
(2010) 06 BOM CK 0130

In the Bombay High Court

Case No : Writ Petition No. 3342 of 1994

Shri Rajendra Ramchandra Tasgave and Others

APPELLANT

Vs

Administrative Officer and Others

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 50

Citation : (2010) 4 LLJ 637

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Uday Warunjikar and R.M. More, for the Appellant; G.H. Keluskar and N.V. Walawalkar for Respondent No. 3, S.R. Page, for Respondent Nos. 1 and 2 and A.I. Patel, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—The petitioners by way of this petition, have prayed vide prayer Clause (a) directions against respondents that they should be directed to pay earned wages to the petitioners. Vide prayer Clause (b), they have prayed that they be paid monthly wages and vide prayer Clause (c), they have prayed that the respondents be directed to pay petitioners their arrears along with interest at the rate of 6% p.a.

2. The facts which are necessary to be cited, are stated thus:

The petitioners were appointed as Peons by the respondent No. 1 from January 1990. It appears that there was a dispute as regards the creation of the posts by the respondent No. 1 and issuance of appointment orders to the petitioners, which resulted in the services of the petitioners being terminated. This resulted in the petitioners filing Complaints (ULP) Nos. 331 of 1990, 339 of 1990 and 361 of 1990. In the said complaints, petitioners had prayed for interim relief, by virtue of an interim order passed in the said complaints, the petitioners were allowed to resume duties and continued to work on their said posts. However, it

is the case of the petitioners that they were not paid wages since June 1990 and thereafter. The respondent Nos. 3 and 4 challenged the interim order passed by the Labour Court in the said complaints by filing Revision Application (ULP) Nos. 146, 150, 151 of 1990 in the Industrial Court. The Industrial Court dismissed the said Revision Applications and confirmed the interim order of the Labour Court. The said order of the Industrial Court was challenged by the respondent Nos. 3 and 4 by filing Writ Petition Nos. 4031 of 1991, 4032 of 1991 and 4033 of 1991. The said writ petitions were dismissed by a learned Single Judge of this Court. However, respondent Nos. 3 and 4 were directed to pay 20% of the amount of wages and emoluments and 80% of the wages were to be paid by respondent Nos. 1 and 5. Accordingly, petitioners were paid their earned wages.

3. In so far as balance of the amount is concerned, the petitioners had filed proceedings u/s 50 of the M.R.T.U. Act, for issuance of the recovery certificate. It is at that stage, petitioners were paid arrears of the wages. However, respondents did not pay them their monthly earned wages thereafter. The Labour Court therefore, directed the respondents by its order dated 05-09-1992 to deposit arrears of the monthly wages from January 1992 till the date of the order within one month. It appears that the respondents did not comply with the said order. This resulted in the petitioners filing criminal complaint (ULP) Nos. 332 of 1992 for non compliance of the order. It appears that respondent Nos. 1 and 2 challenged the order of the Labour Court in Revision Application Nos. 174, 175 and 176 of 1992. The Industrial Court extended the period to deposit the monthly wages. This resulted in the respondent Nos. 1 and 2 filing writ petition Nos. 471, 471 and 472 of 1993. In the said writ petitions, an order came to be passed by the learned Single Judge of this Court, whereby the Labour Court was directed to dispose of the complaints within the specified period. In pursuance of the said directions, complaints (ULP) Nos. 331, 339 and 336 of 1990 were finally heard and disposed of on 30-06-1993, by which order, the said complaints were allowed and the respondents were directed to continue all the complainants, amongst whom were the petitioners, in service with continuity of service and to pay arrears of back wages within one month from the date of the said judgment and order i.e. 30-06-1993.

4. Against the said order dated 30-06-1993, respondents preferred Revision Application being Nos. 129, 130 and 131 of 1993. The said Revision Applications also came to be dismissed by the Industrial Court, Kolhapur, by its judgment and order dated 21-02-1994, thereby confirming the judgment and order of the Labour Court dated 30-06-1993. This resulted in the respondents i.e. 1 and 5 filing Writ Petition No. 3799 of 1994, Writ Petition No. 2165 of 1995 and writ Petition No. 2170 of 1995. The said writ petitions were admitted by this Court. However, by way of interim orders, services of the petitioners were continued and were directed to be paid salary in accordance with certain directions contained in the interim order. The said petitions thereafter, came up for final hearing before a learned Single Judge of this Court and by judgment and order dated 19-03-2004, rule in the said writ petitions were made absolute and certain

directions came to be issued. While making the rule absolute, the learned Single Judge has observed that the Municipal School Board had no authority to create the posts of peons and it was the only Municipal Council/Corporation, which could do so. The learned Single Judge further observed that on a plain reading of the statutory provisions which were applicable, even temporary appointments, which could be made by the Board, was to be made with the sanction of the Municipal authorities and that too for a period not exceeding three years, except with the sanction of the Government. The learned Single Judge did not deem it fit to go into the question of legality or otherwise of the appointments, as according to the learned Single Judge, the same could not be an issue in proceedings under M.R.T.U. and P.U.L.P. Act. The learned Single Judge was of the view that there was no justification for directing reinstatement with back wages and continuity of services, as original appointments of the complainants/petitioners were only for a period of 11 months. The learned Single Judge therefore, was of the view that since there was no continuation order, there could not have been any directions for taking back the petitioners in service. The learned Single Judge, under the facts and circumstances of the said case, therefore, issued directions which are reproduced herein below: -

i) The orders dated 13-06-1993 passed by the Labour Court, Sangli and the order dated 21-02-1994 is modified as above and the operative portions of the orders till stand substituted as under.

ii) All three complaints are hereby partly allowed.

iii) It is declared that the petitioners have engaged in unfair labour practice.

iv) The petitioners may discontinue the services of the peons after paying them compensation of Rs. 10,000/- each which amount of compensation will be paid by Sangli Miraj Kupwad Municipal Corporation i.e. Newly added respondent No. 7.

v) It is directed that the petitioners and respondent No. 7 will not appoint any peons in the Corporation or in the Municipal Schools without first giving an opportunity to the 44 peons who are respondents in these writ petitions and their cases will be considered by giving them relaxation of age.

vi) Rule is made absolute in above terms.

5. As can be seen from the above mentioned directions, the Judgment and order dated 30-06-1993 passed by the Labour Court, Sangli, was modified and substituted by the directions contained in Clause (i) to (iv) of the order of the learned Single Judge. Against the said judgment and order of the learned Single Judge dated 19-03-2004, the petitioners had filed Letters Patent Appeal in this Court being No. 96 of 2004. The said LPA and companion LPAs, came to be dismissed by a Division Bench of this Court on 20-04-2004, thereby the judgment and order of the learned Single Judge came to be confirmed.

6. We have heard the learned Counsel for the parties. In the course of the hearing, learned Counsel appearing for the petitioners fairly conceded that the

petitioners have been paid earned wages as well as arrears in respect of which above petition has been filed and therefore, the petitioners have no grievance as regards that aspect of the matter. It was also revealed during the course of the hearing that the services of the petitioners have been terminated. The only grievance which Mr. Warunjikar sought to agitate before us is that the petitioners, though directed to be paid the amounts in 1990, were not paid the said amounts as directed by the Labour Court and it was only after some time that the said amounts were paid and therefore, the petitioners were entitled to be paid interest on the said amounts and the respondents be accordingly directed to pay interest.

7. In so far as the claim for interest is concerned, as observed by the learned Single Judge in his Judgment and order dated 19-03-2004, the appointments of the petitioners were not found in consonance with the procedure prescribed for making such appointments under the relevant statutory provisions. The learned Single Judge has observed that since the petitioners were appointed on a temporary post for 11 months, no directions could be issued to continue the petitioners beyond the said period. The learned Single Judge in the said judgment, has directed payment of compensation of Rs. 10,000/- on discontinuance of the services of the persons like the petitioners who are appointed as peons, which amount was directed to be paid by the Sangli, Miraj and Kupwad Municipal Corporation.

8. As can be seen from the facts as disclosed above, the matters were carried to the higher Courts by the respondents against the orders passed by the Labour Court. If the petitioners were aggrieved by the fact that the amounts were paid to them belatedly, they should have agitated the said issue before either the Revisional Court or in this Court in the Writ Petitions filed impugning the orders passed by the Labour Courts and Industrial Court. Having not done so, in our view, it is now not open for the petitioners to claim interest on the ground that the said amounts were belatedly paid to the petitioners by the respondents. This is in addition to the fact that the manner in which the petitioners were appointed, was prima facie found not to be in consonance with the statutory provisions. In our view, therefore, in the light of the aforesaid facts, as also in the light of the judgment of the learned Single Judge dated 19-03-2004, the claim of the petitioners seeking interest on the delayed payment, cannot be granted. The Judgment and order of the learned Single Judge, which has been upheld by the Division Bench in the LPA, covers the cases of the petitioners and the petitioners would therefore, be entitled to be dealt with in accordance with the directions contained in the said order. For the aforesaid reasons, we do not find any merit in the above petition, which is accordingly dismissed. Rule discharged.