him before issuing retirement memo. Thus, there was violation of principles of natural justice. Complainant contends that respondents are illegally compelling him to retire from 03.08.2025. Complainant is still efficient and he has remained physically fit, mentally alert and efficient all throughout these years. He was physically and mentally fit on the date of receipt of retirement memo and even today also. Respondents cannot retire him.

3) The issuance of retirement memo is nothing but an unfair labour practice under Items No. 5, 9 and 10 of Schedule IV of MRTU & PULP Act, therefore, complainant approached this court. He also filed an application for interim reliefs praying for a direction to respondents to withdraw from the unfair labour practices

complained of and staying retirement memo dated 01.07.2025. He also prayed for direction to respondents to reinstate the complainant with full back wages, other benefits and continuity of service with effect from 03.08.2025.

4) Respondents were served, they appeared and filed their reply. Respondents submitted that complainant is working with respondent mill. They are governed by Maharashtra Industrial Relations Act 1946. Complainant and respondent are governed by Certified Standing Orders settled under Section 36 of Maharashtra Industrial Relations Act 1946. Complainant will attain the age of 60 years on 03.08.2025, therefore, respondent mill served a memo of retirement on complainant on 01.07.2025 under the Certified Standing Order 20-A advising him to retire from services of respondent on 03.08.2025. Respondents submitted that during Covid-19 pandemic, the working of all mills of respondent have been discontinued. The Government of India is financing mills towards payment of salary and other legal dues payable to retired employees including statutory dues.

5) Respondent mill does not require services of complainant due to above reason. Respondent cannot afford to extend services of complainant due to discontinuance of work in the mills of respondent. The complaint is not tenable.

6) Respondents further submitted that there is no generation of revenue in the respondent mill and that all employees of respondent mill are being paid 50% of their normal salary even

though they are not called for work. The essential staff and employees are being paid full salary. Extending age of retirement of complainant till 63 years is not feasible. Complainant has produced medical certificate to show that he is fit to work in the mill. It was not accepted since the complainant has already attained the age of 60 years and his efficiency has gone down. Respondents prayed for rejecting the interim relief application filed by complainant.

7) I have heard Ld. Counsels for both sides. Ld. Counsel for complainant took me through the retirement memo dated 01.07.2025, reply dated 03.07.2025, medical certificate dated 03.07.2025 and Aadhar Card of complainant. He further submitted that there is nothing on record to show that there was assessment of efficiency of complainant before issuing this letter. He drew my attention towards clause 20-A of the Certified Standing Orders.. He also drew my attention towards following citations.

- 1) Tata Textile Mills (UC) Vs. Munnal Nanhoo Yadav, 1990 ICI R Page 120
- 2) Maharashtra State Textile Corporation Ltd. Vs. Vasudeo Vinayak Joshi 1989 (O) AIJ-MH 117123: 1991 (2) LLJ 457
- 3) National Textile Corporation (Maharashtra North) Ltd. Vs. S. M. Tambe 1999 LawSuit (Bom) 689
- 4) Dattu Rama Sawant Vs. Bharat Textile Hills NTC (SH) Ltd., 2004 LawSuit (Bom) 407
- 5) S. G. Chemicals and Dyes Trading Employees Union Vs. S. G. Chemicals and Dyes Trading Ltd., reported in 1986 LawSuit (SC) 98

- 6) Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and Ors., 1981 LawSuit (Bom) 300
- 7) Mahindra & Mahindra Ltd. Vs. Dwarkanath Babaji Dalvi reported in 2006 LawSuit (BOM) 871

8) On the other hand, Ld. Counsel for respondents conceded that complainant is employee of respondents. He submitted that complainant is going to attain the age of retirement on 03.08.2025. He submitted that from the onset of pandemic of Covid-19, the factory which is financed by the Central Government, is not working and there is no generation of revenue from the mill. Therefore, respondent is not in a position to continue complainant for three more years. The respondent will suffer irreparable loss, if interim relief is granted to the complainant. He also submitted that respondent is not in a position to continue complainant in service. Therefore, retrenchment is necessary and the respondents followed principle of last come, first go.

9) I have thoughtfully considered the submissions of both sides. The Standing Orders are binding upon both the parties. The Standing Order 20-A fixed the age of retirement at 60 years. It is further provided with a clause that if a male operative continues to be efficient, he shall be retained in service up to the age of 63 years. It also makes it clear that if retrenchment becomes necessary, a person who has completed the age of 60 years may be retired in preference to younger men. The above Standing Order is interpreted in various judgments cited by complainant. Ld. Counsel

for respondents conceded that respondent did not take permission under Section 20-O of the Industrial Disputes Act to close down the said mill. The complainant prima facie proved that there is nothing on record to show that he is not fit to be continued in service for three more years. Thus, complainant proved the prima facie case. In absence of any material on record, showing that complainant lost his efficiency or respondents took steps for lawful retrenchment of complainant. Here complainant proved that the balance of convenience lies in his favour and complainant will suffer irreparable loss if interim relief is not granted. Thus, complainant is entitled to interim reliefs claimed by him. Hence, I pass the following order.

ORDER

- 1) Pending hearing and final disposal of the complaint, respondents shall not indulge or continue in unfair labour practices alleged by complainant.
- 2) Pending hearing and final disposal of this complaint, retirement memo dated 01.07.2025 is stayed in its effect, operation and implementation.
- 3) Pending hearing and final disposal of this complaint, respondent is directed to reinstate the complainant with full back wages and other benefits and continue to be in service with effect from 03.08.2025.

Dated: 01.08.2025

(V. G. RAGHUWANSHI)
Member
Industrial Court, Mumbai.