

(2011) 07 BOM CK 0210
In the Bombay High Court
Case No : Writ Petition No. 222 of 2011

State of Maharashtra and others

APPELLANT

Vs

Kishor Jambhulkar

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Citation : (2012) 1 ALLMR 199 : (2012) 2 MhLj 414

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : A.D. Sonak, Addl. Govt. Pleader, for the Appellant; F.G. Isaac, for the Respondent

Judgement

R.M. Savant, J.—Rule, made returnable forthwith and heard, with the consent of the parties. The above petitions involve identical facts and common issues and are, therefore, heard and disposed of together.

2. The above petition and the accompanying Writ Petitions take exception to the Judgment and Orders passed by the Industrial Court in the complaint filed by each of the respondents in the above petitions, who are working with the petitioners. Though separate judgment is delivered in each of the complaints filed by the respondent, all the judgment and orders are dated 16th July, 2010.

3. Shorn of unnecessary details, a few facts can be stated thus - The respondent in each of the above petitions is the workman working with the petitioners. It is the case of the respondents that they have been working with the petitioners since the year 1999 on daily wages. It is further their case that they have been paid daily wages less than their entitlement.

4. The respondent in Writ Petition No. 222 of 2011 was working as a Filter Operator and he has been working continuously as such till 16-12-1996. It is his case that though he has been working for whole of the month, he has been shown working only for 20 days. The payment was also made to him on such basis and it was seen to it that the monthly wages do not exceed Rs.1760/-. It

was the case of the respondent that the petitioners were showing artificial break in every month with an ulterior motive so as not to give continuity. It was further the case of the respondent that the work done by him was of a permanent nature and the practice of giving a break and also continuing him on daily wages was adopted so as not to go give him the benefits of permanency and regularization. The respondent along with the respondents in companion petitions, filed complaints invoking Item No. 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971.

5. The said complaints were resisted by the petitioners and preliminary objections of the petitioners, who are respondents in the said complaints, were that the respondent No.4 - Polytechnic in question run by the respondent No. 1 was not an Industry and the complainants i.e. the respondents in the above petitions were not workmen. It was denied that the respondents were appointed as a Water Filter Operator. It was further denied that the respondents were appointed on daily wages. According to the petitioners, the respondents were appointed as and when work was available. It was further denied that the respondents have worked for 240 days in a calendar year. It was lastly denied that work was of a permanent nature and yet the respondents were kept on daily wages with a view to deny them the benefits.

6. The Industrial Court on the basis of the pleadings of the parties, inter alia, framed the following issues and has answered them as follows

ISSUES

FINDINGS.

1.

Whether the establishment/department where the complainants work is an Industry?

... Yes.

2.

Do the complainants prove that they are working continuously as claimed?

.... Yes.

3.

Do the complainants prove that the respondents have engaged in the unfair labour practice under Item 6 and 9 as alleged?

...Yes.

4.

Whether the complainants are entitled to the reliefs as prayed for?

.... As per final order.

7. It is pertinent to note that though the issue as regards: whether the establishment/department wherein the respondents were working is an Industry, was framed and answered in the affirmative. Significantly, no findings have been recorded in support of the said answer. The impugned judgment and order discloses that the findings have been recorded only in respect of Issue Nos. 2, 3 and 4. However, insofar as Issue No. 1 is concerned, though the issue is answered in the affirmative, one does not find any findings in support of the said answer. Since the said issue goes to the root of the matter and since there have been no findings recorded in respect of the said issue, though the said issue is answered in the affirmative, in my view, the impugned Judgment and Order dated 16-7-2010 is required to be set aside and the matter is required to be relegated back to the Industrial Court for a de novo consideration. The learned counsel appearing for the Respondents in the above petitions does not dispute the aforesaid position.

8. In the above petitions the petitioners have also sought to rely upon certain material which was not before the Industrial Court, which documents are inter alia the following

- i) A Chart showing the sanctioned post in the Polytechnic,
- ii) The Notification showing the sanctioned Post filled in by the petitioners.

The respondents/workmen have also filed their affidavit-in-reply. They also seek to rely upon material which was not produced before the Industrial Court when it decided the said complaint. The said material is inter alia, the chart showing the vacancy position at the relevant time.

Both the learned counsel i.e. the learned Additional Government Pleader appearing for the petitioners and Shri F. G. Issac. the learned counsel appearing for the respondent-workman in each of the above petitions are ad idem that the parties to be given an opportunity to lead further evidence in court in support of the respective case. Hence, the following directions.

(i) The impugned Judgment and Order dated 16-7-2010 passed by the Industrial Court, which is the subject-matter in each of the above petitions, is quashed and set aside and the matter is relegated back to the Industrial Court for a de novo consideration.

(ii) The complainant i.e. the respondent in each of the above petitions would be permitted to amend the complaint, if he so deems fit so as to incorporate any additional contentions, which he seeks to place on record. If such amendment application is moved and allowed, the petitioners herein would be entitled to file their additional written statement dealing with the said case of the complainants.

(iii) The parties would be allowed to lead further evidence in view of the contentious issue involved in the above complaints as regards the claim of

permanency and regularization claimed by the respondents in the above petitions.

(iv) Needless to say that the documents, if any. which they seek to file. be proved in accordance with law.

(v) On remand, the Industrial Court to hear and decide the respective complaints within six months of the first appearance of the parties before it.

(vi) Parties to appear before the Industrial Court on 17-8-2011.

(vii) In the interregnum and till the decision of the complaints, no precipitative action by way of removal should be taken against the respondents unless for disciplinary reasons.

Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.