

(2008) 10 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 3283 of 2000

Executive Engineer (M.I.) Zilla Parishad and Another

APPELLANT

Vs

Satpal Purandal Pardhi and Others

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 7

Citation : (2009) 2 BomCR 507

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : M.P. Munshi, for the Appellant; Salim Khan, for the Respondent

Judgement

Dharmadhikari B.P., J.—The employer-Zilla Parishad, constituted under. The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, has filed this writ petition under Articles 226 and 227 of the Constitution of India, challenging the order dated 26-7-2000 delivered by the Industrial Court, Nagpur in Complaint U.L.P.N. No. 775/1995. Said complaint was filed by total 25 complainants for declaration that their employer has indulged into unfair labour practice under Items 1 -A and 4 of Schedule II and Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (referred to as "M.R.T.U. and P.U.L.P. Act"). They sought declaration that as they had completed 240 days of continuous service they were entitled to regularisation. They pointed out that Government issued circulars and instructions from time to time, that mustering assistants fulfilling the terms and conditions thereof were entitled to grant of permanency. Their complaints were opposed by the present petitioners/employer and learned member of Industrial Court allowed that complaint only in relation to complainant Nos. 3, 7, 15, 16, 19, 21 and 22, who are 7 respondents before me. About rest of the complainants, the Industrial Court has found that they did not fulfill the requirements of Government policy and hence they were not entitled to claim

any benefit. It declared that by not regularizing the services of the said complainants, the employer committed unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. It therefore, granted them regularisation from 31-5-1993, but declined back wages and gave time of one month for compliance. The employer then approached this Court on 21-9-2000. While issuing Rule in the matter, this Court granted interim relief in terms of prayer Clause (ii). The said interim relief staying the operation and effect of the order of Industrial Court continues to operate till date.

2. In this background I have heard Advocate Mrs. Munshi, for petitioners and Advocate Shri Khan, for respondents.

3. Mrs. Munish, has contended that the Industrial Court could not have taken cognizance of the complaint as filed as the respondents were not in service on the date on which the complaint came to be filed and hence, there was no question of their regularisation. She argues that unless and until their termination was quashed and set aside the benefit of regularisation could not have been extended to them. She further contends that none of the respondents were in the employment on 30-6-1995 i.e. the date on which the policy decision was implemented. According to her, therefore, even otherwise benefit of regularisation could not have been given to them. Lastly she places reliance upon the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, to urge that as all the respondents were never recruited after following the prescribed procedure, the Industrial Court could not have issued any directions regularising them. She has relied upon the judgment of Division Bench of this Court in the matter of R.P. Sawant and Others Vs. Bajaj Auto Ltd. and Another, , judgment of learned Single Judge of this Court in the case of MGMT. of Devi Theatre Vs. Vishwanath Raju, and judgment of Hon Tale Apex Court in the case of Ramchander and Others Vs. Additional District Magistrate and Others, in support of her contentions.

4. In the alternative and without prejudice to the arguments raised above, she has argued that for more than 8 years, after the judgment of Industrial Court interim stay has been operating and respondents have not worked for last about 13 years with the petitioners. The petitioners do not have sanctioned posts for them and hence the respondents can at the most be directed to be considered by the petitioners for their regularisation against the vacancies whenever they occur. She further argues that when the respondents have not worked for all this period and they have not made any efforts to have interim orders vacated, they should not be given any wages.

5. Advocate Shri Khan, for respondents points out that the controversy is covered by the judgment of the Hon'ble Apex Court and also the judgment of this Court in the case of Chief Executive Officer, Zilla Parishad Vs. Daulat Narsingrao Deshmukh and Another, : Chief Executive Officer, Zilla Parishad Vs. Daulat Narsingrao Deshmukh and Another, . He states that the circulars or policy decision only required that mustering assistants should be in service on

31-5-1993. He points out that on 1-12-1995, the policy decision has been taken not to terminate any mustering assistant on duty on 31-5-1993, but to absorb them in various departments of State Government on equivalent pay scales and till then, their services were to be utilised in EGS, Soil Conservation, Horticulture etc. He contends that all the respondents were on duty on 31-5-1993 and hence benefit has rightly been given to them by the Industrial Court. He further states that on 21-4-1999, policy decision to extend the said benefit to mustering assistants who were on duty between 25-3-1993 to 30-5-1993 was taken. According to him in view of this policy decision, the regularisation given to the respondents cannot be disturbed. He further states that as there was direction to regularise all the respondents within one month of the order of the Industrial Court, and they were not given any back wages, they are entitled to wages from 1-9-2000 till the actual compliance is made and they are regularised. He argues that mere pendency of matter before this Court or grant of interim relief therein cannot be used to prejudice the cause of present respondents.

6. From arguments above, it is apparent that only legal issue about entitlement of the respondents for regularisation because of termination of their services is being canvassed by the petitioners. The finding of Industrial Court that the respondents in the present writ petition were in services on 30-5-1993 and therefore, they are eligible to claim the benefits of Government resolution dated 1-12-1995 has not been assailed at all. The Industrial Court itself has after appreciating the evidence rejected the complaints of those who were not found entitled to the benefit. Complainant Nos. 2, 4, 6, 8, 10 to 13, 17, 23 and 25 informed the Industrial Court about their regularisation and hence their names were deleted from complaint. It also found that in so far as the present respondents are concerned, there was the letter of Collector, Bhandara (Exh. 44) dated 17-1-1995 which mentioned that they were entitled to be paid wages as there was stay to their termination granted by the Government operating in their favour. As such, their services could not have been and were not terminated. These findings are not demonstrated to be perverse at all.

7. Government Resolution dated 1-12-1995 shows that the Government had earlier decided to retrench all mustering assistants as per Government Resolution dated 26-5-1993, but then that, decision and Government Resolution was stayed by the Aurangabad Bench of this Court as also by the Maharashtra Administrative Tribunal. Because of these orders the Government itself had stayed its decision dated 26-5-1993 and thereafter Maharashtra Administrative Tribunal passed an order and observed that as works under EGS was over, Government had right to terminate the service of mustering assistant. The Hon'ble Apex Court on 29-10-1993 observed that they should be retrenched by following the rule of seniority. Considering all this and in the background of problems faced by the families because of loss of source of income, the Government vide Government resolution dated 1-12-1995 decided that services of mustering assistant on duty on 31-5-1993 were not to be terminated, but they were to be absorbed on equivalent post in other Government department. This Government resolution

has been accepted and implemented by the Industrial Court. It has found that non-implementation of this Government resolution constituted unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act.

8. Subsequently on 21-4-1999 the Government has issued another decision and thereunder similar benefits are also extended to the mustering assistant, who were on duty between 26-5-1993 to 30-5-1993. It is therefore, obvious that even if some mustering assistants were not on duty on 30-5-1993. It is therefore, obvious that even if some mustering assistants were not on duty on 30-5-1993 because they were terminated between 26-5-1993 to 30-5-1993 the benefit of policy has been extended to them by the Government.

9. In judgment in the case of Chief Executive Officer v. Daulat (supra), this Court has directed that mustering assistants were entitled to be considered for grant of benefits in terms of Government resolution dated 1-12-1995 and 15-4-1999. There the employer had approached the High Court challenging the order dated 29-10-1996 passed by the Labour Court in Reference I.D.A. No. 25/1992. The employee therein was engaged initially as Writing Mukaddam on work charge establishment and thereafter in August, 1976 he was engaged as mustering assistant for the purpose of work under EGS. He continued to work until 30-6-1986 and records revealed that he was not engaged between 24-7-1984 to 31-12-1985. Upon his termination a reference was made, and by award dated 29-10-1996 the Labour Court directed the employer to reinstate him on his original post with continuity of service and $\&\text{farc13;rd}$ back wages. In this background in paragraph No. 6, this Court has found that the question of mustering assistant was considered by the learned Single Judge earlier in the case of Subhash Narayan Ahirrao Vs. Dy. Engineer P.W.D., Sub Division and Another, and that order was carried in appeal before the Hon^{ble} Supreme Court vide Civil Appeal No. 5338/1991 and by order dated 2-12-1996 the Supreme Court directed the absorption into regular services be governed by the scheme which was framed by the State Government vide its resolution dated 1-12-1995. In paragraph No. 7 this Court found that there was another resolution issued on 21-4-1999 and another Single Judge of this Court held that the mustering assistants might be considered for grant of benefits in terms of these Government resolutions. In view of these orders, though the award of Labour Court dated 29-10-1996 was quashed and set aside, this Court directed the respondent-employer to consider the respondents in accordance with the Government resolution dated 1-12-1995 and subsequent Government resolutions dealing with the question of regularisation and absorption of mustering assistants.

10. Division Bench judgment of this Court in the case of R.P. Sawant v. BajajAuto Ltd. (supra), has been cited to contend that the complaint of present nature ought to have been filed by the respondents before the Labour Court, as they were terminated. Under the MRTU & PULP Act because of Schedule IV, Item I, read with Section 7, thereof, the Labour Court alone is competent to take cognizance of the matter like termination, dismissal, discharge. The complaints

pertaining to other items like Item Nos. 6 and 9 which deal with continuing the employees as temporaries or badlis for years together with a view to deprive them of the benefits of permanency or even failure to implement award, settlement or conditions of service etc., fall within the domain of the Industrial Court. The Division Bench in this ruling has observed that while trying substantive complaint legitimately falling within its jurisdiction, the Labour Court or Industrial Court is not precluded from moulding the relief as required in the facts of the case. It held that the complaint under Item Nos. 5, 6, 9 and 10 of Schedule IV before the Industrial Court does not become infructuous due to termination of service of workman during the pendency thereof, and Industrial Court has jurisdiction to grant relief even in such cases. This judgment has been followed by the learned Single Judge in the case of Manoj Amdas Ingle (supra), wherein again similar question has been considered, and placing reliance upon this Division Bench judgment, it is observed that it is a substantive claim which is made in the complaint which determines the forum before which it lies. If the substantive reliefs sought in the complaint are regarding termination or dismissal, the complaint has to lie before the Labour Court. After going through the complaint as filed there, in paragraph No. 22 this Court (learned Single Judge) concluded that the complaint was regarding termination and therefore triable by the Labour Court. It is to be noted here that the above referred Division Bench judgment of this Court was questioned before the Hon'ble Apex Court and in its judgment in the case of Bajaj Auto Limited Vs. R.P. Sawant and Others, , while recording compromise between the parties, the Hon'ble Apex Court has left open all questions decided by the High Court.

11. In present facts, perusal of the memo of Complaint (ULPN) 775 of 1995 as filed initially on 30-6-1995, reveals that grievance made was about threatened termination and no relief was sought about termination on 31-5-1993, as there was no such termination. Items 1(a) and 4 of Schedule II of M.R.T.U. & P.U.L.P. Act were only invoked but then that jurisdiction is with Industrial Court only. Substantive grievance was for grant of permanency because of completion of 240 days of service and various Government instructions and circulars to continue mustering assistants in service and to grant them permanency, if they fulfill prescribed terms and conditions. In this complaint termination in July, 1995 was pointed out in 1999 by amendment mentioning it to be termination during pendency of the complaint. Industrial Court has allowed that amendment on 9-7-1999 but then complaints did not invoke Item 1 of Schedule IV of M.R.T.U. & P.U.L.P. Act. They assailed that termination as unfair labour practice under Item 9 of Schedule IV and jurisdiction in relation thereto is with Industrial Court only. In the process of writing the judgment, said Court has wrongly mentioned Item 1(a) of Schedule IV and it has to be only Item 1 (a) of Schedule II of M.R.T.U. & P.U.L.P. Act. But then Industrial Court, in para 12 of its order/judgment noticed that question to be decided was existence of employment on 31-5-1993 and has examined that issue. The above referred Government decisions dated 1-12-1995 and 21-4-1999 also show that the benefit of policy decision of Government has

been extended initially to all those who were in service on 31-5-1993 and thereafter, to all those who were in service between 26-5-1993 to 30-5-1993.

12. The learned Counsel for petitioner has placed reliance upon the judgment in the case of Ramchander and others (supra), to urge that regularisation cannot be granted to the employees who are terminated. The facts of said judgment disclose that employees there worked as Lekhpals and were terminated some time in 1984. The provisions of U.P. Regularisation of Ad hoc Appointments Rules, 1979 were applicable because of its Rule 4 to those who were directly appointed on ad hoc basis and were continued in service. On 23-3-1984 Rule 9 was added and it was declared that 1979 Rules would apply mutatis mutandis to all those who were directly appointed on ad hoc basis on or before 1-5-1983 and were continuing in service on 23-3-1984. The Hon'ble Apex Court found that Rules required continuation in service as ad hoc employee to become eligible for consideration for regularisation and services of some of the employees were terminated in February, 1984 while services of others were terminated in June, 1984. The Hon'ble Apex Court found that those who were not in service could not be regularised. Thus this conclusion is due to language of said Rule 9. In present case it is apparent that there is no such requirement of continuation at all. The employees who continuing in service on 31-5-1993 as already observed above were eligible, and the subsequent policy decision extended that benefit to those also who were not in employment on 31-5-1993, but were in employment between 26-5-1993 to 30-5-1993. The facts necessitating Government decision dated 1-12-1995 itself show that it was the decision of Government to retrench taken on 26-5-1993 which set the ball in motion and process ultimately culminated in above mentioned Government decisions. Thus, in present facts there is no question of holding that when the respondents approached the Industrial Court claiming benefit of above mentioned policy decision, they ought to have been in service. Moreover, in view of finding of fact recorded by the Industrial Court that present respondents were not terminated and were continuing in service on relevant date, this discussion really is not very relevant here. There were directions by Government protecting the services of the respondents and as termination was during pendency of a complaint, Industrial Court did not loose jurisdiction to grant appropriate relief to them.

13. It is to be noted that the judgment of Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , is therefore not applicable in the present facts when the action has been initiated way back in 1995 in terms of the Government decision itself. The other mustering assistants have already got benefit of said policy decision and it would not be fair to deny the same to the present respondents. It is to be kept in mind that the member of the Industrial Court has only granted regularisation in terms of this policy, but has not given them any benefit of back wages for earlier period. The judgment of this Court in Chief Executive Officer Z.P. Ahmednagar (supra), again shows that the Government there was directed to consider the respondent/employee therein for regularisation or absorption.

14. In present facts, however, the respondents cannot get any wages for the period for which they were not in employment of the petitioners. They never made any effort to get interim orders passed by this Court vacated. The stand of petitioners that there are no vacancies or then they should be permitted to regularise or absorb respondents against future vacancies or against vacancies in other departments cannot be looked into in this writ petition. Collector, Bhandara has vide Exh. 44 issued Appropriate instructions to the petitioners and it was for petitioners to note and implement the Government decisions. The member of Industrial Court has granted the benefit of regularisation to these respondents and petitioners therefore have to grant them said benefit in terms of the Government resolutions mentioned above. The benefit of Government resolutions and of adjudication in their favour by the Industrial Court cannot be denied to them only because of grant of stay by this Court or because of pendency of matter before this Court for long period. At the same time, the respondent also cannot be given arrears of salary from the date of Industrial Court orders till their regularisation in pursuance of the said order of Industrial Court. In the present facts I am inclined to grant time till 31-5-2009 to the present petitioners to implement the directions of the Industrial Court. However, it is made clear that the respondents are not entitled to any wages for this period up to 31-5-2009 but then their service shall be treated as continuous for all other purposes from the date on which time given by the Industrial Court for implementation expired.

15. In view of the above, writ petition is partly allowed.

16. The impugned order of Industrial Court is modified by directing the petitioner to extend the benefit of Government circulars to the respondents by 31-5-2009. It is also declared that the respondents are not entitled to any wages for this period up to 31-5-2009 but then their services shall be treated as continuous for all other purposes from 27th August, 2000. No order as to costs.