

(2021) 10 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No.2294 Of 2021

State Of Maharashtra

APPELLANT

Vs

Prakash Rajaram Holkar

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227
Maharashtra Recognition Of Trade Unions & Prevention Of Unfair Labour Practices Act,
1971 — Section 28(1), 30

Citation : (2021) 10 BOM CK 0108

Hon'ble Judges : N.J. Jamadar, J

Bench : Single Bench

Advocate : S.H. Kankal, Manoj Patil

Final Decision : Dismissed

Judgement

N.J.Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the judgment and order dated 2nd July, 2018 passed by the learned Member, Industrial Court, Kolhapur in Complaint (ULP) No.135 of 2014 whereby the appellant was directed to cease and desist from engaging in unfair labour practice and to grant status and privileges of permanent employee to the respondent-complainant in class IV post with all consequential benefits, with effect from 8th October, 2014 within a period of two months thereof.

3. Shorn of superfluities, the background facts leading to this petition can be stated as under:

a] The respondent/complainant approached the learned Member, Industrial Court, with a complaint, under section 28 (1) read with Items Nos. 5, 6, 9 and

10 of Sch-IV of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the Act,1971), contending, inter alia that the complainant has been working with the respondent/employer since 5th July, 1997 as a 'Sweeper'. While making initial appointment, the name of the complainant was called from the office of Employment Exchange and, post interview, the complainant was appointed initially for a period of 29 days. Subsequently, the services of the complainant were continued by issuing orders from time to time on varying posts of sweeper, peon, word boy. Complainant has been working on a clear vacant post. The work performed by the complainant was of perennial nature. In fact, the complainant has worked for more than 240 days, in each of the calendar years, with artificial breaks, which were given with a view to deprive the complainant from the status and privileges of permanent employee.

b] The employer resisted the claim of the complainant. Thrust of the resistance was that the services of the complainant were availed for specific period during leave vacancy of regular employees, temporarily, and subject to conditions stipulated in the appointment orders. Those appointments were, thus, purely temporary and contractual. It was denied that the complainant had rendered 240 days of uninterrupted service in each of the calendar years, since the date of initial appointment. The complainant is thus not entitled to the benefit of permanency.

c] The learned Member, Industrial Court, Kolhapur after evaluating the material on record, especially the evidence of employer's witnesses, was persuaded to hold that the complainant was initially appointed on a class IV post in the year 1997 in accordance with the then prevailing rules. The employers' witness admitted, during the course of cross examination, that since the year 1997, the complainant has been in employment on a clear vacant post and the complainant had completed 240 days of service in each calendar year. Thus, the continuation of the complainant as a temporary employee for years together, despite availability of the post and work, was held to be an unfair labour practice under item 6 of the schedule IV of the Act,1971.

d] Holding thus, the complaint came to be partly allowed with direction to the respondent to grant status and privileges of a permanent employee to the complainant in class IV post with effect from 8th October, 2014 with all consequential benefits.

e] Being aggrieved, the employer/State has invoked the writ jurisdiction of this Court.

4. I have heard Mr. S.H. Kankal, AGP, for the Petitioner-State and Mr. Manoj Patil, the learned counsel for Respondent /complainant. With the assistance of the learned counsels for the parties, I have perused the material on record.

5. Mr. Kankal, learned AGP made an endeavour to impress upon the Court that since the initial appointment of the complainant was against the leave vacancy,

the learned Member, Industrial Court, committed a grave error in granting the benefit of permanency. Reliance was placed on a number of appointment orders whereby the tenure of service of the of the complainant was expressly limited by prescribing the duration thereof. In the face of such appointment orders, the learned Member could not have held that the employer indulged in unfair labour practices and granted the relief to the complainant, urged Mr. Kankal.

6. As a second limb of the submission, Mr, Kankal, learned AGP would urge that the principle of public employment is applicable in the case at hand, as the Government hospital is not an industry, and, therefore, the complainant could not lay claim over a post for which the appointment has not been made in accordance with the recruitment rules.

7. Mr. Manoj Patil, learned counsel for the respondent /complainant, joined the issue by canvassing a submission that the claim of the employer that the complainant was appointed against a leave vacancy is belied by the series of appointment orders from the year 1997 to year 2014. Moreover, the employer's witness has conceded in clear and unequivocal terms that the complainant has been continued in the employment since the year 1997 and discharged the duties of perennial nature and that there was a clear and vacant post against which the complainant could have been appointed. Mr. Patil, would further urge that the reliance sought to be placed by the employer on the judgment in the case of Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. (2006) 4 SCC 1. is not well founded as the said judgment does not denude the authorities under MRTU and PULP Act, 1979 of their statutory powers under sec.30 and 32 of the Act, 1971 to grant permanency to the workers who have been victims of unfair labour practices on the part of the employers under item 6 of the schedule IV.

8. Indisputably, the complainant was initially appointed to class IV post at Civil Hospital, Oras, Tal. Kudal, Dist. Sindhudurg for a period of 29 days. It was specifically mentioned in the appointment order that the appointment was against a leave vacancy. However, the subsequent orders, the copies of which are placed on record, indicate that, time and again, the appointment orders were issued and the complainant continued to work in class IV post of varying description. The nature of the appointment orders also underwent significant change. The later orders (dated 30th November, 2006, 7th November, 2007, 20th June, 2008, 1st October, 2012, 10th May, 2013 and 26th August, 2014, by way of illustration) indicate that the appointments were made on temporary basis for a specific period (a month or two) without any reference to leave vacancy.

9. It would be contextually relevant to note that in the written statement itself the employer admitted that, while making initial appointment, the name of the complainant was called from the Employment Exchange, and appointment was given after holding interview. The employer's witness conceded in the cross examination that the complainant's name found mention in the list maintained by the Employment Exchange since 1994. His name was forwarded by the

Employment Exchange. The complainant was appointed after considering his eligibility and performance in the interview, as per the rules. The said witness went on to admit that the complainant has been in employment with the respondent's hospital since 1997 on a clear and vacant post. Nature of work performed by the complainant was of permanent and perennial nature.

10. In the light of the aforesaid facts, the learned Member, Industrial Court, Kolhapur was within her rights in arriving at the conclusion that the employer engaged in unfair labour practice under Item-6 of Schedule IV of the Act, 1971 in continuing to employ the complainant as a temporary employee, and to continue him as such almost two decades with the object of depriving him of the status and privileges of a permanent employee. In the backdrop of the nature of the work performed by the complainant, it can hardly be disputed that the work was of permanent and perennial nature.

11. Mr. Kankal, learned AGP attempted to salvage the position by canvassing a submission that the complainant's services were not availed at one place and he was employed at different hospitals /health centers, within the district. In my considered view, if that was the case, the practice indulged in by the respondent was even more unfair. It implies that the complainant was made to serve at a different establishments and discharge the duties of multiple posts by giving temporary appointment orders for years together.

12. The submission on behalf of the petitioner /State that the complainant was not appointed in conformity with the recruitment rules and therefore he is not entitled to the benefit of the permanency, does not merit countenance. On facts, it could not be established that the initial appointment was made in violation of governing rules. On the contrary, the employer's witness has admitted that names were called from Employment Exchange and appointment was made post interview. In any event, no charge of back door entry can be attributed to the complainant.

13. In law, the learned Member, Industrial Court was justified in repelling the said contention based on the pronouncement of the Supreme Court in the case of Umadevi (supra) by placing reliance on the judgment of the Supreme Court in the case of Maharashtra State Road Transport Corporation and Anr. Vs. Casteribe Rajya Parivahan Karmachari Sanghatana (2009) 8 SCC 556. wherein in paragraph Nos. 30 to 36 the following observations were made:

30. The question that arises for consideration is: have the provisions of MRTU & PULP Act denuded of the statutory status by the Constitution Bench decision in Umadevi¹. In our judgment, it is not.

31. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that

an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act.

32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years , with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. The provisions of MRTU & PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case of Umadevi¹. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi¹. Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

34. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Assn. arising out of industrial adjudication has been considered in Umadevi and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi¹ leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.

35. Umadevi¹ is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.

36. Umadevi¹ does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to

order permanency of the workers who have been victims of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.

(emphasis supplied)

14. In view of the aforesaid exposition of law, no fault can be found with the impugned order passed by the learned Member, Industrial Court. Hence, in exercise of the extraordinary writ jurisdiction, I am not persuaded to interfere with the impugned order. The petition thus deserves to be dismissed.

Hence, the following order.

ORDER

a] The petition stands dismissed.

b] Rule discharged.