

(2009) 08 BOM CK 0191

In the Bombay High Court

Case No : Writ Petition No. 2508 of 2002

The Chief Executive Officer, Zilla Parishad and The Block
Development Officer

APPELLANT

Vs

Smt. Radhabai Kadekar and The State of Maharashtra

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25B
Industrial Employment (Standing Orders) Act, 1946 — Section 4C

Citation : (2009) 123 FLR 913

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : H.K. Mundhe, for the Appellant; V.R. Mundada, 1 and N.D. Kendre, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.

1 This petition takes exception to the judgment and order dated 22.6.2000 passed by the learned Member, Industrial Court, Aurangabad in Complaint (ULP) No. 202 of 1992.

2. The background facts of the case, are as under:

The respondent herein who is appellant before the Industrial Court filed a complaint before the Industrial Court, Aurangabad contending therein that the petitioner employer are not making her permanent on her post and they are giving minimum wages as per legal rates. It was the case of the respondent that the petitioner herein had engaged the complainant on daily wages for years together and inspite of having vacancy for the class IV employee available, the complainant was not appointed as full time permanent employee or no benefits available to the permanent employee are given to the complainant though the

work of permanent nature has been extracted from the respondent complainant. It is further case of the respondent that she is residing of Ambejogai town, She is helpless lady. Respondent No. 2, who is appointing authority. Petitioner No. 1 is superior authority under whom the petitioner No. 2 is discharging the duties. Respondent/complainant from N.T. category.

The complainant was appointed on daily wages as a sweeper on 20.4.1979 in the office of the petitioners. For that she was paid consolidated pay of Rs. 27/- per month. At the time of filing of complaint, also she was getting only Rs. 27/- p.m.. Her services are without any break. There is no complaint about her work. The certificate is issued to that effect. However, the request of the complainant to make her permanent is turned down by the petitioner employer.

It is further case of the respondent that there are some vacancies of Class-IV posts with the petitioner institution. The complainant/respondent had pointed the vacancies in the schools of the petitioner and was requested to give her appointment on permanent post, however, the petitioner had not appointed her and other junior persons were appointed as Class-IV employees. She made representation on 12.9.1990 and on 6.12.1990 to the petitioners and requested to make her permanent. However, no reply was given by the petitioners. Ultimately, by letter dated 17.12.1990, she was informed by the petitioners that her request cannot be accepted as she is appointed on daily wages. In turn, the respondent send representation to the petitioners stating that since last 12 years, she is working as sweeper and she is getting consolidated salary of Rs. 27/- p.m. only. She is ready to work anywhere in Beed District. The juniors are made permanent however, she has been deprived from the permanency. Therefore, the petitioners herein have committed breach of Item V and VI of Schedule 4 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as the "MRTU and PULP Act" for short). It is further contended that the work of the complaint is of permanent in nature and the work is available with the petitioner. In spite of all these, deliberately the petitioners have not made her permanent. No equal treatment is given to the employees. There is also violation of the Item IX and the petitioners herein have engaged in unfair labour practice under the provisions of the MRTU and PULP Act. Therefore, the petitioner employer have violated the provisions of Item IX and X of the MRTU and PULP Act. Hence, the complaint was field before the Industrial Court, Beed praying for permanency and for all benefits available to the permanent employees from the date of completion of 240 days service.

3. The petitioners herein had filed written statement at Exh. C-3 and denied the contentions raised in the complaint. it is stated in the written statement that the complainant is part time worker working in Panchayat Samiti, Ambejogai. The petitioners have not committed any unfair labour practice as alleged by the complainant. It is admitted that the complainant is working on fixed pay. It is further admitted that the original respondent No. 1 who is petitioner No. 1 herein

is appointing authority for regular posts as per the recruitment Rules made under the Maharashtra Zilla Parishad and Panchayat Samiti Act 1961. the complainant is not appointed by the respondent on regular pay scale. It is further stated that the recruitment of Class IV is to be made as per the Rules and on the basis of the application of respondent No. 1, the petitioner No. 1 herein has never given appointment to the complainant.

4. The Labour Court framed necessary issues for consideration and by judgment and order dated 22.6.2000 allowed the complaint and the petitioners herein are directed to regularize the services of the complainant and make her permanent from the date of filing of complaint i.e. 30.4.1992. The petitioners are further directed to pay new pay scale of class IV employee to the complainant from 1.1.1996 as per the Government Resolution.

5. By way of this writ petition, the order passed by the Industrial Court dated 26.6.2000 is challenged. The counsel appearing for the petitioners submits that the respondent herein was not appointed on any post. There were no sanctioned post and if at all the sanction posts are there, it is necessary to follow the recruitment Rules while appointing the person on the said post. Learned Counsel further submitted that the respondent herein was appointed on consolidated pay of Rs. 27/- p.m. by the school and not by the respondent No. 2 Chief Executive Officer, who is appointing authority under the relevant Act and the Rules and the said consolidated pay was given from the consolidated funds of the school and not from the funds of the Zilla Parishad. It is further submitted that the respondent complainant was working as Sweeper in the school as a part time and therefore, she was not entitled to receive benefits of permanency. It is further submitted that since the respondent-complainant was not working on daily wages but on consolidated pay of Rs. 27/- p.m. and therefore, there is no question of completing 240 days service in a calendar year as provided under Industrial Dispute Act. It is further submitted that the respondent could not be absorbed in Class IV cadre because she does not possess required qualification for appointment as Class IV employee. Learned Counsel has invited my attention to the pleading as well as the grounds taken in the petition and submitted that the judgment and order passed by the Industrial Court is unsustainable and therefore, the same deserves to be quashed and set aside.

6. Learned Counsel appearing for the respondent has invited my attention to the findings recorded by the Industrial Court and vehemently submitted that the respondent has worked from 1979 till the complaint was filed and even thereafter the petitioners have extracted work from the complainant by paying an amount of Rs. 27/- p.m. only. Learned Counsel submitted that the Industrial Court after recording the findings and after taking into consideration the length of service of the respondent, availability of the work and attempts made by the petitioner to absorb herein class IV employee, has arrived to the conclusion that the respondent is entitled for permanency and all consequential benefits. Learned Counsel submitted that the respondent has worked more 27 years as

sweeper on consolidated salary of Rs. 27/- p.m. has not disputed by the petitioners and therefore, the Industrial Court taking into consideration the evidence brought on record by the respondents, directed the petitioners to give permanency benefits as a class IV employee to the respondent. Learned Counsel invited my attention to the written statement of the petitioner filed before the Industrial Court and submitted that the petitioners have stated that the respondent was appointed on consolidated salary of Rs. 27/- p.m. It is further submitted that the provisions of 4C of the Industrial Employment (Standing Orders) Act, 1946 is applicable in the instant case. The learned Counsel has invited my attention to the provisions of Section 4C of the Industrial Employment (Standing Orders) Act, 1946 and submitted that the respondents has worked for more than 190 days uninterrupted, and she therefore, as per the provisions of Section 4C was entitled for permanency. Learned Counsel further submitted that as per the provisions of Section 25B of the Industrial Dispute Act also the respondent was entitled to be conferred permanency and the Industrial Court has rightly directed the petitioners to appoint her as Class-IV employee.

Learned Counsel placed reliance on the judgment of of this Curt in the case of Executive Engineer, Irrigation Division, Gondia and Ors v. Maruti Maroti s/o Janba Dupare reported in 2004 2 C.L.R. 677 and submitted that since the Industrial Court has clearly recorded the finding of facts that the employee the respondent was employed for not less one year continuous, therefore, this Court under Article 227 of the Constitution may not interfere in the findings recorded by the Industrial Court. Learned Counsel further placed reliance on the reported judgment in the case of Zilla Parishad, Ahmednagar and Anr. v. Ramesh Sadashiv Dukre and Ors. reported in 2000 (II) C.L.R. 600. On the basis of para 4 of the said judgment, learned Counsel submitted that this Court has interpreted the provisions of Clause 4(c) of the Industrial Employment (Standing Order) Act, 1946. According to the said provisions a Badli or temporary workman, who has put in 240 days uninterrupted service in the aggregate in any establishment during the period of twelve calendar months shall be made permanent in that establishment. He submitted that the principle underlined the said Standing Order can also be applied in the present case.

Learned Counsel further invited my attention to the judgment and order passed by the Member, Industrial Court and submitted that categorical findings are recorded by the Industrial Court and under Article 227 no interference is warranted. He further submitted that the respondent led evidence before the Industrial Court and there was no cross examination to the Chief Examination of the respondent, therefore, the contention of the respondent in chief examination went uncontroverted by the present petitioners. Learned Counsel further invited my attention to para 9 of the judgment and submitted that, the contention of the petitioners that there are no class IV vacancies available with them, cannot be accepted, in view of the fact that the petitioners herein had not made attempt to absorb the respondent as full time worker category. Therefore, learned Counsel would submit that if there was no vacancy and if the respondent was not

competent or the appointment of class IV employee, there could not have been attempt on behalf of the petitioners to absorb the respondent in full time worker category.

7. After hearing the counsel for the petitioners and the counsel for the respondent No. 1, I am of the considered view that the Industrial Court has taken plausible view on the basis of the evidence brought on record by the respective parties and after hearing the petitioners and respondents, therefore, interference under Article 227 is not warranted.

On careful perusal of the reasons recorded by the Industrial Court would show that even written statement which was filed on behalf of the petitioners before the Industrial Court was not verified by the competent officer as observed by the Industrial Court in para 7 of the judgment. The complainant examined herself at Exh. U-2. Her evidence corroborate the contents of her complaint and the petitioners did not cross examine her. In the written statement, the petitioners have admitted that the respondent was appointed as part time worker on consolidated pay of Rs. 27/- p.m. The Industrial Court after appreciation of evidence on record has come to the conclusion that the petitioners have extracted work from the respondent for 21 years by paying only Rs. 27/- p.m. as consolidated salary and therefore, the Industrial Court has recorded that the great injustice has been caused to the respondent complainant. The Court has come to the conclusion that the petitioners have deprived the respondents from the claim of permanency and there is violation of Item 6 of Schedule IV of MRTU and PULP Act. It would be relevant to note that the Exh. U-9 is a certificate of Block Development Officer, Ambejogai, which shows that the complainant/respondent is working as Sweeper from 28.4.1979 and she gets consolidated pay of Rs. 27/- p.m. There is also a letter of Head Master of Primary school, which was placed on record by the complainant that there is vacant post of peon since last one year. The said letter was issued on 2.11.1982. The document at Exh. U-13 is the representation by the respondent herein to the petitioners requesting them to absorb her in service. The Industrial Court has also observed in para 10 that the services rendered by the respondent are uninterpreted.

Taking into consideration the evidence brought on record and the Government Resolution dated 1.1.1996, the Industrial Court has taken a plausible view and directed the petitioners to regularize the services of the respondent/complainant and make her permanent from the date of filing of complaint and further directed to pay revised pay of Class IV employee to the complainant from 1.1.1996 as per the Government Resolution.

8. Though the learned Counsel for the petitioners contended that the respondent was not appointed against any post, there are no any sanctioned post and the petitioner No. 1 has never issued any appointment letter to the respondent, it is difficult to believe that the respondent complainant who is working since 1979 and almost has put the applicant 30 years service, has worked without knowledge of the petitioners. The document at Exh.U-9 is the conclusive proof

i.e. certificate of Block Development officer, Ambejogai which shows that the complainant is working as Sweeper from 28.4.1979 and she get consolidated pay of Rs. 27/- p.m. can not be ignored. The petitioners though filed written statement did not bother to file affidavit in support of the said written statement and also did not bother to file affidavit of concerned Officer in support of the said written statement. The petitioners did not led any evidence whatsoever before the Industrial Court and did not cross examine the respondents complainant and version in the chief Examination of the respondent went uncontroverted. Therefore, under Article 227 of the Constitution this Court cannot re-appreciate the evidence or accept the new contentions of the petitioners. Apart from that the learned Counsel for the respondent has rightly invited my attention to the provisions of Section 4C of the Industrial Employment (Standing Orders) Act, 1946. The provisions of Section 25B of the Industrial Dispute Act 1947 and the reported judgment of this Court in the case of Zilla Parishad, Ahmednagar and Anr. (supra) and nothing has been brought to the notice of this Court by the petitioners that why the provisions and the judgment are not applicable in the instant case.

Viewed from any angle the respondent complainant by this time has put in about 30 years service and admittedly the petitioners have paid her consolidated salary of Rs. 27/- p.m. even as per the provisions of Minimum Wages Act the woman employee working on daily-wages has to receive Rs. 130/- per day, however, in the present case, it appears that there is clear violation of provisions of Minimum Wages Act by the petitioner authorities. The petitioners have extracted work from the respondent complainant for about 30 years by paying her consolidated salary of Rs. 27/- p.m. This act of the petitioners is not only condemnable but is clear violation of the human rights and act against the humanity. This Court is of the view that there is clear exploitation of the respondent at the hands of the respondents. It is unheard that the person working for entire month is paid Rs. 27/- p.m. As consolidated salary and that too for 30 years. This is a fit case to award compensation to the respondent No. 1. Therefore, the interference by this Court in the well reasoned judgment and order of the Industrial Court Aurangabad is not warranted.

9. The Hon''ble Supreme Court in the case of Surya Dev Rai v. Ram Chander Rai and Ors. reported in 2003 AIR SCW 3872 has observed that, A patent error is an error which is self evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view the error cannot be called gross or patent. I am guided by the observations of the Supreme court in the judgment cited supra and I am of the view that the view taken by the Industrial Court is a plausible view, therefore ,no interference is called for. Writ petition is dismissed. Rule Discharged. Interim relief, if any stands vacated. Civil application, if any, stands disposed of.

10. In addition to the directions by the Industrial Court, for the reasons recorded in para 8 herein above, this Court feels that in order to do the complete justice, the petitioners shall pay an amount of Rs. 25,000/- (Rupees Twenty five thousand only) to the respondent No. 1 by way of compensation, within four week from today. It is made clear this amount of Rs. 25,000/- by way of compensation to be paid in addition to the compliance of the judgment and order of the Industrial Court.

11. The Hon"ble Supreme Court in the case of M.M.T.C. LTD v. Commissioner of Commercial Tax and Ors. reported in 2009 (1) SCC 8 has observed in para 25 that, in appropriate cases, the High Court while exercising supervisory jurisdiction may substitute such a decision on its own in place of the impugned decisions, as the inferior court or Tribunal should have made In the instant case though the judgment and order of the Industrial Court is confirmed and the directions to pay Rs. 25,000/- towards the compensation is in addition to it.

12. It is made clear that so far as the directions to pay Rs. 25,000/by way of compensation to respondent No. 1, is based on the facts and circumstances of the instant case.