

**(2002) 09 BOM CK 0085**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 195 of 2000**

Ramchandra Narayan Rao

APPELLANT

Vs

Sub-Divisional Officer, M.M. Project and Others

RESPONDENT

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**Date of Decision :** 06-09-2002

**Acts Referred:**

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

**Citation :** (2003) 1 BomCR 656 : (2003) 2 BOMLR 163 : (2003) 1 MhLj 36

**Hon'ble Judges :** R.J. Kochar, J

**Bench :** Single Bench

**Advocate :** S.A. Sawant, for the Appellant; C.R. Sonawane, A.G.P. for respondent Nos. 1 and 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.J. Kochar, J.—The petitioner, the most unfortunate creature, who is a called citizen under our Constitution and an integral and inseparable constituent of the "We the People" is being tossed ruthlessly from one Court to another Court. Not by a private employer but by the authorities of our welfare State. In the year 1990 the State has taken away from him his land approximately admeasuring eight acres, the only source of his livelihood. He is now put in the category of Project Affected Persons, vide letter dated 10-4-2000 addressed by the District Rehabilitation Officer. No doubt he might have been given compensation in accordance with law but in my opinion compensation is no substitute for the land. The compensation gets evaporated soon while the land continues as motherland - source of livelihood for generations. To help such persons our welfare State has provided for giving jobs to all such persons whose land was or is taken by the State for different projects and for different public purposes. Even job which many times is temporary is no substitute for the land as the employee retires at some point of time while the land gets inherited down to the generations as a source of livelihood of the poor farmers. None the less the present petitioner became a project affected person as certified by the officer of

the State itself. Even as a project affected person the respondents have not provided him any job. Shri Sonawane, the learned AGP submits that at present there is no project work going on and therefore, the petitioner cannot be absorbed in anywhere. He further submits that if he makes a proper application to the proper authority his name would be maintained in the waiting list of the persons to provide job to such project affected persons. The petitioner has already done so but in vain.

2. However, in the present petition I am concerned with the impugned order passed by the Industrial Court on 22-10-1999 in Revision Application No. 177 of 1997 u/s 44 of the MRTU and PULP Act, 1971. By the impugned order the learned Member of the Industrial Court has reversed the order of the Labour Court dated 8-7-1997 whereby the learned Labour Judge had allowed the complaint filed by the petitioner employee and he was granted reinstatement with full backwages and continuity of service. This is the later portion of the events with which we are immediately concerned. However, earlier the petitioner had filed a compliant of Unfair Labour Practices complaining against the respondents that his services were terminated on and from 3-2-1987 illegally, improperly and in violation of the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. By its order dated 18-3-1996 the Labour Court had dismissed the complaint. The petitioner was aggrieved by the said order of the Labour Court, and therefore he preferred a Revision Application u/s 44 of the Act before the Industrial Court. By its order dated 3-6-1997 the learned member of the Industrial Court reversed the said order of the Labour Court and remanded matter back to the Labour Court for fresh hearing and fresh decision in accordance with law. After remand the Labour Court allowed the complaint by its order dated 8-7-1997. This time the Industrial Court dismissed the complaint by reversing the order of the Labour Court. The petitioner is aggrieved by the last order of the Industrial Court dated 22-10-1999.

3. I have gone through the entire proceedings very carefully. I have also heard both the learned counsel on both the sides at length. The nub of the petitioner's complaint before the Labour Court was that his services were terminated with effect from 3-7-1987 in violation of Section 25F of the I. D. Act, 1947. According to him no retrenchment compensation was offered and, no wages in lieu of notice were offered. The respondents had contested the complaint and had contended that the petitioner was employed on daily wage from 22-9-1980 (Exh. I) and was given work as and when work was available and that he had no right to be continued in employment. It was also contended that there was no question of complying with the Section 25F of the Industrial Disputes Act.

4. The Labour Court had computed the period of 240 days continuous employment as contemplated by Section 25F of the Act. According to the labour Court from the computation of the number of days of continuous employment of the petitioner during the preceding one year he had completed more than 240 days. Actual working during the relevant preceding period from 21-6-1986 to

20-7-1987 was taken as is reflected in the statement which is produced before the Labour Court as Ex. 1. This statement was produced by the respondents, and therefore, this statement has to be accepted as an authentic document to compute the number of days for which the petitioner was employed for the last preceding one year from the date of termination i.e. 3-7-1987 as contemplated under the provisions of the Industrial Disputes Act. The Labour Court has computed the actual working days as 220 days and added Sundays during the said period which according to the Labour Court would be definitely more than 52 days and I do not find any mistake in that presumption of the Labour Court. The Labour Court has added the Sundays and public holidays to the actual working of 220 days and has finally concluded that the petitioner had put in more than 240 days continuous employment during the preceding one year from the date of the termination whereby he became entitled to get the benefit of Section 25F of the I.D. Act. The Labour Court has followed the well known judgment of the Supreme Court in the case of the Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, . The Supreme Court was dealing with the same point of interpretation of "continuous employment". The Supreme Court has repelled the contention of the employer to exclude while counting 240 days the Sundays and holidays. The supreme Court observed that the expression "actually worked" will have to be interpreted to mean that the concerned workman was in service and that he worked during that period including the Sundays and holidays which were also to be counted. The Supreme Court has observed that actually work does not mean that he should have reported for work with sickle, hammer and pen. The expression necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. Following the aforesaid law laid down by the Supreme Court the Labour Court has rightly concluded that the petitioner had completed continuous employment of more than 240 days in the preceding 12 months from 3-7-1987. The computation of the number of days which is given by the respondents has to be accepted as correct. From that computation the Labour Court has come to a conclusion of fact that during the aforesaid period he had worked for more than 240 days and therefore, he was in continuous employment to get the benefit of Section 25F of the I.D. Act. In my opinion the Labour Court has rightly concluded the fact that the petitioner had completed 240 days of continuous employment following the judgment of the Supreme Court. The Labour Court was also within its jurisdiction to hold that the respondent had violated Section 25F of the I. D. Act. The Labour Court was therefore right in directing the reinstatement with full backwages and continuity of service which is the normal rule to be followed after holding the order of dismissal, discharge or retrenchment to be illegal and improper and in violation of the mandatory provisions of the law. In the present case the respondents have not placed any cogent material before the Labour Court to enable it to depart from the said normal rule. The Labour Court was well within its jurisdiction to record such findings of facts from the material on record

and there was no error of law much less any error of fact committed by the Labour Court. The Industrial Court has also nowhere recorded how the Labour Court's findings were perverse. The jurisdiction of the Industrial Court u/s 44 of the MRTU and PULP Act by this time is very well established that it is very narrow and restricted jurisdiction where under the Industrial Court is empowered to interfere with the order of the Labour Court only when there is an error of law apparent on the face of record and if the order of the Labour Court is perverse or is of such a nature that no reasonable man would come to such a conclusion. Our Division Bench has reiterated the law in the case of *Vithal Gatlu Marathe v. Maharashtra State Road Transport Corporation and Ors.* reported in 1995 1 CLR 845. It is surprising that in the entire body of the judgment of the Industrial Court there is not even a whisper of any reason why the Industrial Court interfered with the order of the Labour Court. The Industrial Court has merely recorded its ipse-dixit that the Labour Court order was not proper. The Industrial Court has not given a ghost ground to exercise its narrow jurisdiction of superintendence u/s 44 of the Act. The Industrial Court has merely observed without any basis in paragraph 16 of its judgment that the said findings of the Labour Court seemed to be perverse on the basis of evidence on record. The learned member of the Industrial Court has not taken slightest pains to point out how the order of the Labour Court was perverse. The Labour Court had very well computed the number of days put in by the petitioner during the relevant period from the record of the authorities. The Industrial Court has merely stated that "it is pertinent to note that the Labour Court has not calculated 240 days properly" without saying what way the Labour Court was improper or incorrect. The Industrial Court had no jurisdiction or power to enter into the said prohibited area of fact findings while exercising its restricted jurisdiction u/s 44 of the Act. I have myself gone through the order of the Labour Court and I do not find any error of law or any error of fact to warrant any interference not only u/s 44 of the Act or even under Article 227 of the Constitution of India. The impugned judgment and order of the Industrial Court does not stand scrutiny even for a minute and the same requires to be quashed and set aside being totally perverse and without jurisdiction. The respondents have not only violated the mandatory provisions of the law but have also deprived the petitioner of his very legitimate claim to get a job as a project affected person. Grave injustice was done to him by illegally terminating him from employment and also by not employing him as project affected person. The total source of his livelihood was taken away from him and his family in the rural area and they were left to starve and die as there are scarce means of earning a wage. Considering all the above reasons I have granted him the whole relief of reinstatement with full backwages.

5. The petition succeeds and the rule is made absolute in terms of prayer Clauses (b) (c) and (d). The respondents are hereby directed to reinstate the petitioner with continuity of service and full backwages with effect from 3-7- 1987. He will not get back wages for the period during which he was employed under the orders of the Labour Court when he had worked from 8-7-1987 to 30-11-1999.

The respondents shall employ the petitioner in any project which is available or wherever work is available in accordance with law within one month from today.