

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.806 OF 1995

THE SHRIRAMPUR MUNICIPAL COUNCIL
SHRIRAMPUR

PETITIONER

VERSUS

LAXMAN CHIMAJI NAMDE
AND ANOTHER

RESPONDENTS

Mr.V.S.Bedre, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/09/2015

PER COURT :

1. On 17/02/1995, this petition was admitted and ad-interim relief in terms of prayer clause "E" was granted by the order dated 17/02/1995. Prayer clause 'E' reads as under :-

"Pending hearing and final disposal of this petition, the execution and operation of the impugned order may be kindly stayed."

2. After the learned Advocate appearing on behalf of the petitioner was elevated as the learned Judge of this Court, notice was once again issued and the petitioner was served. Mr.Bedre, learned Advocate has caused his appearance on behalf of the petitioner today.

3. Respondent No.2 herein is not a necessary respondent. Mr.Bedre seeks liberty to delete respondent No.2. Leave granted. Deletion to be carried out forthwith.

4. The sole respondent has been served with Court notice on 03/01/1997, which is after issuance of Rule by this Court. Despite the same, neither has the respondent appeared in person nor has he caused an appearance through an Advocate.

5. This petition has been listed for final hearing since long and has been consistently adjourned on 18/06/2015, 2/07/2015, 23/07/2015, 06/08/2015 and 27/08/2015. Petition is of the year 1994. It is, in these circumstances, that I have heard Mr.Bedre today. Sole respondent is absent.

6. Issue raised for the determination of this Court is restricted only to the aspect as to whether the Industrial Court could grant any relief to the complainant without concluding unfair labour practices against the employer, without making any declaration to that extent and after dismissing the complaint.

7. The respondent had preferred Complaint (ULP) No.131/1990.

Item Nos. 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971 were invoked.

8. The Industrial Court framed the following issues :-

- “[1] Does the complaint prove that the respondent has shown favouritism or partiality to one set of workers, regardless of merits ?*
- [2] Does the complainant prove that the respondent has failed to implement award, settlement or agreement ?*
- [3] What order ?*

My findings on the above issues are :-

- 1. In the negative.*
- 2. In the negative.*
- 3. As per final order.”*

9. The Industrial Court, on the basis of oral and documentary evidence on record, concluded that the complaint was without any merit. The complainant / respondent herein could not prove that any of the acts committed by the petitioner were covered by Item 5 and 9 of Schedule IV. The complaint was, therefore, dismissed. However, certain directions were issued by the Industrial Court, which read as under :

*“The complaint (ULP) No.131 of 1990 is hereby dismissed.
The respondent is directed to give allowance of the post of*

*Overseer according to law from 11-4-1980 till the date of charge is held by the complainant.
Each party to bear its own costs.”*

10. The petitioner has raised a grievance that despite the complaint having been dismissed by the Industrial Court, relief was granted to the complainant. No such relief could have been granted when there was no merit in the complaint, which was dismissed.

11. It is trite law that the Labour or Industrial Court, as the case may be, cannot even grant interim relief under the MRTU and PULP Act, 1971 without prima facie concluding unfair labour practices against the respondents. As such, it is imminent that the Labour or Industrial Court while deciding the complaint, has to conclude finally that the respondent has committed unfair labour practices. Only in such a situation and in the face of such a declaration, can the Industrial Court proceed to grant incidental and consequential reliefs u/s 28 of The MRTU and PULP Act, 1971, to the complainant.

11. In the instant case, the Industrial Court concluded that the complaint was without any merit and therefore it dismissed the complaint. However, it has ordered the petitioner to give allowances

of the post of “Overseer” from 11/04/1980 till the date of charge held by the respondent/employee.

12. I find that the above stated direction was more out of sympathy. The Industrial Court, having come to the conclusion that the complaint deserved to be dismissed, could not have granted any relief to the respondent herein.

13. The Apex Court, in the case of Regional Manager, SBI Vs. Mahatma Mishra, (2006) 13 SCC 727, has held in paragraph nos. 9 and 11 as under :-

“9. Unfair labour practice is not to be readily inferred. Before a conclusion in that behalf is drawn, the conditions precedent therefore must be satisfied. The Labour Court failed to show as to how the appellant can be said to have taken recourse to unfair labour practice. It was not a case where the respondent was being appointed consistently for a number of years with artificial breaks. It was also not a case where the purport and object for such appointment was to violate the provisions of the Industrial Disputes Act. The question again came up for consideration before this Court in Regional Manager, SBI v. Rakesh Kumar Tewari MANU/SC/0044/2006 : (2006)ILLJ748SC wherein Raja Ram (supra) was followed.”

11. This aspect of the matter has been considered by this Court in Principal, Mehar Chand Polytechnic and Anr. v. Anu Lumba and Ors. MANU/SC/8407/2006 : AIR2006SC3074 wherein it was observed:

In Umadevi (supra), it was stated:

There have been decisions which have taken the cue from the Dharwad case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in The Workmen v. Bhurkunda Colliery of Central Coalfields Ltd., though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent

See also State of U.P. v. Neeraj Awasthi and Ors. MANU/SC/0358/2006 : (2006)ILLJ721SC .

Yet again in National Fertilizers Ltd. and Ors. v. Somvir Singh MANU/SC/8165/2006 : (2006)ILLJ1113SC , it was held:

Regularization, furthermore, is not a mode of appointment. If appointment is made without following the Rules, the same being a nullity the question of

confirmation of an employee upon the expiry of the purported period of probation would not arise....

It was further opined:

It is true that the Respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the Respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in Uma Devi (supra).

Furthermore, the High Court, in our opinion, committed a serious error in passing an order only on the basis of sympathy although it was held that the respondent was not entitled to any relief.”

14. Similarly, this court, in Association of Engineering Workers V/s Crompton Greaves Ltd., 2001 II CLR 64, has held in paragraph No.4 as under :-

“4. The petitioner union was aggrieved by the interim order dated 13th November, 2000 passed by the Industrial Court and, therefore, surprisingly had again approached the Industrial Court under the guise of application for review of the order. The Industrial Court had to decide such an application for the so

called review of its own order. From the review order also it appears that more or less the same grounds were agitated. The Industrial Court by its reasoned order dated 30th November, 2000 rejected the review application. I have carefully gone through the proceedings with the assistance of both the learned Counsel. The Industrial Court has refused to grant any interim orders after carefully considering the contentions and pleadings of the parties. The Industrial Court has considered the case prima facie and came to its conclusion that there was no prima facie case to grant any interim orders at that stage. According to the Industrial Court, the balance of convenience was in favour of the respondent company. The Industrial Court was further made to consider its own judgment once again under review but there was no change in the decision of the Industrial Court. Broadly speaking the Industrial Court has considered the matter twice and has come to the same conclusion. I hasten to say that it was only a prima facie view of the Industrial Court and finally on the basis of the evidence, the Industrial Court may change the same. In its interim order, the Industrial Court has considered itemwise the whole case of the petitioner union. I have also gone through the main complaint, but to say the least, the complaint did not contain the specific issues and point but had made all general averments. Under the provisions of the M. R. T. U. and P. U. L. P. Act the complainants have to be very specific about the allegations of the unfair labour practice. The Act does not contemplate general and vague philosophy of social justice. The allegations of the unfair labour practice must squarely fit in the items straight away and not by a long drawn

process of logic and reasoning, such as the allegations of closure made by the petitioner union in its complaint i. e. by shifting from site A to place B and in future the intention of the company is to get eviction decree and to vacate the premises and then to close down the place of employment. The union will have to act when actually the respondent would closed down the place of employment as contemplated by the law.”

15. In the light of the above, this petition is allowed. The operative part of the impugned order dated 28/04/1994, directing the petitioner to grant allowances to the respondent stands quashed and set aside.

16. However, considering the statement of Mr.Bedre that he has learnt that the respondent may have superannuated, it be noted that in the event such allowances are already given, the same shall not be recovered from the respondent as a result of this judgment.

17. Rule is, accordingly, made absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)