

Filed On :- 26.09.2025
Registered On :- 26.09.2025
Decided On :- 06.03.2026
Duration :- 00 Y; 05 M; 11 D

BEFORE SMT. A. C. RAUT, MEMBER,
INDUSTRIAL COURT, MAHARASHTRA, MUMBAI

COMPLAINT (ULP) No. 276 of 2025
(CNR No. MHIC 01 - 000 618 - 2025)

Shri. Vijayanand Surajwali Jaiswar, ... **Complainant**
C/o. Rashtriya Mill Mazdoor Sangh,
Mazdoor Manzil,
G. D. Ambekar Marg, Parel,
Mumbai - 400 012.

... **Versus** ...

1. M/s. Tata Mills,
A Unit of N.T.C Ltd. (WR) Mumbai,
Dr. Ambedkar Marg,
Dadar, Mumbai-400 014.
2. The General Manager,
M/s. Tata Mills,
A Unit of N.T.C Ltd. (WR) Mumbai,
Dr. Ambedkar Marg,
Dadar, Mumbai-400 014.

... **Respondents**

**In the matter of Complaint of unfair labour practice
under section 28 r/w. Items 5, 9 and 10 of Sch.IV
of the MRTU & PULP Act, 1971.**

Coram :- Smt. A. C. Raut, Member.

Appearances :- Shri A. M. Koyande, Ld. Adv. for Complainant.
Shri M. V. Bhat, Ld. Adv. for Respondents.

:- J U D G M E N T :-

(Delivered on :- 06th March, 2026)

1. This Complaint is filed by complainant under section 28 r/w. Items 5 & 9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short, “the MRTU & PULP Act”), alleging unfair labour practices on the part of respondents.

2. Facts giving rise to this Complaint are as under:-

The Complainant has alleged that he is in the employment of the Respondent Mill since 2008. He joined the service of the Mill as a RJK Cone Winder and at present he is working on same post. The record of the Complainant is clean and unblemished. Surprisingly, on 22.09.2025, the Complainant got a notice dated 22.09.2025, intimating the Complainant that he would be retired on superannuation on completion of the age of 60 years. The date of retirement in the said letter was specified to be 25.10.2025. The said letter disclosed reason for the retirement of the Complainant on attaining the age of 60 that he does not fulfill the conditions required under Standing

Order Clause 20-A. In terms of Clause 20-A of the Model Standing Orders, the Complainant is entitled to be in the employment of the Respondent Mill till he attains the age of 63 years. The Complainant is efficient and is capable of discharging his duties till the attainment of age of 63 years. The Complainant replied the said retirement memo by his letter dated 23.09.2025, but the Respondents did not pay any heed to this letter. He has, therefore, alleged that the Respondents have committed unfair labour practice under the items invoked in the Complaint and sought direction to the Respondents to let him work till he attains the age of 63 years.

3. The Respondents filed their Written Statement at Exhibit C-3 and denied all the allegations of the Complainant in toto. It is admitted that the Complainant is its employee. According to the Respondents, the Complainant is not efficient enough to discharge his duties, till the attainment of the age of 63 years. The Complainant has no right to continue to be in the employment of the Respondents till the attainment of the age of 63 years. The Respondents are also within their rights to retrench their employees if there has been surplus. In terms of Standing Order 20-A, the extension is not automatic, but it depends upon the efficiency of the workman. Since the Complainant is not

efficient to discharge his duties. The Respondents have rightly issued the notice to him, intimating him that he would be retiring on completion of the age of 60 years. No case of unfair labour practice is made out by the Complainant. It is contended that the Complaint is not maintainable. The date of birth of the Complainant is 21.08.1965 and hence, its department has rightly issued the retirement memo dated 23.07.2025, advising the Complainant to retire from the services of the Respondent Mill from 21.08.2025. The Respondents denied that the service record of the Complainant is satisfactory. Due his advancing age, the efficiency of the Complainant has gone down. Moreover, the Respondent Mill had introduced MVR Scheme under which several employees have accepted their legal dues after tendering their letter of resignation. It is further contended that the Respondents have already been carrying huge burden of idle wages due to non-availability of work for employees due to pandemic and lock-down w.e.f. 23.03.2020 due to Covid-19 pandemic declared by the Central Government and thereafter. The Respondent Mill has totally lost its business and there are huge financial losses. Hence, the Respondents are not in a position to run the Mill in its full strength due to complete loss of business. Thus, there is no continued utility of the Complainant beyond 60 years. Further the employees have not received their full salary. It is further

contended that the Respondent Mill has no funds to even buy the raw materials to re-start the Mill. Under such circumstances, it is not proper to grant extension to the Complainant till he attains the age of 63 years. Thus submitted that, the Complaint is liable to be dismissed.

4. Heard Shri A.M. Koyande, Ld. Advocate for the Complainant and Shri M.V. Bhat, Ld. Advocate for the Respondents.

5. From the rival pleadings of the parties, following issues are framed on 03.12.2025. I have recorded my findings against each of them, for the reasons to be followed -

<u>I s s u e s</u>	<u>Findings</u>
1. Whether the Complainant proves that the respondents are engaged in unfair labour practices under Items 5, 9 & 10 of Sch.e-IV of the MRTU & PULP Act, 1971 ?	:- In the Affirmative
2. Whether the Complainant is entitled to the reliefs sought ?	:- In the Affirmative
3. What Order?	:- As per final Order.

-: R E A S O N S :-**As to Issue Nos.1 to 3:-**

6. To prove his case, the Complainant has examined himself at Exhibit UW-1, reiterating the contentions raised in the Complaint. He deposed that there is Standing Order, which provides the extension of service till completion of 63 years of age if he is efficient and physically fit. He further deposed that he is efficient and physically fit. Hence, his services may be extended till the age of 63 years. During the cross-examination, Complainant admitted that he had not been called on the work. He further admitted that the mill is now not functioning and production is closed. He further admitted that as the mill is closed they are receiving the salary from the Government. It is denied by the complainant that as the mill is closed, the mill do not require their services. There is no effective cross-examination on the aspect of efficiency or otherwise of the Complainant. Hence, in absence of any cross-examination or any memo or material on record to show that the complainant is unable to perform his work efficiently, his evidence inspires confidence.

7. The Respondents have examined Shri Ramesh Narayan Gurav at Exhibit CW-1, who deposed that Mill is governed by the Certified Standing Orders and as per Standing

Order No. 20-A, male operative can be retained in service till the age of 63 years. He further deposed that due to advancing age of the Complainant, the capacity of the Complainant to work in the Mill has gone down. However, during his cross-examination he admitted that more than 100 employees are on the pay-roll of Respondent Mill. He further admitted that the company has not taken permission for closure. He further admitted that, the company has not issued any memo or charge sheet to the complainant that he is unfit to do the work. He further admitted that as per Standing Orders the employee is eligible to work till the age of 63 years. So far as his statement that because of the advanced age, Complainant is not in position to work effectively, considering his evidence and the fact that Complainant is efficient and further that more than 100 workers are still on the pay-roll, I don't find any reason not to extend the retirement age of Complainant till 63 years, as per the Standing Orders.

8. Clause 20-A of the Certified Standing Orders reads as under:-

“20-A:- An Operative shall retire from service on attaining the age of 60 years, but a male operative shall be retained in service, if he

continues to be efficient upto the age of 63 years, provided that when retrenchment becomes necessary, a person who has completed the age of 60 may be retired in preference to younger men.”

9. A bare perusal of clause 20-A indicates that if an employee is found to be efficient, on attaining the age of 60 years, the employer has no discretion but to continue the services of the employee till the attainment of the age of 63 years. In the case of ***Maharashtra State Textile Corporation v/s. Vasudeo Vinayak Joshi*** (cited supra), it has been held that both the parts of the Section are mandatory. Once it is found that the employee is efficient, the employer has no option but to continue his employee till the age of 63 years.

10. It is not mentioned/explained in the retirement memo dated 22.09.2025 as to how the Complainant is unable to fulfill conditions mentioned in Clause 20-A of the Standing Orders. Clause 20-A can be divided into two parts. Firstly that a male operative shall be retained in service after the age of 60 years, if he continues to be efficient upto the age of 63 years. The second part is that when retrenchment becomes necessary, a

person who has completed the age of 60 years, may be retired in preference to younger men. As regards the first part of Clause 20-A, it is the claim of the Complainant being the male employee/operative, he continues to be efficient and hence he is entitled to be retained in service after the age of 60 years and continued till the age of 63 years.

11. The Respondent Mill has not filed document like medical report of the Complainant to show that the Complainant is inefficient. It will have to be seen whether the Respondents have placed anything on record to show that the Complainant was inefficient to discharge his duties. Admittedly no document is placed on record to show that the Complainant has become inefficient on account of which he cannot be continued till the age of 63 years. The argument of Shri M.V. Bhat, Ld. Advocate that declining efficiency itself is a ground for holding that he is inefficient cannot be accepted. Nothing has been brought on record to show that the performance of the Complainant has been declining since last so many years. It is wrong to presume that with the age, the performance of a person and his continued utility declines. Without there being anything on record, it cannot be said that the Complainant was becoming more and more inefficient with every passing year. Therefore,

this submission of the Ld. Advocate for Respondents cannot be accepted.

12. Now turning to the second part of Clause 20-A, the phrase “when retrenchment becomes necessary”, is more important. It is thus imperative that this part comes into play when ultimately reduction does take place in the number of workmen or the posts, as the case may be. The Respondents have not pointed out any such circumstance warranting retrenchment and in any case, the same is required to be done by complying due process of law. The Respondent Mill has come up with the defence that after declaring the lock-out from March 2020, the activities of the Respondent Mill are completely closed down and the employees are getting only 50% of their normal salary and further that the Mill is not having funds to re-start the Mills. Admittedly, as per Clause 20-A of the Standing Orders, a male operative shall be retained in service if he continues to be efficient upto the age of 63 years, if he continues to be efficient upto the age of 63 years. In the present case, as observed above, the Respondent Mill has not produced on record any admissible document to prove that the Complainant is inefficient and hence not entitled to be continued upto the age of 63 years. The Respondent Mill cannot give a go-

bye to Clause 20-A of the Standing Orders by taking the defence that the activities of the Mill are completely closed down, except by following due process of law.

13. It is true that no agreement was placed on record to show that efficiency of the Complainant will have to be tested on attaining the age of 60 years. However, it has been held in the case of *Premier Automobiles Ltd., Bombay v/s. Engineering Mazdoor Sabha, Bombay- Miscellaneous Petition No.1 of 1975 with Special Civil Application No. 9 of 1976, decided on 16.01.1976*, that Standing Orders form part and parcel of the service conditions between the Management and the employees of the Petitioner concern and reference to the word “agreement” in Item 9 of Sch.IV cannot but include every clause of the Standing Orders.

14. Item 9 of Sch.IV of the MRTU & PULP Act states that failure to implement award, settlement or agreement is an unfair labour practice. As stated above Clause 20A of the Standing Orders clearly shows that on attaining the age of 60 years, the employer has to continue the employee if he continues to be efficient. Thus, in view of the aforesaid authority, this is an agreement between the employer and employee and employee

was obligated to bring on record through documentary evidence that the Complainant was no longer efficient. Therefore, the argument of the Ld. Advocate for the Respondent Mill cannot be accepted. Thus, from the evidence on record, it has to be said that the Complainant was efficient and had to be continued till the attainment of age of 63 years.

15. The Respondents have not placed on record any document to show that the Complainant has lost his efficiency. No notice, no memo has been placed on record to show that the Complainant was intimated that his efficiency is going down consistently. Therefore, by the bare words of the Respondents, it cannot be said that the Complainant is not able to discharge his duties owing to his inefficiency. As discussed earlier, the Complainant has stated on oath that he is physically and mentally fit and efficient to discharge his duties till his attainment of 63 years. As against this, the Respondents have though led evidence, indicating that owing to declining efficiency of the Complainant, the Complainant cannot be continued till the age of 63 years, in cross-examination it came on record that there is no documentary evidence filed on record to show that the efficiency of the Complainant is decreased and he is not medically fit to carry out the work till the age of 63.

It is an admitted fact that no permission to retrench the workman is sought. Thus, the Complainant has proved that the Respondents have committed unfair labour practice under item 9 of Sch.IV of the MRTU & PULP Act.

16. So far as Item 5 of Sch.IV of the Act is concerned, though this item has been invoked by the Complainant, but he has failed to prove by way of cogent evidence, both oral as well as documentary as to how discrimination has been done to him by the Respondents. Same is the case with regard to item 10 of Sch.IV of the Act which speaks about force or violence being exerted upon the Complainant as there is no evidence to that effect. Hence, both these items i.e. items 5 and 10 of Sch.IV of the Act are not attracted in the present case.

17. In the circumstance, it can be concluded the Complainant has proved that the Respondents have committed unfair labour practice under item 9 of Sch.IV of the MRTU & PULP Act, 1971. The Complainant has also succeeded to prove that the Respondents have illegally issued the retirement memo dated 02.05.2025, retiring him from 01.06.2025. Consequently, I hold that the Complainant is entitled for the relief sought and hence I answer Issue Nos.1 to 3 in Affirmative and proceed to pass the following Order :-

O R D E R

- i. The Complaint is partly allowed.
- ii. It is declared that the Respondents have indulged in unfair labour practice under Item 9 of Sch.IV of the MRTU & PULP Act, 1971.
- iii. The Respondents are directed to cease and desist from indulging in the unfair labour practice, as mentioned under item 9 of Sch.IV of the MRTU & PULP Act, 1971.
- iv. Respondents are directed to withdraw the Retirement Memo dated 22.09.2025 retiring the complainant w.e.f. 25.10.2025.
- v. The Complainant is entitled to be continued till he attains the age of 63 years.
- vi. No order as to cost.

Place :- Mumbai.

(SMT. A. C. Raut),
Member,

Date :- 06.03.2026.

Industrial Court, Mumbai.

Argued on : 06.03.2026
Judgment directly dictated : 06.03.2026
and transcribed on
Judgment checked & signed on : 06.03.2026

SPC/-