

(2016) 02 BOM CK 0268

In the Bombay High Court

Case No : Writ Petition No. 2253 of 2008.

The Superintending Engineer, Nagpur Irrigation Circle,
Command Area Development Authority and another

APPELLANT

Vs

Waman Raghoba Shende and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2016) 2 CLR 1 : (2016) 149 FLR 921 : (2016) 3 LLN 78 : (2016) 4
MhLJ 725

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : S.S. Jachak, AGP, for the Appellant; Ku. Kalpana Pathak, Advocate,
for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J. (Oral) - In Complaint (ULPN) No. 248 of 2000, the Industrial Court has granted a declaration that the petitioners are engaged in an unfair labour practise under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (in short "the MRTU and PULP Act"). A positive direction has been given to the petitioners to consider the proposal for bringing the complainants on Converted Regular Temporary Establishment (in short "CRTE") from the year 1982 i.e. from the date, when they were brought on CRTE as Mazdoors. This judgment and order dated 13.01.2006 passed by the Industrial Court is the subject matter of challenge in the present writ petition by the petitionersemployer.

2. The question before the Industrial Court was whether the complainants were actually working on the post of Clerks from the dates of their initial appointments till the completion of 5 years service, so as to bring them on CRTE as Clerks in terms of the Kalelkar award. It is not disputed in the present case that the

complainant Nos. 1, 2 and 3 were appointed as Mazdoors on 28.09.1977, 29.11.1977 and 01.11.1977 and all of them have been conferred with the benefit of bringing them on CRTE basis as Mazdoors in terms of the Kalelkar award, with effect from 29.09.1982, 27.11.1982 and 01.09.1982 respectively. Thus, all of them have been granted the benefits under the Kalelkar Award.

3. The claim of the complainants was that though it is shown that they were appointed as Mazdoors, they have actually performed the duties in the posts of clerk from the dates of their initial appointments till completion of continuous service of 5 years. The Industrial Court has relied upon the proposal sent by the petitioner no.1 to the petitioner no. 2 at Exh.22A, dated 02.12.1994, wherein it is proposed that the complainants be brought on CRTE on the post of Clerk with effect from the year 1982. Accordingly, the direction has been issued to the petitioner No. 2 to consider the proposal sent by the petitioner No. 1, which was the only relief claimed in the complaint filed before the Industrial Court along with consequential reliefs flowing therefrom.

4. The question as to whether they have worked on the posts of Clerk in spite of appointment as Mazdoor is a question of fact which is required to be pleaded and proved. Though there is a pleading, except producing the proposal, no other evidence is brought to the notice of this Court to establish that the complainants have actually performed the work as Clerk for continuous period of 5 years. In such a situation, neither Item 5 nor Item 9 of Schedule IV of MRTU and PULP Act which deals with showing of favouritism or partiality to one set of workers, regardless of merits or failure to implement award, settlement or agreement, does not at all arise.

5. It is not in dispute that the complainant No. 2 ? Diwakar Harija Chimote was appointed as Canal Inspector to occupy the Class III post pending the decision of the petition and he has retired from service on 30.11.2013. Similarly, the complainant No. 3 ? Deorao Thuganjrao Bodakhe was appointed as Measurer to occupy the Class III post and is in service. The complainant no. 1 ? Waman Raghoba Shende did not accept the job on the higher post but has retired from service as Mazdoor in the year 2009.

6. The Industrial Court has directed the petitioner no. 2 to consider the proposal sent by the petitioner no. 1 for bringing the complainants on CRTE from the year 1982 in the post of Clerk. However, non consideration of such proposal has not been made as an unfair labour practise under Schedule IV of MRTU and PULP Act. The Industrial Court has, therefore, committed an error in holding that it was a case of an unfair labour practise committed by the petitioners. The direction to consider the proposal becomes without jurisdiction and cannot, therefore, be sustained.

7. In the result, the petition succeeds. The judgment and order dated 13.01.2006 passed in Complaint (ULPN) No. 248 of 2000 is hereby quashed and set aside. The Complaint (ULPN) No. 248 of 2000 is dismissed. No order as to

cost.