

BANK EMPLOYEES UNION

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v.

RAJARSHI SHAHU GOVT. SERVANTS
CO-OPERATIVE BANK LTD., KOLHAPUR

(Civil Appeal No. 2328 of 2021)

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JULY 06, 2021

**[ROHINTON FALI NARIMAN, K. M. JOSEPH AND
B. R. GAVAI, JJ.]**

Maharashtra Industrial Relations Act, 1946: s. 38(2) – Standing order stipulating the age of retirement of the employees, applicable to employees of the Co-operative Bank – Locus of Registered Trade Union to file application u/s. 38(2) for alteration/modification of the standing order – Held: Original standing order which mandated 55 years as the age of retirement, was changed by consent of both employer and employees, to 58 years, twice, by means of Settlements of 2004 and 2010 which culminated in an award by the Industrial Court – Ministerial duty of implementing the settlement was on both the employer and the employees – Application was moved before the Commissioner of Labour by the Registered Trade Union, which could and should have been joined in by the employer – Thus, any technical objection as to a registered union having no locus to file an application u/s. 38(2), cannot be accepted – Order passed by the Industrial Court, which was based on the locus standi of the Registered Trade Union, is set aside, as also the judgment of the High Court – Locus standi.

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Allowing the appeal, the Court

HELD: It is clear that the original standing order which mandated 55 years as the age of retirement, was changed by consent of both employer and employees, to 58 years, not just once, but twice, by means of Settlements of 2004 and 2010, solemnly entered into under section 18(1) of the Industrial Disputes Act. These settlements were also sanctified by an award of the Industrial Court. Ultimately, the Ministerial duty of implementing the settlement was on both the employer and the employees. It so happened that the appellant moved an application

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A before the Commissioner of Labour. The said application could and should have been joined in by the employer, and in this backdrop, it is clear that any technical objection as to a registered union having no locus to file an application under Section 38(2) of the Maharashtra Industrial Relations Act, 1946, cannot be accepted. Therefore, the order that has been passed by the
 B Industrial Court, which was only based on the *locus standi* of the appellant, is set aside and held that the Industrial Court ought to have given some teeth to its own Judgment and held that the very appeal which was filed before it be dismissed for the very good reason that the bank should not be allowed at the stage of
 C implementation of two settlements (culminating in an award) solemnly entered into between itself and its employees, to now turn around and question the *locus standi* of the appellant. The judgment of the Industrial Court and, consequently, the judgment of the High Court is set aside. [Para 8][508-B-F]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2328 of 2021

From the Judgment and Order dated 18.12.2014 of the High Court at Bombay in Writ Petition No. 6558 of 2013.

E Colin Gonsalves, Sr. Adv., Ms. Jane Cox, Ms. Aparna Bhat, Ms. Karishma Maria, Advs. for the Appellant.

Vinay Navare, Sr. Adv., Ms. Gwen Karthika, Ms. Abha R. Sharma, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **R. F. NARIMAN, J.**

1. Leave granted.

2. The short question that arises in this appeal is as to whether the appellant – Registered Trade Union - had locus to prefer an application to modify a standing order that applies to the employees of the respondent
 G under Section 38(2) of The Maharashtra Industrial Relations Act, 1946. The brief facts necessary in order to dispose of this appeal are as follows:-

The original standing order with which we are concerned, and which stated the age of retirement of the employees of the bank, reads as follows :-

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“22(7) Every employee shall retire from service on attaining the age of 55 years, Extension not exceeding one year at a time or three years in all may be given at the discretion of the president.”

3. By two Agreements dated 11.01.2004 and 21.02.2010 which were settlements under Section 18(1) of the Industrial Disputes Act entered into between the respondent and its employees, it was agreed vide Clause 16 of the 2004 settlement and Clause 15 of the 2010 settlement that the retirement age would now be 58 years. A reference was made under Section 73A of The Bombay Industrial Relations Act (as it was then styled) to the Industrial Court, which then made an award in terms of the two settlements entered into. This award was dated 10.03.2010. However, when it was pointed out that formalities under the Maharashtra Industrial Relations Act in modifying the standing order 22(7) needed to be gone through in order to implement the two settlements which culminated in an award, the appellant – Registered Union - filed an application on behalf of the employees dated 26.04.2011 under Section 38(2) of the said Act. Armed with the consent letter from various other unions dated 04.09.2012, the application was heard by the Additional Labour Commissioner. The Additional Labour Commissioner, vide his order dated 25.10.2012, recorded as follows :-

“As the employees of the said Bank are also employed in other different local areas of viz. Tasgaon, Kavathe Mahankal, Khanapur, Atpadi, Jath, Shirala, Walwa, Miraj, Palus, Kadegaon talukas and they are represented by Kolhapur District Bank Employees Union, Kolhapur which is the representative and approved union for Banking Industry for the abovesaid local areas, the said union’s views were obtained in accordance with the provisions of sec. 39 (1) of the Bombay Relations Act, 1946. The said union by their letter dated 04/09/2012 conveyed that they have no objection in the matter of settlement of alteration to the said Standing Order.

In accordance with the provisions of section 39 (1) of the Act, the management of the said Bank was requested to file their say in respect of the proposed alteration. The Bank by their communication dt. 19/03/2012 communicated their various objections objecting the union’s proposed alteration, but the management of the Bank could not refute the fact that

A *they have made two settlements dated 11/01/2004 and 21/02/2010 wherein the management Bank has agreed to alter the retirement age of their employees from 55 to 58.*

B *As both the parties i.e. the employees through their representative unions, and also the management of the said Bank have already mutually made the agreements to effect the change in retirement age, I find no difficulty to make the alteration to the Standing Order clause No. 22(7) which will read as under :-*

C *Standing Order No. 22 (7) – Every employee shall retire from service on attaining the age of 58 years . Extension not exceeding one year at a time or three years in all may be given at the discretion of the President.”*

D 4. However, an appeal was filed by the Bank in November 2012 against the said order, in which essentially one point was taken up, which was that under Section 38(2) of the Maharashtra Industrial Relations Act, only an employee, as defined under the said Act, could apply to the Commissioner of Labour for an alteration of a standing order and the Registered Union, being separately defined, would therefore have no locus to do the same. This appeal was allowed by the Industrial Court, on a conspectus of the provisions of the said Act, that the appellant Union would have no locus to approach the Commissioner of Labour under Section 38(2) of the Maharashtra Industrial Relations Act, as only an employee defined under the said Act would be allowed to do so. In addition, the Industrial Court, being troubled about the fact that, by its order, the bank would be allowed to resile from the two settlements entered into, the court’s consciencespoke out thus :-

G *“10) No doubt, the Appellant Bank had executed an Agreement with the Opponent Union and in the said Agreement, it was decided to change the age of retirement from 55 years to 58 years. But, the Appellant Bank has made change in its Standing Orders by moving an application under Section 38(2) of The Bombay Industrial Relations Act, 1946. This act of the Appellant Bank shows the attitude of the Bank towards its employees. On the contrary, it was for the Appellant Bank to become a model employer by moving an application under Section 38(2) of the said Act for change in the age of retirement of its employees from 55 to 58 years and the same is not done.*

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Undisputedly, the Agreement states about the change in the age of retirement that does not mean that the law has given right to the Union to file an application under Section 38(2) of The Bombay Industrial Relations Act, 1946.”

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5. From this order, a writ petition was preferred by the appellant. By the impugned Judgment dated 18.12.2014, after an exhaustive survey of the said Act, it was found that the Industrial Court’s order could not be interfered with, and, as a result, the writ petition was dismissed.

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6. Mr. Colin Gonsalves, learned senior counsel appearing on behalf of the appellant, has taken us through the provisions of the Act in copious detail and has argued that on merits, his client would certainly have locus, particularly given Section 27A of the said Act, which has not been viewed by the impugned Judgment in its correct perspective. In any event, he added that it would be preposterous to allow a party to a settlement, who, in fact, ratifies the aforesaid settlement, to resile therefrom at a stage of Ministerial implementation. He, therefore, submitted that the appeal made against the learned Additional Labour Commissioner’s order to the Industrial Tribunal ought to have been dismissed on the ground that since either the employer or the employee, or both, could have gone to the Commissioner of Labour to implement the two settlements entered into, it would not lie in the mouth of the employer to now turn around and take up a technical plea of locus when the employer itself could and should have approached the Labour Commissioner under Section 38 to implement the two settlements solemnly arrived at between the parties.

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7. Sh. Vinay Navare, learned senior counsel appearing on behalf of the Bank, supported the Judgment of the Bombay High Court and took us in copious detail through the provisions of the Act and the standing orders. According to him, once it is seen that the definition of ‘Employee’ and “representative Union” is different, and once it is also seen that under various other provisions of the Act, more particularly Section 42, an ‘employee’ and a ‘representative union’ have both been referred to separately, as opposed to Section 38 which speaks only of an ‘employee’, obviously a representative union would have no locus to move an application under Section 38, and the Judgment under appeal ought not to be disturbed at all. He, however, makes a submission that in case this Court were not to accept his submission, the matter could be sent back to the Commissioner of Labour for a reconsideration on merits after

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- A adding one or more employees, so as to take care of the technical objection taken.

8. After hearing both the learned senior counsel appearing for the parties at length, we do not propose to disturb the impugned Judgment on merits. Having regard to the facts of this case, it is clear that the original standing order which mandated 55 years as the age of retirement, was changed by consent of both employer and employees, to 58 years, not just once, but twice, by means of Settlements of 2004 and 2010, solemnly entered into under Section 18(1) of the Industrial Disputes Act. Not only this, these settlements were also sanctified by an award of the Industrial Court dated 10th March, 2010. Ultimately, as correctly argued by Mr. Gonsalves, the Ministerial duty of implementing the settlement was on both the employer and the employees. It so happened that the appellant moved an application before the Commissioner of Labour. The said application could and should have been joined in by the employer, and in this backdrop, it would be clear that any technical objection as to a registered union having no locus to file an application under Section 38(2) of the said Act, cannot be countenanced. We, therefore, set aside the order that has been passed by the Industrial Court, which was only based on the locus standi of the appellant, and hold that the Industrial Court ought to have given some teeth to Paragraph 10 of its own Judgment and held that the very appeal which was filed before it be dismissed for the very good reason that the bank should not be allowed at the stage of implementation of two settlements (culminating in an award) solemnly entered into between itself and its employees, to now turn around and question the locus standi of the appellant. On this narrow ground, therefore, this appeal is allowed and the Judgment of the Industrial Court dated 14th March, 2013 and, consequently, the judgment of the High Court is set aside. We reiterate that we are not, in any manner, disturbing the High Court Judgment on merits, leaving the question of law decided by it open. All consequential benefits, as a result of this Judgment, to the employees of the respondent, be given within a period of six months from today.

- G Pending interlocutory application(s), if any, is/are disposed of.