

**(1996) 02 BOM CK 0061**

**Bombay High Court**

**Case No:** Writ Petition No. 167 of 1996

Mahatma Gandhi Memorial  
Hospital

APPELLANT

Vs

Madbukar Vishwanath  
Ranawade and Another

RESPONDENT

**Date of Decision:** Feb. 12, 1996

**Citation:** (1996) 3 BomCR 707 : (1996) 73 FLR 1586 : (1997) 1 LLJ 583 : (1996) 1 MhLJ 762

**Hon'ble Judges:** G.R. Majithia, J; Devkant Trivedi, J

**Bench:** Division Bench

### **Judgement**

G.R. Majithia, J.

Rule, with the consent of the parties" counsel, rule is made returnable forthwith.

Learned counsel for respondent No. 1 waives service.

The petitioner, Mahatma Gandhi Memorial Hospital, has challenged the order of the Industrial Court, Bombay, dated November 17, 1993 on the interim relief application, Ex U-2, in Complaint (ULP) No. 1177 of 1995, in this writ petition under Article 226 of the Constitution of India.

2. Respondent No. 1, Madbukar Vishwanath Ranawade, (hereinafter "the respondent"), joined the service of the petitioner as a Clerk from March, 1962. Later on he worked as a Cashier too. In September, 1966 he was promoted to the post of Head Clerk. He worked in the various departments of the petitioner-hospital and was asked to assist the superiors like Administrative Officer, Accounts Officer, Secretary, Board of Management. He was designated as Junior Administrative Officer in December, 1974.

The respondent was informed by retirement memo dated August 11, 1995 that he would be retired from service on attaining the age of 58 A years with effect from October 31, 1995. The respondent challenged this order by filing a complaint against the petitioner under Items 5, 9 and 10 of Schedule IV read with Item 1 of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU and PULP Act"). Along with the application, an application for interim relief (Ex. U-2) was also filed praying therein that a direction be issued to the petitioner-Hospital to retire the respondent from service on his attaining the age of 60 years and not on his attaining the age of 58 years. The application was allowed by order dated November 17, 1995 and the following order was passed :-

"Retirement Memo dated August 11, 1995 issued by the Respondent Hospital is hereby quashed and set aside till final disposal of the Complaint.

The Respondent Hospital is further restrained from retiring the Complainant till he attains the age of 60 years or till final disposal of the Complaint."

A reading of this order reveals that the Industrial Court has not only quashed the retirement order contained in retirement memo dated August 11, 1995 but also restrained the petitioner from retiring the respondent till he attains the age of 60 Years or till the final disposal of the complaint. The Industrial Court did not visualise that the validity of the retirement memo was under challenge in the principal complaint filed by the respondent. Without adjudicating upon the rival contentions raised with regard to the validity of the retirement memo, the Industrial Court thought it fit to quash it while disposing of the interim relief application. The petitioner in its affidavit-in-reply has taken a positive stand that the respondent, on the date of issuance of the retirement memo, was designated as a Junior Administrative Officer and his duties and responsibilities were partly of supervisory and managerial nature and was drawing a salary of Rs. 9,000/- approximately and as such he was not a "workman" falling within the purview of the MRTU and PULP Act. It was further the case of the petitioner that identical complaints were filed, viz. Complaint No. 1140/1986 and Complaint No. 1240/1986. The Industrial Court held that the Model Standing Orders were not applicable to the cases like that of the respondent as and that they could be retired from service on attaining the age of 58 years.

3. The Industrial Court, for reasons best known to it, did not think it proper to advert to the abovementioned aspect of the matter. Even otherwise the Industrial Court did not understand that the balance of convenience was not in favour of the respondent. Even if ultimately it had come to the conclusion that the age of retirement is 60 years and not 58 years as is contended by the petitioner-management, it could compensate the respondent by asking the petitioner to pay him two years" salary. This relief was admissible at the time of final disposal of the complaint and not prior thereto. The Industrial Court did not appreciate that if the complaint is dismissed, as was the fate of similar other complaints filed by employees similarly situate how he would restore the status quo ante. In the present case, the respondent has achieved the object for which he has filed the complaint without proving his contention that he was not occupying a

supervisory post and was a workman and was entitled to continue in service till the age of 60 years under the Standing Orders. The learned Industrial Court, while disposing of the interim relief application, has quashed the retirement memo and we are at a loss to understand as to under what provision of law he has done so. The order does not reflect application of judicial mind. Looking to the matter from any angle, the order cannot be sustained.

4. For the reasons stated above, the writ petition succeeds and is allowed. Rule is made absolute in the following terms :-

(i) Order dated November 17, 1995 on the in

(ii) Interim relief application, Ex. U-2, is dismissed. The Industrial Court is directed to dispose of Complaint (ULP) No. 1177 of 1995 expeditiously.

(iii) The Prothonotary and Senior Master is directed to send a copy of this order to Mr. S. S. Hirurkar, Member, Industrial Court, Bombay, at present posted at Pune.