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

WRIT PETITION NO. 7284 OF 2015

**AYESHA BEGUM MOHAMMADSAHEB SHAIKH
VERSUS
THE DEAN GOVERNMENT AYURVEDIC HOSPITAL TULJAPUR ROAD
OSMANABAD**

**WITH
WRIT PETITION NO. 7285 OF 2015**

**ANITA RAJABHAU GAIKWAD
VERSUS
THE DEAN GOVERNMENT AYURVEDIC HOSPITAL TULJAPUR ROAD
OSMANABAD**

**WITH
WRIT PETITION NO. 7286 OF 2015**

**FARUQ RASHID KAZI
VERSUS
THE DEAN GOVERNMENT AYURVEDIC HOSPITAL TULJAPUR ROAD
OSMANABAD**

...
Advocate for Petitioner : Mr.Shelke Avishkar S.
AGP for Respondent/State : Mrs.Y.M.Kshirsagar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd July, 2015

Per Court:

1 All these Petitioners are aggrieved by the impugned judgment
and order dated 26.03.2015 delivered by the Industrial Court, Latur in

three revision petitions preferred by the Respondent.

2 All the Petitioners are identically situated and the cause of action is identical. The Respondent/ Employer is also the same Government Ayurvedic Hospital, Osmanabad. These three petitions are, therefore, being taken up together.

3 Shri Shelke, learned Advocate for the Petitioners, has strenuously submitted as under:-

- (a) All the Petitioners have passed their 10th standard examination.
- (b) The Government Resolution dated 17.10.2007 provides for appointment of teaching and non-teaching staff.
- (c) By an advertisement dated 22.06.2013, the Respondent/ Management called for applications for appointment as “Panchkarma Assistants” on contractual basis.
- (d) The stipend payable was stated to be at the rate of Rs.100/- per day.
- (e) The Petitioners applied to the Respondent pursuant to the advertisement and were interviewed on 28.06.2013.
- (f) By identical appointment orders of various dates, the Petitioners were appointed as “Panchkarma Assistants”.

- (g) The Marathwada Sarva Shramik Sanghatana, by its representation addressed to the Respondent, prayed for payment of minimum rates of wages as have been fixed by the Minimum Wages Act, 1948.
- (h) The Directorate of Ayush, State of Maharashtra called upon the Respondent to explain as to what were the conditions of service while engaging the contract employees on account of the outsourcing of the said activity.
- (i) By an order dated 01.10.2014, all the Petitioners were terminated.
- (j) Each of the Petitioners filed an independent complaint alleging Unfair Labour Practices against the Respondent along with an application for interim relief under the MRTU & PULP Act, 1971.
- (k) By the order dated 01.01.2015 passed by the Labour Court, Latur, the applications for interim relief below Exhibit U/2 were allowed and the Respondent was directed to reinstate the Petitioners temporarily in service till the decision of the main complaints.
- (l) The Respondent/ Management preferred Revision Petition Nos.1, 2 and 3 of 2015 before the Industrial Court at Latur.
- (m) By the impugned judgment and order dated 26.03.2015, the

Industrial Court partly allowed the Revision Petitions by setting aside the interim order passed by the Labour Court and directed the Respondent to allow the Petitioners to work as and when work is available till the disposal of the main complaints.

- (n) The Industrial Court has lost sight of the fact that it's jurisdiction under Section 44 of the MRTU & PULP Act, 1971 was revisional in nature and not in the form of an appeal.
- (o) The Industrial Court lost sight of the fact that it was dealing with an interlocutory order and should not have entertained the revision petitions.
- (p) The Industrial Court lost sight of the fact that the interim order passed by the Labour Court did not cause grave injustice to the Management.
- (q) The Industrial Court also lost sight of the fact that the interim order passed by the Labour Court was aimed at meeting the ends of justice and was an equitable order.
- (r) The Industrial Court failed to consider the observations of the Apex Court in paragraphs 11 and 12 in the matter of *Deoraj v/s State of Maharashtra* reported in **2004(5) Bom.C.R. 615 (SC)**.
- (s) The impugned judgment and order of the Industrial Court is

perverse and unsustainable.

4 I have considered the strenuous submissions of Shri Shelke. It, however, cannot be disputed that Annexure-5 to the Government Resolution dated 17.10.2007 indicates that the Government had resorted to “outsourcing” so as to engage the contract labourers/ employees through outside agencies.

5 Similarly, it cannot be lost sight of the fact that the advertisement indicated that the recruitment was on a contractual basis. The Petitioners had applied pursuant to the said advertisement. By their appointment orders, the Petitioners were made aware that their appointments are on contractual basis, attracting an honorarium of Rs.100/- per day and their contract could be terminated without any notice and without assigning any reason. The Petitioners were called upon to accept their appointment orders only if they agreed to the terms and conditions set out therein.

6 The main complaints are pending final adjudication. It needs to be mentioned that the observations of the Industrial Court are pertaining to the interim order passed by the Labour Court and are, therefore, to be construed only of prima facie nature. Similarly, any

observation emerging from this order would also tantamount to an observation at an interlocutory stage. The observations of this Court as well as the Industrial Court can have no impact on the final adjudication of the main complaints.

7 The observations of the Apex Court in paragraphs 11 and 12 from Deoraj judgment (supra), read thus:-

“11. *The Courts and Tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the Courts are also over burdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any Judge to test.*

12. *Situations emerge where the granting of an interim relief would tantamount to granting the final relief*

itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case – of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

8 It is, therefore, clear that the Honourable Supreme Court holds the view that interim relief in the nature of a final relief could be permissible in the rarest of rare case and where the judicial conscience of the Court is convinced that if such relief is not granted, it will do violence to the sense of justice as it would result in perpetuating injustice.

9 In the instant case, the Labour Court needs to come to a

conclusion with regard to the contractual engagement of the Petitioners. Whether, the contractual engagement is sustainable or not, is to be decided. Similarly, whether, such contractual engagement would stand the test of the exception to retrenchment, as is provided in Section 2(oo) of the Industrial Disputes Act, 1947, needs adjudication. Four contingencies below Section 2(oo) will have to be scrutinized by the Labour Court.

10 This Court in Writ Petition No.6419/2014 vide judgment dated 17.06.2015 (*The Zilla Parishad v/s Maya Tukaram Sonawane*), relying upon several judgments of the Honourable Supreme Court as well as this Court, has held that granting interim relief in the nature of reinstating the complainant in service amounts to granting final relief at an interim stage. Reinstatement by way of interim relief is not permissible in every case.

11 I find from the impugned judgment of the Industrial Court that it has tried to balance the equities especially in view of the fact that the Petitioners prima facie have been engaged on contract basis in the light of the outsourcing of the activity by the Government. The directions of the Industrial Court that the Petitioners should be given work as and when it is available, appears to be an equitable order.

12 As such, these Writ Petitions are devoid of merit and stand dismissed.

13 Needless to state, the Labour Court shall decide the pending complaints strictly on their own merits and without being influenced by any observations emerging from the impugned judgment of the Industrial Court or this order. In the event, the pendency with the Labour Court is not too high, it shall endeavour to decide these complaints expeditiously.

(RAVINDRA V. GHUGE, J.)