

(1995) 11 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 5844 of 1991

Bibhishan Yeshwant Babar

APPELLANT

Vs

Executive Engineer, Kukadi Prakalp Bhuvikas, Pune and
Others

RESPONDENT

Date of Decision : 14-11-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (1997) 3 LLJ 1081

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; Seema Sarnaik, for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India is directed against the order dated June 28, 1991 made by the Industrial Court, Pune, in Complaint (ULP) No. 308 of 1988 dismissing the complaint. The complaint was filed under the provisions of Section 28 read with Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The Petitioner was working as labourer at Shirur Division under the First Respondent, Executive Engineer. Kukadi Prakalp Bhuvikas Vibhag No. 1 from November 18, 1984. He was paid wages at the rate of Rs. 15.95 per day. The Petitioner's service was terminated with effect from October 25, 1986 on the ground of surplusage. On June 18, 1987, the Petitioner went to the site of work, Kukadi Prakalp Bhuvikas Vibhag, Shirur, and learnt that new labourers were being employed by the Officer-in-Charge. The Petitioner requested the said Officer to allow him to join work, but he was refused work and not allowed to join work. On these allegations the Petitioner moved Complaint (ULP) No. 308 of 1987 before the Industrial Court, Pune, invoking Items 9 and 10 of Schedule IV of the Act and claimed re-employment in the service of the First Respondent.

3. The Industrial Court recorded evidence and, after appraisal, held that the Petitioner had failed to prove the facts alleged by him. In the first place, the contention of the Petitioner was that he was entitled to the benefit of Section 25F of the Act as his termination of service on October 25, 1986 was "retrenchment" within the meaning of the Industrial Disputes Act and that he was entitled to the benefit of Section 25F of the said Act. On the evidence, the Petitioner failed to prove that he had one year's "continuous service" or 240 days working during the period November 14, 1984 to November 14, 1986, since admittedly he was absent from November 8, 1985 to November 31, 1985. The learned Judge of the Industrial Court has also disbelieved the Petitioner's evidence that he had gone to the work site or that other labourers had been engaged to do the work. The Industrial Court held that the Petitioner had not completed 240 days in any working year, that he cannot get the benefit available to the permanent workers of the benefit of the provisions of Section 25F or 25G of the Industrial Disputes Act, or that he had gone to the work-site on November 18, 1986 and demanded work which was refused to him or that other labourers junior to him had been taken an employment. The complaint has been purely on the basis of factual findings. I see no reason to interfere with the order of the Industrial Court in exercise of writ jurisdiction.

4. In the result, writ petition is dismissed and the rule is discharged with no order as to costs.