

(1995) 07 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 5408 of 1989

Manabhau Damu Khairnar and Others

APPELLANT

Vs

State Of Maharashtra and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1995) 71 FLR 1006 : (1996) 1 LLJ 990

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

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This Writ Petition under Article 226 of the impugned of the Industrial Court, Nasik dated 21st June 1989 made in Revision Application (ULP) No. 6 to 9 of 1989 and Revision Applications (ULP) No. 19 to 21 of 1989, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The petitioners were employed as Muster Assistants to do the clerical work in the Forest Department and their duty consisted of recording attendance of unskilled labourers who were employed in the Panlot Niyajan Scheme which was taken up under the Employment Guarantee Scheme formulated by the State of Maharashtra under the provisions of the Maharashtra employment Guarantee Act, 1977. The Petitioners were working as Muster Assistants continuously from March 1984. It is not in dispute that the Petitioners were not required to do manual unskilled work at any time and they were not paid the unemployment allowance payable under the Maharashtra Employment Guarantee Act. With effect from 31st August 1987, their services were orally terminated without any previous notice or payment of wages in lieu of notice or retrenchment compensation.

3. The Petitioners challenged the termination of their services by Complaints (ULP) No. 147 to 150 of 1987 before the Labour Court at Dhule, under the

provisions of the Act alleging that their abrupt removal from the services without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947, amounted to an unfair labour practice within the meaning of Item 1 of Scheduled IV of the Act. The Labour Court held that the orders terminating the services of the Petitioners were illegal and that thereby the Respondents had engaged in an unfair labour practice within the meaning of Item 1 of Schedule IV of the Act. It also directed reinstatement of the Petitioners, but without back wages. Being aggrieved by the refusal of back wages, the Petitioners filed, Revision Application (ULP) No. 19 to 21 of 1989, while the Respondents challenged the direction in the order of then Labour Court granting reinstatement by their Revision Applications (ULP) No. 6 to 9 of 1989, the Industrial Court, Nasik, allowed Revision Application (ULP) No. 6 to 9 of 1989 preferred by the Respondents and set aside the order of the Labour Court. It also dismissed Revision Application (ULP) No. 19 to 21 of 1989 filed by the Petitioners. Being aggrieved thereby, the petitioners are before this Court by the present writ petition.

4. The order made by the Labour Court Dhule, in Complaint (ULP) No. 148 of 1987 has been placed on the record of this Writ Petition. I am informed by the learned Advocates on both sides that the other orders made in the companion Complaints were identical. The Labour Court overruled the contention of the Respondents and held that the Petitioners were employed in the Forest Department in connection with employment of unskilled labourers under the Employment Guarantee Scheme, which did not amount to an "Industry" within the meaning of Section 2(i) of the Industrial Disputes Act, 1947, by placing reliance on the celebrated judgment of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The Labour Court also held that the mandatory requirement of Section 25F of the Industrial Disputes Act, 1947, were not complied with while terminating the services of the Petitioners. After noticing the Employment Guarantee Scheme under the Employment Guarantee Act, the Labour Court overruled the contention that the Complaint was not tenable. On the material placed on record, the Labour Court had no difficulty in holding that the termination of services of the Petitioners was illegal and, therefore, they were entitled to be reinstated. However, because there was no evidence to show that the work was available with the Respondents subsequent to the termination of the service of the Complainants, the Labour Court rejected their claim for back wages and continuity of services.

5. In the Industrial Court, the contention vigorously canvassed by the Respondents was that the Petitioners were not "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Surprisingly, this contention found favour of the Industrial Court and formed the basis for interfering with the order of the Labour Court. Relying on its own earlier decisions, copies of which have not been made available to me by either side, the Industrial Court held that the work under the Employment Guarantee Scheme would not fall within the meaning of "industry" as defined by Section 2(i) of the Industrial Disputes Act,

1947 and, therefore, the Petitioners were not "workmen" within the meaning of Section 2(s) of the said Act. In this view of the matter, the Industrial Court was of the view that the provisions of the Act were not applicable to them and, therefore, the Complaints were liable to be dismissed. For these reasons, the Industrial Court interfered with the Labour Court's Order, set aside the directions for reinstatement and dismissed the Complaints.

6. It is unfortunate that the attention of the Industrial Court was not drawn to a judgment of a learned single Judge (Saldanha, J.) of this Court in *S. N. Ahirrao v. Dy. Engineer P.W.D. Dhule* 1991 Lab.I.C. 1688. If the attention of the Industrial Court had been drawn to the judgment, the Industrial Court would have noticed that this judgment overruled all contentions which found favour with the learned Judge of the Industrial Court. *S. N. Ahirrao's* case (supra) was also a case arising under the Maharashtra Employment Guarantee Act. The Petitioner therein was employed as a Muster Assistant by the Deputy Engineer, P.W.D., Sub-Division, Dhule, for doing work in connection with the inspection of muster rolls of persons employed under the Employment Guarantee Scheme. After having worked for about 5 years, his services were terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947. The Petitioner filed a Complaint under the identical provisions of the Act and sought relief from the Labour Court at Nasik. The Labour Court held that the termination of his service was contrary to Section 25F of the Industrial Disputes Act, 1947, and directed reinstatement without back wages. A Revision Application filed at the instance of the Respondents in the said Writ Petition. Succeeded before the Industrial Court which also took the view that by virtue of Section 16 of the Maharashtra Employment Guarantee Act, provisions of the said Act would have effect notwithstanding anything inconsistent there with in another law for the time being in force or in any instrument having effect by virtue of such law. The Industrial Court in that case was persuaded to hold that the provisions of the Maharashtra Employment Guarantee Act prevailed over the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, and consequently the Complaint was liable to be dismissed. The judgment in *S. N. Ahirrao's* case (supra) has clearly overruled the contention based on the provisions of the Maharashtra Employment Guarantee Act. As pointed out by the learned Judge (Saldanha, J.,) the provisions of the Maharashtra Employment Guarantee Act would apply only to adult persons residing in rural areas who are willing to do unskilled manual work. As far as clerical employees like, Muster Assistants are concerned, the Learned Judge held that the Employment Guarantee Scheme does not apply to him nor was he covered by the provisions of the Maharashtra employment Guarantee Act. The learned Judge also held that the State, which must act as a model employer, cannot be heard to contend that if it has to conform with the law of the land, then it will close won the scheme and that the State must set an example by conforming to the law which it expects other citizens to abide by. The Industrial Court's order is, therefore, erroneous and liable to be interfered with.

7. I am also not impressed with the reasoning given in the Labour Court's order for not granting the Petitioners full back wages. As far as it is possible to discern from paragraph 4 of the impugned order of the Labour Court, the reason given for refusal of back wages is that there was no evidence to show that the work was available with the Respondents after the termination of the services of the petitioners. The said reason, in my view, is completely irrelevant and immaterial. Back wages are directed to be paid by way of compensation for employment which has been deprived of in contravention of the mandatory provisions of the Statute. In the case of the Petitioners, even if the Respondents were entitled to terminate the service for lack of work, they were required to follow the provisions of Section 25F of the Industrial Disputes Act, 1947, and if they fail to do so, there is no reason why the Petitioners should be deprived of their back wages. If the Respondents are entitled to terminate the service for lack of work, they may do so, after complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

8. The learned Assistant Government Pleader, Mr. Malwankar, has raised the following contentions :-

(i) That Industrial and Labour laws are not applicable to persons employed under the Employment Guarantee Scheme framed under the Maharashtra Employment Guarantee Act, 1977.

(ii) Even if the provisions of the Industrial Disputes Act applied to the case of the Petitioners, the provisions of Section 25F being inconsistent with Section 16 of the Maharashtra Employment Guarantee Act, 1977, the provisions of the later Act would over-ride the provisions of Section 25F of the Industrial Disputes Act, 1947.

9. In my view neither contention is sound and can be accepted. As to the first contention though Mr. Malwankar contended that there was Division Bench Judgment of our High Court which had taken the said view, despite time being granted to him, he was not able to make such a judgment available to me for my consideration. It is surprising that an important issue of law as nature contended, even if it be contained in unreported judgment, was not make available to the learned Assistant Government Pleader at the time of the hearing of the Writ Pleader at the time of the hearing of the Writ Petition. The judgment in S. N. Ahirrao (supra) runs counter to this contention.

10. As far as the second contention is concerned, the contention is no longer res integra in view of the judgment of our Court in S. N. Ahirrao (supra) and, therefore, has to be rejected.

11. Though, Mr. Malwankar attempted to persuade me to adjourn the hearing of the Writ Petition on the ground that the issue involved in this Writ Petition was subjudice before the Division (Writ Petition No. 4494 of 1993). I was not impressed by the said request after scrutiny of the concerned writ petition. I have perused the case papers of Writ Petition No. 4494 of 1993. That is a writ

petition filed under Article 226 of the Constitution of India by the Petitioners directly before this Court seeking relief of issuance of a Writ of Mandamus on a writ order or direction in the nature of mandamus to the State Government to cancel the order of termination given to the Petitioners therein and also for a direction to the Respondents therein to frame a Scheme to regularise the services of then petitioners and persons similarly situate. That is not the issue which arises in the writ petition being heard by me presently.

12. Mr. Malwankar also drew my attention to a judgment of the division bench at Aurangabad in Writ Petition No. 1284 of 1989 (Per Kamat & Chapalgaonkar, JJ). That was also a case where an employee had directly moved the High Court for a direction to the State authorities to make him permanent under the Employment Guarantee Scheme and, while dismissing the Petition, the Division bench indicated that the nature of the Employment Guarantee Scheme being essentially temporary, it would be impossible to give such direction to the State.

13. My attention is also drawn to the Writ Petition No. 88 of 1994 filed in this Court. It was also a case of an order of the Industrial Court in Revision being challenged by the Petitioner. Unfortunately, in that case, the learned Judge appears to have been persuaded by the State to adjourn the Writ Petition at admission stage, after ad-interim relief, till the disposal of Writ Petition No. 4494 of 1993 before the Division Bench. This appears to have been done on the ground that the State Government like to take policy decision in the matter of regularisation of employment under the Maharashtra Employment Guarantee Scheme, 1978. As I have said earlier, Writ Petition No. 4494 of 1993. In my judgment, does not raise the issues which have arisen in the present writ petition and it is unnecessary to postpone the hearing and disposal of the present writ petition till the disposal of the Writ Petition No. 4494. of 1993. I am not persuaded by the statement as to policy decision regarding regularisation of employees under the Employment Guarantee Scheme. For the simple reason that the Writ Petitioners before me, as held in the case of S. N. Ahirrao (supra) are not employees under the Employment Guarantee Scheme. For these reasons, I refused to adjourn the Writ Petition and I have heard disposed of the present Writ Petition on its merits.

14. For the reasons above, the Writ Petition succeeds. The order of the Industrial Court, Nasik made in Revision Applications (ULP) No. 6 to 9 of 1989 is hereby quashed and set aside and the order of the Labour Court, Dhule, granting reinstatement made in Complaints (ULP) No. 147 of 1987, 148 of 1989 and 149 of 1987 and 150 of 1987 is hereby confirmed. The order of the Industrial Court, Nasik, made in Revision Applications (ULP) No. 6 to 9 of 1989 are hereby quashed and set aside. In addition to the relief granted by the Labour Court, Dhule, the Petitioners shall also be entitled to continuity of services from the respective dates of their removal and full back wages from the respective dates of their removal until reinstatement.

15. Rule accordingly made absolute with no order as to costs.

16. Issuance of certified copy of this judgment expedited.