IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 904 OF 2014

1. The Chief Executive Officer,
Zilla Parishad, Parbhani
Tq & Dist Parbhani.

2. District Health Officer,
Zilla Parishad, Parbhani
Tq. & Dist. Parbhani.

3. Medical Officer,
Primary Health Centre,
Adgaon (Bazar), Tq. Jintur,
Dist. Parbhani. ..Petitioners

Versus

Manik Narayanrao Bansode,
Age 37 years, Occ. Nil,
R/o at Mohakhed, Post
Adgaon (Bazar), Tq. Jintur,
District Parbhani. ..Respondent

...
Advocate for Petitioners : Shri Joshi Sachin G.
Advocate for Respondent : Shri Golewar V.P.
...
CORAM : RAVINDRA V. GHUGE, J.
Dated: July 08, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners has assailed the interim order dated 8.8.2013 delivered by the Industrial Court on application Exhibit U-2 in Complaint (ULP) No.64 of 2013.

5. The sole respondent has preferred the said Complaint under Section 28(1) read with items 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. Application Exhibit U-2 has been filed under Section 30(2) praying for interim orders. By order dated 8.8.2013, the Industrial Court has directed as under:-

> *"The order of status quo i.e. service conditions of the complainant as on today i.e. 10.6.2013 be maintained till disposal of the main complaint. "*

6. The petitioners draw my attention to the order dated 31.5.2007 passed by the Chief Executive Officer, ZP, Parbhani thereby appointing a contractor, namely, Hari Om Multi Services to deploy 27 vehicle drivers on contractual basis for a period of one year effective from 1.6.2007. He further points out that respondent No.1 by order dated 11.11.2008 had extended the contract by one year and has permitted Hari Om Multi Services to deploy 28 drivers in place of 27, on contractual basis. He also points out the specimen copy of the appointment order issued by Hari Om Multi Services to the 28 drivers. It is not in dispute that the petitioners have not prayed for adding Hari Om Multi Services as a respondent in the pending complaint before the Industrial Court.

7. He further points out an order dated 7.11.2009, issued by respondent No.2 District Medical Officer, addressed to Hari Om Multi Services, informing the latter, that the contract will be coming to an end on 10.11.2009 and all 28 drivers shall be withdrawn by Hari Om Multi Services in the afternoon of 10.11.2009. He, therefore, submits that the complaint filed by the respondent is untenable.

8. He has relied upon the judgment of the learned Division Bench of this Court dated 18.4.2007 in LPA No. 39 of 2007. He has also relied upon the judgment of this Court dated 4.12.2014 in the matter of The Managing Director M/s Epitome Components Ltd. Vs. Swarajya Kamgar Sanghatana and others - Writ Petition No.8991 of 2014.

9. I specifically have asked the learned Advocate for the petitioners whether the respondent was in the employment of the petitioners on 24.5.2013 when the complaint was instituted. Shri Joshi submits that though the contract with Hari Om Multi Services was terminated on 10.11.2009, the respondent was engaged by the petitioner No.3 and was continued in employment as a Driver on *"as and when required basis"*. He further submits that the petitioner No.3 had no authority to engage the respondent. He however, concedes that the respondent was directly engaged by petitioner No.3 and Hari Om Multi Services was not in the picture on the date the complaint was filed since no services have been taken from Hari Om Multi Services after 10.11.2009.

10. Prima facie, it appears from the above fact situation that the respondent has been engaged by petitioner No.3 and is being paid salary by the Zilla Parishad, Parbhani. In so far as the authority of the petitioner No.3 to engage the respondent is concerned, I am not required to deal with this aspect since it is an intra departmental issue to be dealt with by the petitioners.

11. The issue, therefore, is whether the impugned order passed at an interlocutory stage can be termed as being perverse.

12. The judgment of the learned Division Bench, dated 18.4.2007 (supra), is with regard to the compliance of Section 25(F) of the Industrial Disputes Act and as regards in what circumstances can the termination of an employee fall within the exception carved out to retrenchment under Section 2(oo) of the ID Act. The said judgment is on an altogether different issue and is not on the issue of the CLRA Act, 1970.

13. The judgment of this Court in the case of Epitome (supra), was on the jurisdictional issue raised before the Industrial Court since 71 workers mentioned in Annexure "A" of the complaint were said to have been deployed by respondent Nos.2 and 3 - Labour Contractors who had appeared before the Court as respondents. The deployment of the workmen was through these two Contractors. Therefore, this Court had concluded in the light of the judgment of the Apex Court in the case of Vividh Kamgar Sabha

Vs. Kalyani Steel [(2001) 2 SCC 381], Sipla Limited Vs. Maharashtra General Kamgar [(2001) 3 SCC 101] and the judgment of this Court in the case of Indian Seamless Metal Vs. Sunil Rambhau Iwale and others [2001 III CLR 78], that the complaint was untenable.

14. In the instant case, it is an admitted position that the contract with Hari Om Multi Services was terminated on 10.11.2009 and thereafter, there was no labour contractor in between the petitioners and the respondent. The ratio laid down in Epitome's case (supra), is, therefore, not applicable.

15. The complaint is at the stage of cross-examination of the respondent - workman. Impugned order is dated 8.8.2013. In the light of the above, I am not inclined to cause any interference since the complaint is likely to be decided within a short duration. So also, no perversity is pointed out in the said order.

16. Shri Golewar, learned Advocate for the respondent makes a grievance that the respondent has stepped into the witness box and the petitioners are delaying the cross-examination.

17. Without going into this controversy, I deem it proper for the Industrial Court to deal with Complaint (ULP)No.65 of 2013. The Industrial Court shall look into the aspect of delaying tactics if resorted to, by any of the litigating sides.

18. In the light of the above, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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