

MANU/MH/1779/2014

Equivalent Citation: [2014(142)FLR1116], 2014(4)LLN352(Bom.)

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 10466 of 2013

Decided On: 23.06.2014

Appellants: **V.I.P. Industries Ltd.**

Vs.

Respondent: **V.I.P. Employees Union**

Hon'ble Judges/Coram:

S.J. Vazifdar and A.K. Menon, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Shailesh C. Naidu and T.R. Yadav

For Respondents/Defendant: Bennet D'Costa, R.M. Haridas and i/b T.N. Sonawane

JUDGMENT

S.J. Vazifdar and A.K. Menon, JJ.

1 . Rule. By consent of the parties the writ petition is disposed of finally at the admission stage.

The petitioner seeks a writ of certiorari quashing and setting aside an order dated 15.10.2013 passed by the Minister of Labour, Government of Maharashtra.

Respondent No. 1 is the recognized union. Respondent No. 2 is the State of Maharashtra. Respondent Nos. 3 to 8 are the petitioner's employees, who had filed a representation dated 29.1.2013 before the Minister of Labour, State of Maharashtra.

2 . On 16.5.2000, a settlement had been arrived at between the petitioner and respondent No. 1 under which the age of retirement remained at 58 years. The settlement was terminated and a fresh charter of demands was served upon the petitioner. On 27.6.2003, the petitioners issued a notice of change under section 9A of the Industrial Disputes Act. One of the changes sought was a reversion in the age of retirement at 56 years. It is not necessary for the purpose of this writ petition to refer to the petitioner's justification for the same. Suffice it to note that an MoU dated 24.10.2004 was executed between the petitioner and respondent No. 1, whereunder the age of retirement was refixed at 56 years. On 1.3.2007, respondent No. 1 issued a notice of termination of the settlement dated 24.10.2004. Respondent No. 1 also raised a fresh charter of demands on 9.9.2007. The demand relating to the age of retirement was however, withdrawn subsequently. Negotiations ensued between the parties in this regard. A counter charter of demands was raised by the petitioner. The Assistant Commissioner of Labour called the parties for discussions in respect of the disputes and for conciliation. Ultimately a memorandum of settlement dated 7.7.2009 was entered into for a period upto 31.12.2012, under which the age of retirement was continued at 56 years.

3 . In November/December, 2009 respondent No. 1 addressed a letter to the

Conciliation Officer calling upon him to take up for discussions the demands raised by respondent No. 1's letter date 4.6.2008. The Assistant Commissioner of Labour called upon all the parties to attend his office. The conciliation proceedings commenced. This Assistant Commissioner of Labour admitted the dispute under conciliation. The parties were unable to come to any understanding. Accordingly a failure report dated 5.4.2010 was submitted. On 26.4.2010, the appropriate government referred the dispute for adjudication before the Industrial Tribunal, Nashik.

The Reference before the Industrial Tribunal is pending and has in fact been proceeded with to a substantial extent. The statement of claim and written statement have been filed, issues have been framed, oral evidence has been adduced by both the parties and the arguments have concluded. The final order remains to be passed. This was the position till 2011.

4. On 29.10.2013, respondent Nos. 3 to 8 made a representation to the Hon'ble Minister for refixing the age of retirement. The Minister not having done so, respondent Nos. 3 to 8 filed Writ Petition No. 1151 of 2013, praying that their representation be heard and decided by the Minister. The writ petition was disposed of by the following order :--

"Learned Counsel appearing for the Petitioners states that the Petitioners are pressing prayer clause (b) at this stage. He states that notwithstanding the earlier order passed by this Court, the representation dated 29th January 2013 (Exhibit-A to the Petition) has not been decided by the first Respondent. We accept the said statement.

2. In view of this statement, we direct the first Respondent to decide the representation at Exhibit-A to the Petition within a period of six weeks from today.

3. It is obvious that if the Petitioners are aggrieved by the order passed on the representation, it will be open for them to adopt appropriate remedy for challenging the said order.

4. The Petition is disposed of on above terms.

5. Parties to act upon an authenticated copy of this order."

The impugned order was passed pursuant to the above order.

5. Firstly, it is doubtful whether the impugned order passed pursuant to the order dated 10.6.2013 in Writ Petition No. 1151 of 2013 was passed under the provisions of the Industrial Employment (Standing Orders) Act, 1946. We will assume it was. It would make no difference. The Minister did not have jurisdiction to decide the same even assuming it was under the IE (SO) Act. It was not even contended that the Minister had jurisdiction under the IE (SO) Act to decide the issue. It is the Certifying Officer as defined in clause 2(c) of the Act, who is entitled to do so. We do not read the order of the Division Bench dated 10.6.2013 quoted above as holding that the Minister had jurisdiction to decide the representation even assuming it was under the IE (SO) Act. The order merely directed the Minister to decide the representation. It is obvious that while doing so all the issues, including as to the jurisdiction were required to be decided. Moreover, there is no question of conferring jurisdiction upon the Minister if he had none under the Act.

6. The presence of various officers, including the Deputy Commissioner of Labour at the hearing before the Minister, would make no difference. The decision has been rendered not by them but by the Minister, who had no jurisdiction to decide upon dispute forming the subject-matter of the proceedings. There was an inherent lack of jurisdiction.

7. In the circumstances, the impugned orders are liable to be quashed and set-aside.

8. Mr. D'Costa, the learned Counsel appearing on behalf of respondent No. 1 stated that respondent No. 1 has also filed an application to the Certifying Officer under the Act of 1946. The Certifying Officer has fixed the age of retirement as 58 years. The petitioner has challenged the said order. Needless to add that those proceedings will be decided on their own merits. Mr. Naidu contended that the order of the Certifying Officer in that matter cannot stand as it was based only upon the Minister's order impugned in this writ petition. Mr. D'Costa denies the same. All the issues including this issue are kept open.

In fact, we have not decided the merits of the disputes in this matter either. Our decision in this writ petition rests solely on the ground that the Minister did not have jurisdiction to pass the impugned order.

In the circumstances, the writ petition is disposed of by quashing and setting aside the order dated 15.10.2013. There shall be no order as to costs.

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