
(2009) 02 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 1390 of 2005

The Plantation Officer, Social Forestry, Amgaon Range and
The Divisional Forest Officer (In fact Deputy Director of
Forest, Social Forestry)

APPELLANT

Vs

Rashtriya Mazdoor Sena

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (2009) 02 BOM CK 0131

Hon'ble Judges : S.R. Dongaonkar, J

Bench : Single Bench

Advocate : M.P. Badar, Special, for the Appellant; D.A. Sonawane, for the Respondent

Judgement

S.R. Dongaonkar, J.—Heard Shri M.P. Badar, Special Counsel for petitioner and Shri D.A. Sonawane, Advocate for respondent.

2. Petitioners are challenging the order of Industrial Court, Bhandara dated 24.9.2004 in complaint ULP No. 66/1994 by which he has ordered to send the proposal of the complainant (for one employee. Shri Babulal T. Bahekar) to the Government for reconsideration of regularization of services w.e.f. 1.11.1994 as per policy decision of 13.12.1996 within a period of one month from the date of order.

3. Facts leading to the petition may be stated thus. The complainant. Respondent. Rashtriya Mazdoor Sena, through its Secretary had filed the instant ULP complaint. According to it, three employees including one Babulal T. Bahekar who were earlier regularized, were subjected to the decision of withdrawal of their regularization. According to the complainant it was a registered trade union and the complaint was filed on behalf of these three employees. They were working as Choukidars since about 10 years. They have completed 240 days service in each calender year for five years prior to 1994. Initially they were

regularized, however, later on their regularization was withdrawn. As the petitioners are challenging the impugned in respect of Babulal T. Bahekar, it may be stated that he was earlier regularized on 13.12.1996. However, later on; his continuation was withdrawn on 3.3.1997. It is alleged that the respondent did not challenge this withdrawal of continuation. However, later on he was continued in the employment. The respondent preferred this complaint and contended that the said Bahekar was entitled to regularization in view of Government Resolution of 1996. According to the respondent, the said Shri Bahekar had worked for 240 days in each year for five years and therefore, he was entitled to be continued and for regularization in service. The learned Member, Industrial Court, Bhandara allowed the said complaint in respect of Bahekar and directed petitioners to send his proposal for reconsideration of the government to regularize his services w.e.f. 1.11.1994 i.e. for reconsideration of withdrawal of his regularization.

4. This order is challenged by the petitioners.

5. Learned Special Counsel for the petitioner Shri M.P. Badar has submitted that the petitioner department is not an industry. It is Social Forestry Department of the government and therefore, the provisions of the Industrial Disputes Act are not applicable. It is also his contention that u/s 25-B of the I.D. Act the only cases of retrenchment or lay-off are to be considered. Therefore, the provisions of this section are not at all attracted. It is further his submission that said Bahekar is not the employee who has completed 240 days service or worked in each of the 5 years and five years continuous service factually. It is also his submission that the said Bahekar did not lead any necessary clinching evidence on record to that effect. On the contrary the evidence led by the petitioners of One Shende clearly proves the case of the petitioner and therefore, the impugned order is liable to be set aside. He has relied on some of the authorities to contend that the Social Forestry Department is not an industry. He has also relied on the judgment of the Apex Court to contend that unregistered/unrecognized trade unions cannot maintain such complaint. It is also his submission that the condition precedent of the government resolution of 1996 that is 240 days service in each year and five years continuous service are not satisfied and therefore, the impugned order is incorrect at law.

6. As against this, learned Counsel for the respondent has submitted that the complainant union was registered union and therefore, the complaint at its instance for the members of the union would be maintainable. He also submitted that the said Bahekar had satisfied the two necessary conditions of the said Government Resolution and therefore, he was entitled for regularization. According to him, the issue as to whether the Social Forestry Department is an industry or not, is pending before the Apex Court and as such the same should not be a hurdle in granting benefit of regularization to the said Bahekar.

7. On perusal of the impugned judgment, it would be seen that the Industrial Court has held that Social Forestry Department is not an industry. However, he

proceeded to decide the complaint as it was noticed that the matter was pending before the Hon. Apex Court for determination as to whether the Social Forestry Department is an industry or not.

8. Parties did not place any material on record to show that said issue has been decided by the Apex Court. However, the fact remains that the Division Bench of this Court has held that the Social Forestry Department is not an industry. Reference may be made to the judgment in 2002 1 CLR 383 Haribhau Gaman Waghchaure v. State of Maharashtra and Anr., and in 2002 3 Mh.L.J. 761 Bombay High Court M.S.S. Sanghatana v. Social Forestry. Therefore, unless there is something to support submission of the respondent that the Social Forestry Department i.e. the petitioner is not an industry, the complaint as framed by the respondent would not be tenable.

9. The complainant has mentioned in the complaint that it is a registered trade union and the complaint has been filed on behalf of its members. Therefore, unless something otherwise is clearly available to lead to the inference that the respondent is a registered union and the persons for whom they are agitating the cause are its members, their contentions in this regard cannot be upheld.

10. Turning to the most important issue in the present case i.e. whether said Bahekar has completed five years of continuous service and 240 days work in each year for five years, their evidence need to be seen.

11. Complainant Bahekar did not depose anything about the same in clear terms that he has worked for more than 240 days in each year. In this regard he has only stated in cross examination that he has not submitted affidavit and undertaking in the prescribed form as mentioned in the order Exhibit 27. He has further stated that while computing the total working days of 240 days in the EGS should be excluded. He has not placed any material to show that he has completed 240 days service in a calendar year. He further admitted that he has not given any reply to the cancellation order Exhibit 29. This will show that he has not placed any material on record to show that he has completed 240 days work in each calendar year for five years preceding to the effective date mentioned in the relevant government resolution.

12. As against this evidence of the petitioner's witness Shende, in clear terms and on the basis of material deposed that complainant Babulal has not completed 240 days in each calendar year for five years. There is nothing in his cross examination to show that he is deposing false in favour of the petitioner. Cross examination is only to the effect of giving suggestions which are denied by him. However, the respondent, it seems has not shown from muster roll that the complainant Bahekar had completed 240 days work in each year. He has denied the suggestion that the complainant was working as Choukidar even during the period from 10.7.1987 to 11.4.1994. He has further stated that the complainant is not entitled to the benefit applicable for permanent employee because he had not worked 240 days in the relevant years, continuously.

13. Nothing is pointed out by the learned Counsel for the respondent, particularly from the muster roll, or by calling record that the said Bahekar had completed 240 days work in each year and such work for five years.

14. This Court in Writ Petition No. 4704/2008 has held that the person before he is entitled to such regularization, the services of such person should be for five years prior to 1.11.1994 and he should have completed 240 days work in each year. As respondent has not been able to point out the compliance of these conditions precedent, he would not be entitled for such regularization.

15. Therefore, the impugned order of the Industrial Court does not withstand the legal scrutiny. The same is therefore, liable to be quashed and set aside. Ordered accordingly. No orders as to costs.