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Decided on :- 12-02-2018

Duration :- 00 Y; 01 M; 11 D

Exh. No. O-2

BEFORE SHRI S. Z. SONBHADRE
MEMBER, INDUSTRIAL COURT, AT AKOLA

REVISION APPLICATION (ULP) No. :- 01 of 2018
(CNR No. MHIC30-000001-2018)

JAYANT SURYAKANT PADGILWAR
J. S. Corporation, Partner,
Mangaldas Market, AKOLA – 444001
Mobile No. 7745061313 .

- **Petitioner**

Versus

RAMESH MAHADEVRAO PAWAR,
At Post Babhulgaon Jahangir,
Taluka Dist. Akola.

- **Respondent**

IN the matter of Revision Application
Under Section 44 of the M.R.T.U. & P.U.L.P. Act

Coram :- S. Z. Sonbhadre, Member

Appearances :- Shri G. R. Deshpande, Ld. Adv. For Petitioner.

Shri A. V. Pathkhedkar, Ld. Adv. For Respondent.

J U D G M E N T

(Delivered on this 12th day of February, 2018)

01. This is the Revision Application under section 44 of the M.R.T.U. & P.U.L.P. Act, filed by the Revision Petitioner (original Respondent) thereby challenging the order dated 24-11-2017 passed by the Ld. Labour Court Akola in Criminal Complaint ULP No. 5 / 2017, whereby the Ld. Labour Court Akola, issued process against the present Revision Petitioner for the offense punishable under section 48 (1) of M.R.T.U. & P.U.L.P. Act.

02. The parties to the proceedings are referred by their original designation before the Ld. Labour Court Akola. The facts leading to the filing of this Revision are as under :

03. The Complainant filed Complaint ULP No. 37/2016 before the Ld. Labour Court Akola thereby challenging the retrenchment order dated 27-05-2016. The Complainant along with his main Complaint has filed Application under Section 30 (2) of the M.R.T.U. & P.U.L.P. Act and prayed for stay to the effect and operation of the Retrenchment order dated 27-05-2016. It is stated that the Ld. Labour Court after

hearing allowed the Stay Application and directed the Respondent / Employer to reinstate the Complainant / Employee till the disposal of the main Complaint vide order dated 20-12-2016. The said order dated 20-12-2016 is challenged by the Respondent / Employer before this Court by filing Revision ULP No. 37/2016 before this Court and the said Revision is pending before this Court. It is further stated that the Complainant / Employee have filed the Crim. Complaint ULP No. 5/2017 against the Respondent / Employer for the offense punishable under section 48 (1) of the M.R.T.U. & P.U.L.P. Act for disobedience of the order dated 20-12-2016 passed by the Ld. Labour Court Akola in Complaint ULP No. 37/2016.

04. It is the case of the Respondent / Employer that the Ld. Labour Court without giving anxious thoughts, passed the order of issue process against the Respondent / Employer vide order dated 24-11-2017 and the said order is under challenge in this Revision.

05. The Complainant has appeared in the Revision vide Exh. U-1 and filed Reply to the Interim Application vide Exh. U-2 and opposed the prayer for grant of Interim Relief. On 09-02-2018, the Respondent / Employer i.e. the Revision Petitioner have not pressed the Application Exh. U-2 and the Revision was heard finally.

06. In view of the rival submissions of the parties, following points arise for my determination and my findings thereon are recorded for the reasons are as under :

POINTS

FINDINGS

i. Whether the impugned order dated 24-11-2017 passed by the Ld. Labour Court Akola in Crim. Complaint ULP No. 5/2017 requires to be interfered with in the Revision under section 44 of the M.R.T.U. & P.U.L.P. Act, 1971 ?

No

ii. What Order ?

- As per final order

REASONS

07. Heard both parties. Perused record. I find that the Ld Labour Court have recorded Verification of the Complainant on 13-04-2017 below Exh. 1. The Ld. Labour Court vide order dated 13-04-2017 issued Show Cause Notice to the Respondent / Employer. It appears from the record that the Respondent / Employer has appeared on 04-08-2017 and 14-8-2017 sought time to file reply. The Respondent thereafter on 10-10-2017 filed Reply before the Ld. Labour Court vide Exh. C-4 and pleaded that there is no willful disobedience of the order. It is the case of Respondent Employer that the Applicant has not come to the Office of the Non-Applciant personally and not submitted any joining request Application. It is further stated in para 7 of Reply Exh. C-4 that the Respondent was not aware regarding the passing of the order because of being on business tour. It is further case of the Respondent / Employer that the Complainant have not personally approached for joining as per order. Accordingly, I find that the Respondent / Employer

have taken a plea of ignorance of order passed by the Ld. Labour Court.

08. The Ld. Labour Court thereafter passed the order dated 24-11-2017 below Exh. 1 and issued Process against the Respondent Accused (present Revision Petitioner) for the offense punishable under section 48 (1) of the M.R.T.U. & P.U.L.P. Act.

09. During the course of hearing, the Ld. Counsel for the Employer / Revision Petitioner have challenged the issue process order mainly on two grounds i.e. the present Revision Petitioner was not the party to the main Complaint ULP No. 37/2016 and therefore contempt is not maintainable against the Revision Petitioner. It is further case of the Respondent / Employer that the Partnership Firm and its Partners are Two Different and separate entities and therefore no Criminal Complaint is not maintainable against the Partner. It is further case of the Respondent / Employer that there is no Personal Service of the order dated 20-12-2017 to the Office

of J. S. Corporation i.e. the Respondent / Employer. It is the case of Respondent / Employer that the Ld. Labour Court without considering its grounds have passed the Issue Process Order.

10. Perused the record with the assistance of the parties. I find that the Ld. Labour Court passed the order dated 20-12-2016 in Complaint ULP No. 37/2016, whereby the effect and operation of the termination order dated 27-05-2016 is stayed till the final disposal of the main Complaint and the order was to be complied with within a period of one month from the date of order. The Complainant have filed on record the Documents as per List Exh. U-7. The Document No. 1 as per List Exh. U-7 is the Application dated 01-02-2017 made by the Complainant himself to the Respondent / Employer along with the copy of order dated 20-12-2016 in Complaint ULP No. 37/2016. Said application appears to have been sent to the Respondent / Employer by R.P.A.D. The address of the Respondent / Employer on the Application dated 01-02-2017 is exactly similar with the address of the

Respondent / Employer in the present Revision Petition. So also, though the Respondent / Employer have disputed the service of the order, yet I found that the Respondent have not disputed the address mentioned on Application dated 01-02-2017. As such, I am of the view that the Complainant / Employee have sent the Application along with the order on the Correct Address of the Respondent / Employer. As such, I do not find any justification in the submissions of the Respondent / Employer (Revision Petitioner) that the copy of order dated 20-12-2016 is not served on the Respondent / Employer. So also the Respondent / Employer (Revision Petitioner) has filed Revision ULP No. 6 of 2017 against the order dated 20.12.2016. As such I am of the view that the Respondent / Employer (Revision Petitioner) cannot be permitted to plead that the order is not received by it.

11. The another ground of challenge of the Respondent / Employer is that he was not party to the original Complaint ULP No. 37/2016. In this regard, the Complainant / Employee have filed on record documents with

list Exh. U-4 in this Revision. The document No. 1 with list Exh. U-4 is the order dated 27-05-2016 whereby the services of the Complainant / Employee are terminated. I find that order dated 27-05-2016 is signed by present Revision Petitioner (Jayant Padgilwar) as a Partner of J. S. Corporation. So also the order dated 20-12-2016 in Complaint ULP No. 37/2016 reveals the description of the Respondent as "J. S. Corporation, Through its Partner, Jayant Padgilwar, Mangaldas Market, Tilak Road, Akola, Tah. And Dist. Akola". As such, it appears that the present Revision petitioner is impleaded as a party Respondent in the main Complaint ULP No. 37/2016 as a Partner of the Employer J. S. Corporation. So also, the present Revision Petitioner neither before the Ld. Labour Court nor before this Court have demonstrated that there are any other Partners of the Employer J. S. Corporation. So also, I find that the termination order dated 27-05-2016 is signed by the present Revision Petitioner in the capacity of partner of the J. S. Corporation. As such, I find that the said "Jayant Padgilwar" is the only person who is looking after the business activities of the Employer J. S.

Corporation. As such, it cannot be said that the present Revision Petitioner was not party to the original Complaint ULP No.37/2016. Accordingly, the submissions of the Learned Counsel for the Revision Petitioner that the Revision Petitioner and the Employer J. S. Corporation are the two different Entities is liable to be rejected.

12. Ld. Labour Court in para 7 have considered the fact that the present Revision Petitioner has challenged the order dated 20-12-2016 in Complaint ULP No. 37/2016 by filing Revision ULP No. 6/2017 and discarded the submissions of the Revision petitioner that he was not aware about the order dated 20-12-2016. The Ld. Labour Court on the basis of material on record in the form of Complaint Exh. 1, Verification of the Complainant, so also the order dated 20-12-2016 and the Application dated 01-02-2017, have rightly concluded that the Complainant have made out a prima facie case, for issuance of Process against the present Revision petitioner. The Ld. Labour Court have also recorded the fact that the present Revision Petition have not demonstrated any

steps for the compliance of the order dated 20-12-2016. Accordingly, I am of the view that the order dated 24-11-2017 in respect of Issue Process against the Revision Petitioner is just and proper and does not require any interference at Interim Stage in the Limited Supervisory Jurisdiction under Section 44 of the M.R.T.U. & P.U.L.P. Act.

13. The Ld. Counsel for the Revision Petitioner / Employer have relied on the law laid down by the Hon'ble Bombay High Court in the case of **Maroti S/o. Narisngrao Ladde -V/s- Balakdas S/o Lakhon Meshram and others,** reported in **MANU/MH/0389/2006 = 2006 (6) ALL MR 229,** wherein it is held that no person can be impleaded as a party Respondent /Accused in the Criminal Proceedings unless he is a party to the main Complaint. I find that the facts in the case before the Hon'ble Bombay High Court were that the Complaint was filed against the company and the Company was the sole Respondent and no Officer of the Company was made a party to the Complaint. However, in the Criminal Complaint Manager and Dy. Manager were impleaded as

Respondent / Accused for disobedience of the order. In such circumstances, Hon'ble Bombay High Court held that the Criminal Complaint would not be initiated against the Officers of the Company, unless they were party to the Main Complaint. However, in the case in hand, it appears that the Respondent / Employer is the firm wholly managed by Shri Jayant Padgilwar. As such, I find that the present Revision petitioner is a party in the capacity of Partner to the main Complaint. So also the present Revision Petition under his Signature Only have issued the Retrenchment order dated 27-05-2016. As such, I am of the view that the present Revision Petitioner is rightly impleaded as a party Respondent in the proceedings under Section 48 (1) of the M.R.T.U. & P.U.L.P. Act. As such, the submissions of the Employer are liable to be rejected.

14. The Respondent / Employer i.e. Revision petitioner have further relied on the law laid down by the Hon'ble Apex Court in the case of Dulichand Lakshminarayan -V/s- The Commissioner of Income Tax, Nagpur, I find that the

said Authority of the Hon'ble Apex Court, is in respect of Income Tax Act, 1922, and therefore cannot be made applicable to the facts and circumstances of the case in hand.

15. The Ld. Counsel for the Revision Petitioner have further relied on the law laid down by Hon'ble Bombay High Court in the case of **Indian Tourism Development Corporation -V/s- The Presiding Officer**, reported in **MANU/MH/0496/2009 = 2009 (123) FLR 191**. Hon'ble High Court in the said authority found that the liberty was given to the terminate the services by following the due process of law. As such, Hon'ble High Court held that it was the duty of the Labour Court to ascertain prima facie whether the order of termination was passed without following due process of law or not. Hon'ble High Court found that no such exercise was followed by the Labour Court. As such, Hon'ble High Court found that the order of issue process was passed without application of mind. However, in the case in hand, I find that the Ld. Labour Court have passed the order by considering the entire material on record. As such, with due

respect, I am of the view that the Authority relied on by the Revision Petitioner in the case of **Indiam Tourism Development Corporation** cannot be made applicable to the facts and circumstances and case in hand.

16. As against the above authorities, the Ld Counsel for the Complainant / Employee have relied on the law laid down in the case of **MOTOR INDUSTRIES CO. LTD. NASHIK -V/s- POPAT MURLIDHAR PATIL and another**, reported in **2008 (6) Mh. L. J. Page 144**. In the said authority of MOTOR INDUSTRIES CO. LTD. Hon'ble Bombay High Court held that the Revisional Court cannot undertake the exercise of appreciating the evidence on its own as if it is a Court of Appeal. The Ld. Counsel for Complainant have further relied on the law laid down by the Hon'ble Bombay High Court in the case of **BHOJRAJ s/o. NARAYAN PARATE -V/s- DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, NAGPUR**, reported in **2011 (1) Mh. L. J. 726**. In this case also Hon'ble Bombay High Court in Para 7 have been pleased to hold that Section 44 of the

M.R.T.U. & P.U.L.P. Act confers Supervisory Powers over the Industrial Court. Hon'ble Bombay High Court held that Section 44 does not empower the Industrial Court to sit in appeal and enjoy wider scope over the orders of the Labour Court. I have already recorded my finding in respect of propriety of the findings recorded by the Ld. Labour Court. So also I find that the order passed by the Ld. Labour Court is just and proper by considering the material available on record. As such, I do not find any substance in the Revision in the Limited Supervisory Jurisdiction under Section 44 of the M.R.T.U. & P.U.L.P. Act.

17. In view of above discussions, the Revision fails and deserves to be dismissed. Accordingly, I proceed to pass the following order.

ORDER

- i. The Revision (ULP) No. 1 / 2018 is hereby dismissed.
- ii. R. & P. be sent to the Ld. Labour Court, Akola.
- iii. No order as to costs.

S. Z. Sonbhadre
Member
Industrial Court, Akola

Dated :- 12-02-2018.

SNK.

I/c. Assistant Registrar,
Industrial Court, Akola.

Argued on - - - :- 09-02-2018.

Judgment dictated on - :- 12-02-2018.

Judgment transcribed on :- 14-02-2018.

Judgment checked & signed on 15-02-2018.