

(2011) 07 BOM CK 0143

In the Bombay High Court

Case No : Writ Petition No. 979 of 2011 and 984 of 2011

Divisional Forest Officer and Range Forest Officer APPELLANT

Vs

Shri Ganiram Kewat
 State of Maharashtra and Range RESPONDENT
Forest Officer Vs Shri Santosh Sahare

Date of Decision : 21-07-2011

Acts Referred:

Citation : (2011) 07 BOM CK 0143

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : A.D. Sonak and T. Khan, A.G.Ps, for the Appellant; N.N. Mothghare, Learned Counsel, for the Respondent

Judgement

R.M. Savant, J.—Rule with the consent of the parties made returnable forthwith and heard.

2. The above Writ Petitions take exception to the judgments and orders passed by the Industrial Court, Bhandara, by which the complaints filed by the Respondent in each of the above petitions came to be allowed and the declaration came to be issued that the Petitioners herein have engaged in unfair labour practice covered under Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. and P.U.L.P. Act, 1979). The Industrial Court has issued a direction to regularize the services of the complainants by forwarding a proposal to that effect as per Government Resolution dated 30/01/1996. A further direction was issued to extend the benefit of permanency to the complainants.

3. Shorn of unnecessary details, the factual matrix of the case can be stated thus.

The Respondent in each of the above petitions claimed to be working with the Forest Department i.e. the Petitioner above named from the year 1990 on daily wage basis. It appears that the State Government to ameliorate the conditions of

the persons, who were working on daily wages took a policy decision to regularize their services. Pursuant to which the State Government issued a Government Resolution Dated 30/01/1996 inter alia governing the regularization of services of such daily wagers. In terms of the said resolution, the cut off date fixed was 1st November, 1994 and the daily wagers, who had worked for a period of 240 days in the minimum every year in the preceding five years, were to be given the benefit of regularization. The Respondent in the above petitions filed Complaint ULP 75/2007 (subject matter of Writ Petition No. 781/2011) invoking Items 5, 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. The substantive relief sought in the said Complaint was that the Respondent was seeking regularization of his services and to grant him benefit of permanency with the back wages and continuity of service in terms of the said Government Resolution dated 30/01/1996. Similar complaints were filed by the Respondents in the other petitions.

4. The parties went to trial. During the course of the trial, since the issue was as regards whether the Respondent workman had completed 240 days of service in each of the preceding five years, the Respondent was directed to take inspection of the muster rolls and prepare a chart in respect of the number of days that he had worked in the preceding five years. Accordingly, inspection was afforded to the Respondent on the basis which a Chart was prepared in respect of each of the Respondents in the above writ petitions, which was proved in evidence and came to be marked as Exhibit 32.

5. The said chart was signed on behalf of the Petitioners herein by one Ashwini kumar Thakkar, who was then working as Range Forest Officer. In so far as the Petitioners are concerned, they also sought to produce muster rolls in respect of each of the Respondent complainant in support of their case that each of the Respondent complainant had not worked for a period of 240 days in each of the preceding five years prior to the cut off date. However, since the said muster rolls were not proved by the Petitioners in accordance with the provisions of the Evidence Act, the same was not accepted.

6. The Industrial Court relying upon Exhibit 32 filed on behalf of the Respondent recorded a finding that each of the Respondents in the above petitions had worked for a period of 240 days in each of the preceding five years prior to the cut off date. In so far as the muster rolls produced by the Petitioners are concerned, the Industrial Court did not deem it fit to take it into consideration on the ground that they did not cover the entire period. The said finding of the Industrial Court finds place in paragraph No. 11 of the impugned judgment and order.

7. Having heard the learned Counsel for the parties, in my view, the impugned judgment and orders passed in each of the above petitions are required to be quashed and set aside and the matters are required to be remanded back to the Industrial Court for a de novo consideration.

8. The issue in the complaint was as regards the entitlement of the Respondent workman to the benefits of the State Government Resolution dated 30/01/1996 indubitably the said benefits can only be available to a daily wager, who has worked for a period of 240 days every year in the preceding five years prior to the cut off date i.e. 1st November, 1994. No doubt, the statement at Exhibit 32 produced by the Respondent has been proved by the process known to law and was therefore exhibited as Exhibit 32. However, the Industrial Court could not have brushed aside the material produced on behalf of the Petitioners by stating that the said material does not relate to the entire period. The Industrial Court thereby failed to appreciate the case of the Petitioners that the Respondents workmen were not working for a period of five years preceding the cut off date. Hence, it was incumbent on the Industrial Court to permit the Petitioners to lead evidence in that behalf, as the same went to the very root of the matter in so far as the case of the respective parties were concerned. In not doing so and merely relying upon Exhibit 32, the Industrial Court has shut itself from material which could be said to be relevant for the purposes of adjudication of the issue that was involved in the said complaint. In that view of the matter, the judgment and orders subject matter of the each of the above petitions as indicated above are required to be quashed and set aside and accordingly are quashed and set aside and the following directions are issued.

i) The Petitioners would be entitled to produce the muster rolls and such other material in their possession in support of their case that the Respondents complainants in each of the above petitions have not worked for a period of 240 days in a year for the preceding five years.

ii) The Petitioners would be entitled to prove the said documents by the procedure prescribed under the Indian Evidence Act.

iii) The Respondents complainants would be entitled to cross examine the witness of the Petitioners through whom the said documents would be got proved by the Petitioners.

iv) The Industrial Court would thereupon consider the material on record as also the pleadings and thereafter adjudicate upon the complaint. The Respondent would also at liberty to produce further material, if they so be in fit.

v) The parties to appear before the Industrial Court on 17th August, 2011. The Industrial Court thereafter to dispose of each of the complaints within a period of four months.

vi) The person, who has signed the said document at Exhibit 32, i.e. Ashwini kumar Thakkar has filed an affidavit in the instant petition stating the circumstances in which he has signed the said document, in my view, therefore, the same would also be a relevant document to be considered by the Industrial Court.

9. Rule is accordingly made absolute in the aforesaid terms with parties to bear

their respective costs.