

(2008) 04 BOM CK 0046

In the Bombay High Court

Case No : L.P.A. No's. 71-77, 79-81 and 82 of 1998

Maharashtra State Board of Secondary and Higher Sec.
Education and Another

APPELLANT

Vs

Sanjay Krishnarao Shrungare

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2008) 118 FLR 134 : (2008) 3 LLJ 277

Hon'ble Judges : R.C. Chavan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : T.D. Khade, for the Appellant; V.P. Marpakwar, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—These appeals by the Maharashtra State Board of Secondary and Higher Secondary Education, Amravati are directed against the orders passed by the learned Judge, Labour Court, Amravati in respondent's complaint of unfair labour practice, confirmed in revision by the learned Member, Industrial Court, Amravati, as well as learned single Judge of this Court in Writ Petitions filed by the appellants against the said orders.

2. The respondents/complainants claimed to be engaged by the appellant Board as peons on daily wages. They had completed required number of days of continuous service. They alleged that yet the appellant board terminated their services without any reasons and without complying with the provisions of Section 25-F and 25-G of the Industrial Disputes Act. The complainants further allege that after termination of their services the appellant Board engaged new employees in violation of the provisions of Section 25-H of the Industrial Disputes Act and thus, indulged in unfair labour practice.

3. The appellant had claimed that it was performing sovereign function and, therefore, was not subject to rules applicable to an Industry. It was stated that

the complainants were appointed on daily wages for a specific period and their services were terminated after completion of the work. It was alleged that the complainants had not completed the requisite number of days of continuous service to entitle them to continue in service.

4. Upon consideration of the evidence tendered before him, the learned Judge, Labour Court, Amravati held that the appellant had indulged in unfair labour practice and directed the appellant board to reinstate the complainants in service with fifty percent back wages within a period of two months from the date of order i.e. December 9, 1996. The learned Member, Industrial Court, before whom revision petitions were filed by the appellant board, dismissed the revision petitions. These orders were challenged by the appellant Board by filing writ petitions. The learned single Judge, who heard the petitions, held that except filing the reply the petitioner did not lead either oral or documentary evidence before the Labour Court. The findings recorded by the Courts below did not disclose any manifest or apparent error of law and, therefore, there was no room to interfere in exercise of writ jurisdiction of the Court. He, therefore, rejected the writ petitions. Aggrieved thereby the appellant board preferred these appeals.

5. We have heard learned advocate Mrs. Khade for the appellant Board and learned advocate Shri Marpakwar for all the respondents.

6. The learned Counsel for the appellant relied on a judgment of the Supreme Court in Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. and Another Vs. Employees' Union and Another, . The learned Counsel submitted that as in the reported decision, in the present case, the respondents employees were engaged seasonally for the summer and winter examinations only, and therefore, such seasonal workers could not claim permanency. As rightly countered by the learned Counsel for the respondents, the question is not of granting permanency to the respondents workmen. It is only about their wrongful termination. Further, no plea has been raised in the proceedings before the Labour Court that the respondents were seasonal employees. Therefore, the ratio of the decision is inapplicable to the present case.

7. The learned Counsel for the appellant next relied on judgment of the Supreme Court in Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., . This decision too relates to regularisation of services of the workers temporarily working under the State Government against the posts which were not sanctioned. Here, the question is not one of regularisation, but of terminating the services of the respondents without complying with the provisions of Section 25-F of the Industrial Disputes Act. Therefore, even this decision would be unhelpful for the appellant.

8. The learned Counsel for the appellant next relied on the judgment of the Apex Court in Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, . She submitted that the Supreme Court had held that when employees on daily wages were appointed on the basis of need of the work, termination of their

services could not be construed as retrenchment. For raising such contention, or relying the ratio of this judgment, the appellant ought to have raised the relevant plea before the Labour Court and ought to have tendered the evidence to show that the respondents were engaged casually according to the need of the work. Both, Labour Court as well as Industrial Court, upon consideration of the evidence tendered before the Labour Court, came to the conclusion that factually engagement of the respondents as daily wagers for a considerable length of period almost regularly has been established. It is not shown as to how these factual conclusion were erroneous to warrant interference in writ jurisdiction in order to assail the order of the learned single Judge by the present appeal.

9. The contention of the learned Counsel for the appellant that it was for the respondents to tender evidence that they were engaged for 240 days by the appellant/board and that the burden did not lie on the appellants cannot be faulted. However, it may be seen that the respondents have tendered evidence before the Labour Court stating therein that they had been engaged as daily wagers and had continued in employment till their services were terminated. In the absence of any reason to disbelieve this evidence the Courts below could not have taken a different view in the matter. The learned Counsel for the appellant submitted that one Prafulla Dawale examined on behalf of Peons had admitted in cross-examination that no written order of appointment was given; there was no advertisement of vacancies; their names were not recommended by the Employment Exchange or Social Welfare Department; they were employed because they had acquaintance in the department; they were paid wages after computing the working days; and that they had no documents to show that they had worked for more than 240 days in the preceding orders. Similar is the evidence on behalf of clerks. The learned Counsel for the appellants, therefore, submitted that in view of the latest trend of decisions of the Supreme Court, the evidence of workmen alone would not be sufficient to prove continuous employment for a period of 240 days.

10. First, it has to be noted that this cross-examination also does not dislodge the veracity of the word of the respondents which has been relied on by the Courts below. Secondly, while there is no doubt that the burden did not lie on the appellants to disprove that the respondents had worked for 240 days, if the appellants were in possession of some evidence in respect of the services rendered by the respondents, there is no reason why it] should not have tendered such evidence. In these appeals charts showing the number of days for which the respondent in each of the appeals worked have been annexed by the appellant itself. They do not show that the appointment was sporadic or seasonal in nature. The charts annexed by the appellant itself in these appeals would demonstrate that the appellant could have tendered this evidence before the Labour Court. If the appellant chose to keep from the Court the best evidence it had in respect of respondents' employment, the appellant must blame itself.

11. In this view of the matter, it cannot be said that the learned single Judge

erred in refusing to interfere in concurrent findings recorded by the learned Judge of the Labour Court and Member of the Industrial Court in respect of termination of services of the respondents which amounted to unfair labour practice.

The appeals are, therefore, dismissed.