2023:BHC-AS:36982

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 41 OF 2013

The General Manager,
Mutha Founders Pvt Ltd .. Petitioner

Versus

~~Balu Appa Kurne~~ (since deceased)
Kamal Balu Kurane & Ors. .. Respondents

.....

- Mr. Nitin A. Kulkarni for Petitioner
- Mr. Kishor Ajetrao for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 05, 2023

JUDGMENT:

1. Heard Mr. Kulkarni, learned Advocate for Petitioner and Mr. Ajetrao, learned Advocate for Respondents.

2. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India to challenge the Judgement & Order dated 05.11.2012 passed by the learned Industrial Court, Satara in Complaint (ULP) No. 104/2007.

3. Such of the relevant facts necessary for adjudication of the present Writ Petition are as under:-

3.1. Petition is filed by the General Manager of the Petitioner, a Company registered under the Companies Act,1956 having its factory at MIDC, Satara. Original Respondent Mr. Balu Appa Kurane was an employee of the Petitioner. During pendency of the present Petition,

original Respondent expired on 20.01.2022. Petition is thereafter defended by his legal heirs i.e. wife – Smt. Kamal Balu Kurane, daughter – Anjali Balu Kurane and son -Albard Balu Kurane.

3.2. Original Respondent was appointed on 01.09.1989 as a helper in the Moulding Department of the Petitioner. The nature of his duties included physical transfer of moulded iron i.e. hot liquid iron in kettle weighing 5 kgs and pouring the same into moulds which were kept at some distance from the furnace. Admittedly the work was categorized as "heavy work". On 09.06.2006, original Respondent was on duty in the second shift and at about 11:30 p.m. collapsed due to low blood pressure while on duty and was admitted to the hospital in Satara for treatment. Original Respondent recovered and rejoined duty after about 3 to 4 months. At the time of rejoining the duty, original Respondent requested Petitioner Company to give him light work in view of his health condition and was given light duty and continued working on a light job. On 09.05.2007 original Respondent suffered a burn injury to his leg while on duty in an accident inside the factory. After recovering from the injury, when he resumed duty, he submitted certificate from the District Hospital Satara recommending that he should be provided with light work as he had suffered permanent locomotive disability. Petitioner Company informed him that the Company was not in a position to provide light work in the

alternative and he was directed to perform his original duty as helper in the moulding department. Original Respondent refused to do the said work but attended the work premises by punching his card daily.

3.3. Being aggrieved original Respondent filed Complaint (ULP) No. 104/2007 under Section 28 read with Item 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "**the said Act"**) on the ground that pursuant to his accident on 09.05.2007, he suffered from locomotive disability and in view thereof, the insistence of Petitioner Company directing him to perform his original duty was refused by him due to medical advice given by the Civil Surgeon of the District Hospital. The request of the original Respondent was not adhered to by the Petitioner. It was contended by the original Respondent that insistence of Petitioner Company directing him to perform his original work which was heavy work and it was contrary to the medical advise and recommendation by the Doctor and it amounted to unfair labour practice. Due to his medical condition, the original Respondent was unable to carry out his original work.

3.4. Several show-cause-notices were issued to the original Respondent on the ground that he refused to carry out the work allotted to him and thereby causing financial loss to the Company. It is seen that 72 show-cause-notices were issued to the original

Respondent and 18 letters were also issued to him to show cause as to why wages should not be deducted from his salary. Most of the show-cause-notices and letters issued by Petitioner Company were replied to by the original Respondent, *inter alia*, stating that he should be allotted light work and no wages should be deducted from his salary. From June 2007 to October 2007, Petitioner Company deducted wages of Rs. 16,404.90 from the salary payable to the original Respondent.

3.5. On 25.08.2007 notice was issued to the original Respondent for holding inquiry which was to commence from 31.07.2007. However no specific show-cause-notice or chargesheet was given to the original Respondent prior to the specific charges having been framed against him. In the above background, Complaint (ULP) No. 104/2007 was filed by original Respondent before the Industrial Court, Satara, *inter alia*, stating that he had met with an accident during the course of his employment and suffered locomotive disability and hence, it was obligatory on the part of the Petitioner Company to provide him suitable light work. He also claimed benefit under the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3.6. Before the learned Industrial Court, it was argued by

Petitioner Company that since the original Respondent was covered under the Employees State Insurance Scheme, he could always claim compensation from ESIC. It was argued that the provisions of the Disabilities Act wold not be applicable to private institutions / private companies like the Petitioner. It was argued that since the original Respondent was a permanent employee of the Petitioner from 01.08.1989 and Petitioner was a manufacturing foundry, it was mandatory upon each worker to perform heavy work in the foundry and no light work could be assigned to him. It was argued that the original Respondent deliberately refused to work in the Petitioner Company and perform his duty since 09.06.2007, therefore he was not entitled to any wages for the period after 09.06.2007 on the settled principle of "No work no pay".

3.7. Learned Industrial Court framed the point for determination, viz; whether the Complainant i.e. original Respondent proved that the Company engaged in the act of unfair labour practice? This was answered in the affirmative.

3.8. By the impugned judgement dated 05.11.2012, learned Industrial Court declared that Petitioner Company indeed engaged in unfair labour practice in the facts and circumstances of the present case and directed the Company to pay to the original Respondent wages from 09.06.2007 upto the date of the said judgement i.e.

05.11.2012 as claimed within a period of two months from the date of the judgement. The learned Industrial Court further directed the Petitioner Company to give light work or any suitable post to the original Respondent within a period of two months and until then directed that no wages would be deducted from his salary.

4. Mr. Kulkarni, learned Advocate for Petitioner Company while assailing the judgement passed by the learned Industrial Court would submit that the said judgement returned palpably perverse findings and conclusions which could not have been reasonably arrived at on the basis of the evidence placed on record. He would submit that the learned Industrial Court could not compel the Petitioner Company to provide light work to the original Respondent in the absence of any award or agreement or settlement to that effect and in that view of the matter, it could not be held that Petitioner Company committed any unfair labour practice as alleged by the original Respondent. He would submit that the facts of the present case admittedly prove that the original Respondent did not work or rather refused to work and sat idle after punching his card and hence on the settled principle of "No work no pay", he would not be entitled to any remuneration or compensation or wages for the period during which he admittedly did not work. Hence he would argue and submit that the direction given to the Petitioner Company to pay wages to the

original Respondent for the days on which he did not work is contrary to the statutory provisions of the said Act as also the Payment of Wages Act, 1936. He would submit that none of the grounds enumerated in Sections 7(a) to 7(q) of the Payment of Wages Act, 1936 were attracted in the present case nor it was the case of the original Respondent that his wages were deducted for his absence from duty under Section 9 of the Act and in view thereof, the learned Industrial Court committed an error in coming to the conclusion that the Petitioner Company had deducted wages of the original Respondent under Section 7(2) of the said Act. He would submit that repeated insistence of the original workman to provide him light work in the absence of any award, agreement or settlement without raising a dispute even in the case of the admitted fact that he had suffered disability during employment could not be acceded to by the Petitioner Company. Hence the direction given by the learned Industrial Court to provide light work to the original Respondent without any dispute having been raised under the provisions of the Industrial Disputes Act, 1947 is beyond the provisions, scope and ambit of the said Act. He would submit that by virtue of the impugned judgement and the directions given therein, the learned Industrial Court has re-written the contract of employment and conditions of services with the original Respondent which was non existent and cannot be supported by any statutory provisions. He would therefore urge and submit that

the impugned judgement deserved to be quashed and set aside in view of the fact that the original Respondent refused to carry out duty at his workplace and the conclusion that the Petitioner Company indulged in unfair labour practice therefore cannot be sustained.

5. *PER CONTRA,* Mr. Ajetrao, learned Advocate for the legal heirs of original Respondent would submit that the findings returned by the learned Industrial Court that the original Respondent was unable to do the heavy work of a helper in the moulding department which he was earlier assigned to do prior to his ailment was based on the Medical certificates provided to the original Respondent which were as evidence placed on record and accepted by the Court. He would submit that this Court needs to take into cognizance the fact that the original Respondent suffered health problem during the course of his employment and also met with the accident while on duty which rendered him disabled due to locomotive disability and in that view of the matter, it was recommended by the Civil Surgeon that he be given light duty work. As against this medical advice, insistence of Petitioner Company to compel the original Respondent to do heavy work was rightly rejected by the learned Industrial Court as unfair labour practice. He would submit that even during pendency of the present Petition, Respondent had requested the Petitioner to allot him work in the Department of Seal (Moulding) which was in fact light

work. He has drawn my attention to the affidavit-in-reply dated 26.09.2013 filed by the original Respondent and more specifically paragraph No. 6 thereof wherein such a request was in fact made to the Petitioner Company. It is seen that the letters at Exh. A appended to the affidavit-in-reply bear out this fact. He would submit that in a parallel proceedings apprehending termination, the original Respondent filed Complaint (ULP) No. 78/2009 and the learned Labour Court granted interim relief to the original Respondent by order dated 02.02.2010 which was challenged by the Petitioner Company before the Industrial Court in Revision Application No. 3 of 2010. He would submit that the said Revision Application was dismissed on 25.09.2012 by the Industrial Court and the said order was impugned by the Petitioner Company in Writ Petition No. 42 of 2023. He would submit that the said Petition was disposed by this Court on 18.07.2022 in view of the statement made by the Advocate for Petitioner Company that in view of subsequent developments, the Petition was rendered infructuous. This was because the Petitioner Company by then had provided light work to the original Respondent. He would therefore submit that the impugned judgement therefore is a correct judgement and does not call for any interference.

6. I have heard Mr. Kulkarni, learned Advocate for Petitioner and Mr. Ajetrao, learned Advocate for Respondent at length and with

their able assistance perused the record and pleadings in the present case. Submissions made by them have been noted and received due consideration of the Court.

7. In the present case, it is seen that the original Respondent Mr. Balu Appa Kurne (Kurane) had led his evidence vide Exh. U-14 before the Industrial Court. In addition to his oral evidence, he placed reliance on various documents viz. Documents exhibited as Exh. U-17 to U-38 which included his salary slip and more specifically medical certificates issued by the Civil Surgeon, District Hospital Satara below Exh. U-17, U-18 and U-23. As against this, though Petitioner Company led evidence of its Deputy Manager, the documents which the Petitioner Company relied upon below Exh. C-129 to C-143 included only the show-cause-notices and letters which were issued by the Petitioner Company to the original Respondent. It is seen that the work performed by the original Respondent was admittedly heavy work and as a part of his duty he was required to carry hot liquid iron from the furnace in a kettle weighing about 5 kgs and pour the same into moulds which were kept at some distance from the furnace. The nature of his duty involved pouring near about 10 moulds in the furnace within 30-40 minutes and there were 10 furnaces in all. It is seen from the record that on 09.06.2006, original Respondent suffered a stroke and he was admitted to Sanjeevani

Hospital at Satara and underwent treatment for about 3-4 months after which he resumed duty. It is seen that at that time Petitioner Company allotted him light work. This is an undisputed fact. Thereafter, it is seen that on 09.05.2007, after almost one year, he met with an accident in the course of his work inside the factory and had a burn injury to his leg resultantlty leading to locomotive disability. He was again treated and remained on leave but when he resumed his duty armed along with the Medical certificates recommending him light work, Petitioner Company refused to allot light work to him and insisted that he perform his regular work of helper in the Moulding department. It is an admitted position which is evident from the evidence placed on record that pursuant to the disability suffered by original Respondent, he had a backache problem and coupled with his locomotive disability he was unable to carry out heavy work. Record also indicates that even after passing of the impugned judgement, by specific letters dated 18.01.2012 and 23.08.2012, original Respondent requested the Petitioner to allot him light work in various other departments such as seal moulding department, quality department etc. It is seen that the Industrial Court has recorded a finding that in so far as the factual aspects are concerned, they are not much in dispute and they are clearly ascertainable from the evidence placed on record. Though it was argued by Petitioner Company that the contents of the Medical certificates could not be accepted as proof

in evidence as the Doctors were not examined, record clearly shows that the original Respondent was unable to perform heavy work and was fit to perform only light work. It is seen that the Medical certificates which were placed on record and referred to and relied upon in the evidence of the original Respondent were exhibited without any objection on the part of Petitioner Company. Thus Industrial Court accepted the said Medical certificates and recorded that the original Respondent suffered health problems during the course of his employment which was borne out from the said Medical certificates. A clear finding is returned in paragraph No. 21 of the impugned Judgement that the Medical certificates were issued by the Competent Authorities and they were consistent in their view and opinion and since they were not objected to when they were exhibited, the same cannot be disregarded by the Court merely because the Medical authorities were not examined. The Industrial Court has also returned a categorical finding to the effect that the documentary evidence produced by the original Respondent is corroborated by the oral evidence of the original Respondent. The Industrial Court came to a clear conclusion that based on the Medical certificates produced and the evidence on record, the same clearly proved that the original Respondent suffered health problems which reduced his working ability and strength. Next the learned Industrial Court while returning its finding on the proposition of 'No work no pay' came to the

conclusion that the said principle would not be applicable in the facts of the present case. The Industrial Court held that it was an admitted position that disability of the original Respondent occurred during the course of his employment which was proved and therefore, he was undoubtedly entitled to be given the light work which was ignored by the Petitioner Company. It was further held that without giving light work to the original Respondent, Petitioner Company admittedly deducted wages from his salary payable to him without constituting any inquiry or without giving any show-cause-notice and conducting the inquiry in respect thereof. This according to the learned Industrial Court amounted to transgression and violation of the provisions of the Payment of the Wages Act, 1936 as also indulgence of unfair labour practice on behalf of the Petitioner Company. While returning these findings, learned Industrial Court placed reliance on the decision in the case of **Narendra Kumar Chandla Vs. State of Haryana and Ors**[1] wherein it was observed that Article 21 protects the livelihood as an integral facet of right to life. It was held that when an employee is afflicted with an unfortunate disease due to which he is unable to perform his duties on the post he is holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Learned Industrial Court placed reliance of the decision in the case of **S.N. Kedare Vs. Ceat Tyres of**

1 1994 (68) FLR 942

India Ltd & Anr[2]. wherein this Court referred to the provisions of Section 10(1) and 9-A of the Industrial Disputes Act, 1947. This was a case wherein the Petitioner workman while on duty had an accidental fall injuring his left hip and back due to which he was unable to work on the earlier job allotted to him. In that case, the workman was given a lighter job but on lower wages. The Court held that said unilateral reduction of wages by the employer would be contrary to the provisions of Section 9-A of the Industrial Disputes Act even if the workman was given a lighter job. Next the learned Industrial Court referred to and relied upon the decision in the case of **Goodlass Nerolac Paints Ltd Vs. Paints Employees Union[3]**wherein this Court in paragraph Nos. 11, 12 and 17 of the said decision referred to the ratio of the Supreme Court while dealing with the provisions of the Payment of Wages Act which held that deduction in payment of wages can only be made on the basis of an inquiry / investigation and it would not be proper for the management to deduct wages for absence of the individual workman without holding such investigation / inquiry. A sequitur of this decision is that no deduction of wages can be made without holding an inquiry or at least some kind of investigation. That apart, the learned Industrial Court also referred to and relied upon the following decisions in support of the proposition that deduction of wages of the original Respondent when the original

2 2001 (91) FLR 922 (Bom.H.C.)
3 2002 (1) Bom.LC 244 (Bom)

Respondent was ready to perform alternative work which the Petitioner Company was under an obligation to provide to him was completely illegal :-

(i) *The Premier Automobiles Employees' Union & Ors. Vs. The Premier Automobile Ltd & Ors.*[4]*;*

(ii) *Uco Bank & Anr. Vs. Rajinder Lal Capoor.*[5]*;*

(iii) *Union of India Vs. K.V. Jankiraman*[6]

8. In view of the above observations and findings, learned Industrial Court returned findings in paragraph Nos. 34, 35 and 36 of the impugned Judgement which are reproduced below:-

> *"34. In view of the guide lines given in all above authorities if the evidence given in present matter is scanned then the Complainant is attending his duties regularly. He is available at the place of his service throughout the work hours by punching card. His salary is drawn but the deduction is made on the analogy of "no work no pay". Complainant is ready to perform the light work in respect of which there is a medical opinion. The Complainant was not allotted the light work and it is the stand taken by the Management that light work is not available. Thought it has been brought on record that other sections are also available in the factory of the Respondent where the light work is available. But it is the case of the Respondent that Complainant was appointed for foundry work and therefore, he cannot be shifted to other section. It has also come on record that before deducting the wages/pay of the Complainant some notices were issued to him. But no enquiry was held before making such deductions and the deduction were on high percentage than as prescribed under the provision of Payment of Wages Act. The Complainant is entitled to claim alternate job as he has suffered the medical problem during the course of employment.*
>
> *35. So, by deducting the wages from the pay of Complainant more than prescribed under the Act that to without holding enquiry amounts the breach of agreement as contemplated under Item-9 of Schedule - IV of the MRTU & PULP Act. So when the disability was occurred to Complainant during the course of employment by which he is unable to perform heavy work and when he is ready to do the light work then there is implied contract that Respondent shall provide the light work to him when he is attending the duties regularly. Non*

4 1997 ICLR 302
5 2007(2) SC-SLR 306
6 AIR SC 2010

providing light work to the Complainant also amount to the breach of implied service condition and therefore, it also amounts to breach of Item-9 of Schedule-IV of the MRTU & PULP Act.

36. When Complainant is medically advised not to perform heavy work and when Respondents are insisting him to perform the heavy work which were against medical advise and harmful to his health then such act on the part of Respondents certainly amounts to the act of force and it is squarely covered under the provision of Item-10 of Schedule-IV of the MRTU & PULP Act."

9. The above findings arrived at by the learned Industrial Court cannot be faulted with nor do they call for any interference as it is proven on record that the original Respondent suffered and sustained an occupational disability reducing his capacity to work and reluctance of the Petitioner Company to provide him with alternative light work when he was admittedly unable to perform the heavy work was an act of unfair legal practice which was contrary to the Medical certificates / medical advice given to the original Respondent. That apart the act on the part of the Petitioner Company to deduct his wages unauthorizedly without following the statutory provisions of the Payment of Wages Act, 1936 was clearly an act of unfair labour practice and hence, the impugned judgement dated 05.11.2012 deserves to be upheld and confirmed in its entirety.

10. It the present case, it is seen that ad-interim relief was granted in terms of prayer clause (B) on 18.12.2013. Rule in the Petition was granted on 06.05.2014. While granting Rule, this Court granted stay on the order directing the refund of the deduction made

from the wages of the original Respondent till disposal of the Petition. It was also recorded by the Court that Respondent should be given light work of sweeping and cleaning the entire shop floor and to do other light work as directed by his superiors and that the Petitioner would give him light work of such nature during pendency of the Petition. The original Respondent therefore would be entitled to the entire refund of deduction made by the Petitioner Company from his wages in accordance with law. Needless to state that the present Respondents i.e. legal heirs and dependents of original Respondent shall be entitled to all such amounts which may / were due and payable to the original Respondent.

11. Petitioner Company is directed to pay all such amounts which are due and payable to the present Respondents within a period of four weeks from the date of this judgment. Since the impugned judgment is confirmed, the Petitioner Company is directed to pay interest on the said amounts due and payable to the original Respondent and now to the present Respondents @ 9% per annum from the date of payment till it is paid over.

12. With the above directions, Rule is discharged.

13. Writ Petition is dismissed.

Amberkar

[MILIND N. JADHAV, J.]