

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

COMPLAINT (ULP) NO. 227 OF 2019

Mr. Ankush Kumbhar

...Complainant

Versus

Dr. Balabhai Nanavati Hospital
& Anr.

...Respondents

CORAM: M. R. KUMBHAR, MEMBER.

Appearances: Shri. R. R. Yadav, Advocate for the Complainant.
Smt. Vedika Puri, Advocate for the Respondents.

ORDER BELOW EX.C-8

(Dated: 13.03.2024)

- 1) Read the application filed by the respondent at Ex.C-8. Perused the say of complainant filed at Ex.U-8. Heard both the Ld. Advocates for the parties.
- 2) By this application, respondent prayed to frame preliminary issue in respect of jurisdiction of the court.
- 3) During the course of argument Smt. Vedika Puri, Ld. Advocate for the respondents strongly submitted by inviting my attention towards the reply cum objection to application for interim relief dated 14.03.2022 and specifically pointed out the respondent has taken preliminary objection in para no. 1. Therefore, preliminary issue requires to be framed. She further strongly submitted that the complaint filed by the complainant is not maintainable for more than

one reason. She added that the respondent has never engaged in any unfair labour practices as alleged by the complainant. She invited my attention towards the complaint of complainant at Ex.U-1 specifically in para no. 2 and submitted that it is a contention of complainant that the respondents have engaged in unfair labour practices under Item No. 9 of Schedule IV of the M R T U & P U L P Act 1971 on and from 25.06.2019. Whereas complainant is seeking relief from March 2015 to June 2018, as per the memorandum of settlement dated 16.02.2018. She further submitted that as per Rule 101 of the Industrial Court Regulations, any complaint of unfair labour practice is required to be filed within a period of 90 days from the date of occurrence of unfair labour practices. However, the complaint is filed after lapse of 90 days which clearly indicates that there is inordinate delay. Further complainant has not filed separate delay condonation application. Therefore, the complaint filed by the complainant is not entertainable in law as well as in fact.

4) She further strongly submitted that the complainant is guilty of suppressing true facts while claiming the relief before this court. She further reiterated that respondent never committed any unfair labour practices within the purview of Item No. 9 of Schedule IV of the Act.

5) She lastly submitted that the present complaint is filed by the complainant union is not as per the provisions of the Industrial Court Regulations as the complainant has failed to spell out the exact cause of action which leads to unfair labour practices falling under

Item No. 9 of Schedule IV of the Act. In absence of any specific cause of action or allegations, complaint is not maintainable and therefore preliminary issue needs to be framed and be decided before proceeding further.

She relied upon the observations of Hon'ble Supreme Court in the matter between **Hasan Mithu Mhasvadkar Vs. Bombay Iron & Steel Labour Board & Anr.**, equivalent citation Air 2002 SC 3290 and invited my attention towards observations at para no. 5. She further relied upon the observations of Hon'ble Bombay High Court between **Executive Engineer, Central Public Works Department, Aurangabad Vs. Raju Banduji Raut** reported in 2009 II CLR. 187 and invited my attention towards the observations which reads as:-

“It is not possible to accede to the observations of the learned revisional Court. Copy of the written statement is on record. There the petitioner has in clear terms denied the alleged relationship of employer and employee among the parties i. e. complainant and respondent. Noticing such pleadings it was for the Courts below i. e. learned Judge as well as revisional Court, to find out as to whether they have jurisdiction to entertain and decide the complaint. Issue of jurisdiction hits the Court or authority, at the thresh hold and such issue in fact goes to the root of the matter. Once it is held that Court is having jurisdiction, there is no difficulty for the Court to proceed with the case before the Court. These are the Courts, functioning under the provisions of the Act, 1971. It was for these Courts, to take into consideration,

the case of the complainant himself as to whether he is being governed by a particular or specific statute and/or can resort to provisions of Act, 1971. Unless Courts are satisfied that the complaint filed by the complainant is maintainable, Court should not have proceeded to examine and decide the application for interim relief under [section 30](#) of the Act of 1971.”

6) She further relied upon the observations of Hon'ble Bombay High Court between **Siemens Ltd. Vs. Their Employees represented by Siemens Workers' Union and Anr.**, equivalent citation 2010 (126) FLR. 350 and invited my attention towards the observations at para no. 9 to 12 which reads as:

“9 The learned counsel for the petitioner in support of his submission has also relied on The Workmen of M/s. Hindustan Lever Ltd. & Ors. v. The Management of M/s. Hindustan Lever Ltd., 1984 (I) LL. J page 388 (SC) to frame such preliminary issue as it goes to the root of the matter. The same modality will be in the interest of all the parties.

10 The Apex Court in Hussan Mithu Mhasvadkar vs. Bombay Iron & Steel Labour Board & Anr., (2001) 7 SCC 394 has also considered that the issue whether a particular person is workman or whether particular factory is industry, the Court must consider at the earliest and adjudicate the same including the status of the respective parties. The same principle also applies here as it is necessary to adjudicate at the earliest whether there exists industrial dispute or not and for that it is not necessary to go into other issues as ordered to proceed by the trial Court.

11 In *Nedungadi Bank Ltd. v. K. P. Madhavankutty & ors.*, 2000 I CLR 671, the Apex Court while dealing with *Section 10* of the Industrial Disputes Act, 1947 and considering the other Supreme Court judgments has specifically observed as under:

"... The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question."

12 In my view, the preliminary objection so raised needs to be adjudicated first by giving full opportunity to both the parties. The impugned order dated 26.10.2009 is accordingly quashed and set aside. The Application filed by the petitioner is accordingly allowed so far as deciding the preliminary issues so raised. The Industrial Court, Thane is therefore to proceed to pass orders in accordance with law."

7) She further relied upon the observations of Hon'ble Bombay High Court between **The Nashik Merchants' Co-op. Bank Ltd., Nashik, a Multi State Scheduled Bank Vs. Madhukar Bhaurao Hingmire and P. W. Bhuyar** reported in 2011 (III) CLR. 192 and invited my attention towards observations at para no. 9 and submitted that observations are helpful to case of respondent.

8) She lastly relied upon the observations of Hon'ble Supreme Court in **Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. & Anr.**, equivalent citation AIR 2001 SC 1534 and invited my attention towards the observations at para no. 5 wherein it is observed that -

“the provisions of M R T U & P U L P Act can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the Company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate Forum that a complaint could be made under the provisions of M R T U & P U L P Act.”

9) She relied upon the observations of Hon’ble Karnataka High Court in **Management of Rangaswamy & Co. Vs. D. V. Jagadish** reported in 1991 (62) FLR. 346 and invited my attention towards the head notes which reads as:-

“Labour and Industrial- Interim Relief- Award of- Articles 226 and 227 of Constitution of India, 1950- Whether Labour Court has acted within its jurisdiction in awarding interim relief to first Respondent?- Held, the jurisdiction of the Labour Court to decide the dispute, depends upon the decision on the question whether the 1st respondent is a ‘workman’ – Therefore, the Labour Court ought to have decided the issue as a preliminary issue if it was required to consider the interim relief sought for by the 1st Respondent- Appellant has not disputed that 1st Respondent was its employee- It is also case of Appellant that it has, in exercise of its power as contained in terms of employment of 1st Respondent, terminated service of 1st Respondent- Whether Appellant is justified in terminating services or not is a matter for Labour Court to consider- However if 1st Respondent has nothing to maintain

himself it is necessary that he should be provided interim relief so that he can prosecute dispute and relief sought for by him can be adjudicated- In exercise of Court jurisdiction under Article 226 and 227 of Constitution, Appellant can be directed to pay certain sum to 1st Respondent during pendency of dispute- Hence Labour Court directed to decide the issue as to whether the 1st Respondent is a 'workman' as a preliminary issue- Appellant directed to pay by way of an interim relief a sum from the date of presentation of the writ petition in this Court until the preliminary issue is directed- Writ appeal allowed."

and submitted that in catena of judgments the Hon'ble High Courts as well as Hon'ble Supreme Court observed to frame preliminary issue when there is dispute raised by the other side. Therefore, the observations relied by the respondents are helpful to their case and prayed to allow his application.

10) On the contrary, Shri. R. R. Yadav, Ld. Advocate for the complainant strongly opposed the very application of respondents. He further submitted that the complainant was issued with suspension letter dated 14.01.2017 suspending with immediate effect followed by charge sheet dated 30.01.2017. Inquiry was conducted. After receipt of report of inquiry officer, the respondents issued suspension order dated 18.06.2018 suspending the complainant for 4 days from 18.06.2018 to 21.06.2018 by way of punishment. He further submitted that thereafter complainant was allowed to report on duty with effect from 22.06.2018. Thereafter complainant approached to

the management through union's letter dated 06.02.2019, 25.03.2019, and his letter dated 12.04.2019 and 29.05.2019 requesting the management to pay due arrears but in vain. Thereafter complainant through his Advocate's letter dated 14.06.2019, requested to pay due arrears. However, the respondents by their letter dated 25.06.2019 rejected the claim of complainant on the ground that on the day the memorandum of settlement was signed, complainant was under suspension and as per the terms and conditions of settlement, complainant is not eligible to get arrears.

He lastly submitted that by inviting my attention towards the complaint at Ex.U-1 and submitted in para no. 2 complainant has clearly stated the date of rejection of his claim by letter dated 25.06.2019. Therefore it is the date of cause of action. The complaint filed before this court on 26.08.2019 which is within 62 days from the date of rejection of the claim and this court has jurisdiction to try and entertain the complaint and not necessary to frame preliminary issue of limitation or maintainability of the complaint and prayed to reject the application of respondent.

11) Having heard the oral submissions of both the Ld. Advocates, I have perused the complaint filed by the complainant under Section 28(1) read with Item No. 9 of Schedule IV of the M R T U & P U L P Act. In the complaint, the complainant prayed to direct the respondents to pay arrears based on the memorandum of settlement dated 16.02.2018 executed between the Mumbai Labour Union and respondent management. Further prayed to direct to pay

the difference of subsistence allowance on the increment / arrears as per memorandum of settlement and to pay difference of leave, wages, bonus, PF contribution etc. etc. on 27.08.2019.

12) The objection on behalf of respondent is in respect of complaint filed by the complainant is not within limitation. According to complainant after rejecting his claim dated 25.06.2019, complaint is filed within limitation and therefore not necessary to frame issue regarding limitation and maintainability of the complaint. The complainant along with list Ex.U-10 placed copy of suspension letter dated 14.01.2017, charge sheet dated 30.01.2017 and the copy of suspension order dated 18.06.2018 giving punishment of 4 days' suspension. Along with Ex.U-11 complainant also placed copy of memorandum of settlement dated 16.02.2018.

It is not the dispute between the parties that in respect of status of complainant. If the status is not disputed, then no question arise to entertain the complaint filed by the complainant. On behalf of complainant, Shri. R. R. Yadav, Ld. Advocate invited my attention towards the observations of Hon'ble Supreme Court in the matter between **D. P. Maheshwari Vs. Delhi Administration** reported in 1983 Law-Suit(SC) 260 wherein at para no. 1 the Hon'ble Supreme Court observed that

".....It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those

objections in the first instance, carry the matter to the High Court under [Art. 226](#) of the Constitution and to this Court under [Art. 136](#) of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under [Art. 226](#) of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under [Art. 226](#) of the Constitution nor the jurisdiction of this Court under [Art. 136](#) may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them.....”

13) On behalf of complainant, Shri. R. R. Yadav, Ld. Advocate also relied the observations in Rajiv Bhalchandra Gundewar Vs. Crompton Greaves Ltd. reported in 2000 Law-Suit(BOM) 847 in respect of framing of issues.

14) In the light of observations relied by both the parties and the allegations of complainant in respect of unfair labour practices under Item No. 9 of Schedule IV seeking the benefit of memorandum of settlement. Admittedly there is a settlement signed between the union and the management of respondent. Further complainant was the employee of respondent at relevant time and he was not extended the benefit of settlement. The Hon'ble Division Bench of Bombay High Court in Regional Manager, Maharashtra State Road Transport Corporation, Nagpur Vs. Regional Secretary, Maharashtra State Transport Kamgar Sanghatana, Karanja (1984 LIC 721) observed that - where under the settlement, the Road Transport Corporation assured the union that it will absorb the workmen of the ex-operators and for non implementation of this assurance, the complaint was filed on the ground that unfair labour practice was followed by the corporation wherein it is held that the relief claimed by the workers was for an unfair labour practice of continuing nature and accordingly occurrence of such unfair labour practice would recur so long relevant terms of settlement remained unimplemented. The Hon'ble Division Bench held that the workers had every right to approach the Industrial Court under Item No. 9 of Schedule IV of the Act. This view was reiterated in Maharashtra State Road Transport Corporation, Bombay Vs.

Maharashtra Motor Commercial Federation, Nagpur, 1986 LIC 253. It therefore follows that the unfair labour practice continued until the settlement remain unimplemented as in the present case.

Further it is needless to mention here that in the case between **Narang Hotels (Pvt.) Ltd. Vs. N. K. Nandapurkar**, 1984 I LL. N 329 wherein pointed out that sub Section 1 of Section 28 of the M R T U & P U L P Act permits filing of the complaint before the competent court against any person who has engaged in or is engaging in any unfair labour practices which clearly indicates that the complaint can be filed if the unfair labour practice is a recurring practice and in such a case, even if the commencement of unfair labour practice is of a date prior coming into operation of the Act, still the continuance of the same, subsequent to the date of the Act in place the aggrieved party to file the complaint.

15) In the light of settled position of law, the present complaint is filed under Item No. 9, therefore, the question of limitation does not arise.

16) It should not be ignored that since beginning it is the contention of complainant that after he was awarding punishment of four days' suspension from 18.06.2018 to 21.06.2018 he was allowed to report on duty on 12.06.2018. Thereafter complain approached time to time requesting to pay the arrears in subsistence allowance and benefit as per the MOU. Lastly on 14.06.2019 the respondent rejected

his claim by reply dated 25.06.2019 and the present complaint is filed on 27.08.2019. That means within a period of 90 days. The facts are self-explanatory supported with documents filed no record. With due respect the observations relied by the respondent and the observations made therein are not in respect of limitation but in respect of status of the workman and therefore they are not helpful to the case of respondent. I find much substance in the submissions made on behalf of complainant for rejecting the application filed by the respondent for framing preliminary issue. Therefore, application is liable to be rejected.

17) With this, I proceed to pass the following order.

ORDER

- 1) Application at Ex.C-8 stands rejected
- 2) Case to proceed further according to law.

Dated: 13.03.2024

ams/-

Sd/-
(M. R. KUMBHAR)
Member
Industrial Court, Mumbai.