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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2821 OF 2013
WITH
CIVIL APPLICATION NO. 9669 OF 2015
IN WP/2821/2013

Sacred Heart Society,
Bhingar Road, Ahmednagar-414001.
Through the Manager.

...PETITIONER

-VERSUS-

Ashok Nana Netake,
Age : 34 years, Occ : Service,
R/o Siddharthnagar, House No.85,
Zopadpatti, Behind Sarda College,
Ahmednagar.

...RESPONDENT

...
Advocate for Applicant : Mr.Shelke Shivaji T.
Advocate for Respondent : Mr.P V Barde.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th August, 2015

Oral Judgment:

1 The Civil Application is filed by the original Petitioner praying for an order of staying the execution and operation of the impugned judgment and order dated 06.09.2012 delivered by the Industrial Court in Complaint (ULP) No.57/2007. In the alternative, it is prayed for staying further proceedings in Application (PGA) No.62/2015, Application (IDA) No.11/2015 and Criminal Complaint (ULP) No.10/2014 pending on the

file of the Labour Court, Ahmednagar.

2 Since the hearing of the Civil Application in itself called for a hearing on the petition, I called upon the learned Advocates to address this Court on the petition itself. They graciously have done so.

3 The Writ Petition was admitted by the order dated 07.04.2014 and Rule was expedited.

4 I have heard the lengthy submissions of the learned Advocates for the Petitioner and the Respondent.

5 The Respondent had preferred Complaint (ULP) No.57/2007 before the Industrial Court at Ahmednagar against the Petitioner herein claiming permanency and benefits incidental and consequential thereto. It was stated that he was working with the Petitioner as a Gardner since 1999 within the hostel premises which housed lady teaching staff (18 sisters).

6 By the impugned judgment and order dated 06.09.2012, the Industrial Court has allowed the complaint and has granted the benefits of permanency to the Respondent from 16.09.2004. It is informed that the

Respondent is now terminated on 09.03.2015 which order of termination is not yet called in question, to the knowledge of the learned Advocates.

7 Shri Shelke, learned Advocate has vehemently submitted that there was no post of a Gardner available with the Petitioner. He was working as a Gardner intermittently and was offered the work on humanitarian ground. There was no regular selection process followed in selecting and appointing the Respondent. The Respondent has admitted in cross-examination that he is only IVth standard educated, he has no knowledge of gardening and he has not undergone any formal course of training of gardening.

8 Shri Shelke further submits that unless the post of Gardner is available, the Respondent could not have been confirmed in the said position. He further submits that now the trees have grown and there is hardly any work available for the Respondent. The Respondent has also been terminated. Since the Respondent is a male Gardner, it was not appropriate to deploy him within the hostel premises which housed 18 sisters who are teachers.

9 Shri Shelke further submits that this case needs to be considered on a different footing and cannot be equated with any other

Establishment either industrial or non-industrial in the public or private sector. He, therefore, submits that the impugned judgment of the Industrial Court which does not take into account all these factors, deserves to be quashed and set aside.

10 Shri Barde, learned Advocate for the Respondent, has supported the impugned judgment of the Industrial Court. He submits that the work was available. The Respondent was working as a Gardner. There has not been a single instance which could be cited as an example that the presence of the Respondent within the hostel premises is being a security threat to any of the sisters.

11 Shri Barde further submits that he has brought sufficient evidence before the Industrial Court to prove the factum of employment and continuous service with the Petitioner. There is no special law or separate legislation for dealing with the Societies like the Petitioner Society. It is not a Government undertaking or instrumentality of the Government. There is no issue of creation of posts.

12 Having considered the submissions of the learned Advocates for the respective sides and having gone through the petition paper book and the impugned judgment, I do not find that any interference is called

for in the impugned judgment of the Industrial Court.

13 The Respondent had produced the documents below list Exhibits U/9 and U/18. The application Exhibit U/11 was filed to seek production of service books and certain documents from the Petitioner. The Industrial Court had allowed the application Exhibit U/11 and ordered the Petitioner to produce the service books and registers. Despite the directions, the same were not followed.

14 However, the documents at Exhibits U/9 and U/18 as well as some documents filed by the Petitioner below list Exhibit C/13, have brought the Wage Register of the Petitioner for the period April, 2002 till August, 2008 on record. It was established that the name of the Respondent appeared in the said register. There are 05 to 06 similar employees engaged by the Petitioner itself. Presently, the Respondent has been terminated on 09.03.2015 which is a separate cause of action.

15 It was, therefore, proved before the Industrial Court that the Respondent had worked in continuous and uninterrupted service of the Petitioner in each calender year. The Wage Register indicated the payment of wages made to him in each month over a period of almost six years. Earlier, he was terminated on 01.10.2003. However, by way of a

compromise before the Labour Court in Complaint (ULP) No.83/2004, the Respondent was reinstated.

16 Unlike any State Instrumentality wherein the Establishment, in which the Employee is working, does not have power to create posts and sanction posts, the Petitioner herein is not required to seek such permission from the Government.

17 Considering the totality of the evidence adduced before the Industrial Court and the conclusions drawn by the Industrial Court, I do not find that the impugned judgment suffers from any error or perversity. It is informed that Criminal Complaint (ULP) No.10/2014 filed by the Respondent under Section 48(1) of the MRTU & PULP Act, 1971, is pending before the Labour Court.

18 For the above stated reasons, this Writ Petition is devoid of merit and hence, is dismissed. Rule is discharged.

19 The pending Civil Application does not survive and is also disposed of.

(RAVINDRA V. GHUGE, J.)