

(2015) 08 BOM CK 0182
In the Bombay High Court
Case No : Writ Petition No. 3220 of 1995

The General Secretary

APPELLANT

Vs

Nagnath Ganpat Khandave

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 BOM CK 0182

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Bedre V. S., for the Appellant; Patil Ashok, Advocate h/f Upadhye V. N., Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J—This petition was admitted by order dated 18.7.1995.

2. The respondent is an employee of the petitioner. His father retired on 28.2.1983 and the respondent was engaged on 14.9.1983 as a part time Peon. He contends that he had been working as a full time Peon since the petitioner is a growing educational institution and presently is the largest educational institution in that part of the State.

3. The respondent had preferred Complaint (ULP) No. 206 of 1987 before the Industrial Court at Ahmednagar invoking item Nos. 5,6,9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act "). He had set out a list of persons, who were junior to him and have been granted regularization, who are as under:-

a) Shri Bhau Shinde, from New English School from the same category, where the petitioner is working.

b) Shri Vilas Kathinkar from practicing school Ahmednagar to Sainath Vidyalaya, Shirdi.

- c) Shri Sadashiv Late from practicing school to B.Ed. College, Ahmednagar.
- d) Shri Dattu Dandwate from practicing school to D.Ed. college, Ahmednagar.
- e) Mrs. Shalinibai Shinde from Navin Marathi School, Navipeth, Ahmednagar to Sainath Vidyalaya, Shirdi,
- f) Shri Mulay from practicing school to New English School, Ahmednagar.

4. It was contended that the above said employees were part time Peons and were confirmed as full time Peons in the various educational institutions of the petitioner.

5. By the impugned judgment and order dated 18.8.1994, the Complaint was allowed and the respondent herein was granted permanency and benefits incidental thereto from 1989. The petitioner is aggrieved by this judgment.

6. The contention of the petitioner in this petition is as under:-

- (a) The impugned judgment and order is not legal, fair and proper.
- (b) The impugned judgment suffers an error, apparent on the face of the record.
- (c) The Industrial Court has exercised jurisdiction not vested in it by law.
- (d) The respondent was appointed as a part time Peon in 1983 and he continues as a part time Peon even today (32 years).
- (e) The petitioner -educational society is receiving 100% grants from the Government.
- (f) The post of Peon cannot be created by the petitioner.
- (g) Unless the number of students reaches 500 or more, no permanent vacancy can be said to be created to accommodate the respondent.
- (h) Proposal of the respondent will have to be sent to the competent authority for sanction.
- (i) An irregular appointment is sought to be regularized by the impugned judgment of the Industrial Court.
- (j) Evidence recorded before the Industrial Court is not properly appreciated.

7. Shri Bedre, learned Advocate for the petitioner has therefore, strenuously contended that merely because the respondent is working even today, for the past 32 years as a part time employee, would not create any right to claim permanency. Unless the permanent vacant post is available, he cannot be accommodated. The Industrial Court does not have the jurisdiction to direct the regularization of the respondent in the light of the judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 :

(2006) 3 Supreme 415 . He, therefore, prays for the quashing and setting aside of the impugned judgment by allowing this petition and further prays for the dismissal of the complaint.

8. Learned Advocate for the respondent has supported the impugned judgment. He submits that the respondent is living in inhuman conditions. He is presently paid an amount of Rs.150/- per month. He was 19 years" old when he joined as a part time Peon with the petitioner establishment in 1983. He has devoted the prime of his life in serving the petitioner institution and has put in about 32 years till this date. In another couple of years, he would be attaining the age of superannuation. Post retirement, his life is bleak since he would not be entitled to any retiral benefits if the contention of the petitioner is accepted.

9. It is further submitted that the respondent / original complainant brought evidence on record before the Industrial Court and proved that juniors and colleagues similarly situated were granted regularization as full time employees / Peons. The petitioner receives 100% grants from the Government.

10. The respondent had made a statement in paragraph No. 1 of his Complaint that he was drawing a salary of Rs.150/- per month. The petitioner has taken undue advantage of the interim order passed by this Court on 18.7.1995 directing that the respondent employee should be continued as a part time Peon on the same terms and conditions as before. He is at pains in pointing out that even today, the petitioner is paying him Rs.150/- per month. He, therefore, prays for the dismissal of this petition with heavy costs.

11. I have considered the submissions of the learned Advocates. I have gone through the grounds for challenge put forth by the petitioner and have considered the impugned judgment of the Industrial Court.

12. This Court by its order dated 18.7.1995, granted interim relief to the petitioner by permitting it to continue the respondent as a part time Peon on the same terms and conditions as before. This petition has been pending for 20 years in this Court.

13. The petitioner has canvassed on the basis of the Umadevi"s judgment (supra), that the Industrial Court could not have exercised its jurisdiction while dealing with the Complaint (ULP). It cannot be overlooked that the impugned judgment was delivered on 18.8.1994, almost 12 years prior to the judgment of the Apex Court in the case of Umdadevi (supra). So also the Apex Court, in the judgment delivered in the case of Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 123 FLR 136 : (2009) 11 JT 609 : (2009) 4 LLJ 286 : (2009) 12 SCALE 25 : (2009) 8 SCC 556 : (2009) 13 SCR 937 : (2010) 3 SLR 588 : (2009) 9 UJ 4242 , has concluded that the powers of the Labour and Industrial Court under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ") cannot be denuded by the judgment of the Apex Court in Umadevi"s case (supra).

14. The Apex Court in the Castribe judgment (supra) has framed the following issues as points for determination:-

"(one) : Whether a direction to the Maharashtra State Road Transport Corporation (for short, "Corporation") by the Industrial Court, and confirmed by the High Court of giving status, wages and all other benefits of permanency, applicable to the post of Cleaners to the complainants is justified ?

(two) : Whether the two complaints filed by Castribe Rajya Parivahan Karmchari Sanghatana (for short, "Union"), an unrecognized union under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU and PULP Act"), alleging unfair labour practice on the part of the employer under item No. 6 of Schedule IV are maintainable ?"

15. The same have been answered by the said judgment, concluding that the Industrial Court can issue directions for granting permanency to employees within the scope of items 5,6 and 9 of Schedule IV of the said Act.

16. Notwithstanding the above, the case in hand is squarely covered by the directions of the Apex Court in paragraph No. 44 of the Umadevi's judgment (supra), which reads as under:-

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

17. I have gone through the impugned judgment in the light of the submissions of the learned Advocates for the respective sides. The oral and documentary evidence on record was considered by the Industrial Court. It was concluded that the respondent was working continuously and had discharged his duties as a Peon with the petitioner. At the relevant time, the petitioner had several

educational institutions in the form of 1 D.Ed. College, 7 Secondary Schools and 2 Primary Schools. The respondent was appointed in a New Marathi School and was working for about 8-9 hours in a day. In 1986, a permanent post of a Peon fell vacant owing to the retirement of a Peon namely, Shri Deokar. It was thus concluded that there was a vacant post of a Peon.

18. The Industrial Court also considered the evidence on record to conclude that two new Peons, namely, B.R. Sathe and Sakatkar were appointed after the engagement of the respondent. The strength of the petitioner institution and its various educational institutions has grown. Peons are required to be appointed in each educational institution.

19. Owing to the interim order passed by this Court and over a period of 20 years during which this petition was pending, it cannot be disregarded that few Peons may have retired, thereby creating further vacancies.

20. The respondent had preferred a Civil Application in this Court, wherein, advertisements issued by the petitioner published on 22.4.2000 and 24.11.2004 in Marathi news papers, namely, Dainik Nagar Times and Dainik Nava Maratha Ahmednagar, calling for applications for filling in several posts, including Peons, were mentioned. The original copies of the news papers were shown to the Court by the learned Advocate for the respondent, across the Bar.

21. In my view, paragraph No. 44 of the Umadevi's judgment (supra), as is reproduced above, would mandate that the petitioner's should regularize the services of the respondent. In the event, the contention of the respondent that he is paid Rs.150/- per month, even today, is true then it needs to be concluded that the petitioner's act of keeping the respondent on such a paltry amount, necessarily needs to be deprecated.

22. The Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 , has observed as under:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in

writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*), *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 and *Kaushalya Devi v. Bachittar Singh*).

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts

and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened."

23. The Apex Court has once again considered the scope of the writ / supervisory jurisdiction of this Court in yet another case in the matter of Surya Dev Rai Vs. Ram Chander Rai and Others, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 .

24. In the light of the above, I do not find that the impugned judgment of the Industrial Court could be termed as perverse or erroneous. I do not find that the impugned judgment is likely to cause grave injustice to the petitioner educational institution so as to cause an interference by this Court.

25. Considering the fact situation as recorded above, the petitioner deserves to be directed to comply with the directions of the Industrial Court, set out in its judgment dated 18.8.1994 and grant all benefits of permanency, incidental and consequential thereto, without interest, within a period of eight weeks from today. In the event, it is not so done, benefits in the nature of difference in wages in comparison to equally placed comparable Peons shall carry an interest of 6% p.a. from the date of the judgment of the Industrial Court till actual realization / payment.

26. This petition, being devoid of merits, is therefore, dismissed.

27. Rule is discharged.