

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5381 OF 2015

1. Shri Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tq. Rahuri, Dist. Ahmednagar
Through its President.

2. Pragati Vidyalaya Rahuri
Run by Shri Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tq. Rahuri, Dist. Ahmednagar
Through its Head Master.

..Petitioners

VERSUS

1. Shri Ravindra Balasaheb Devare,
Age 27 years, Occ. Service,
R/o Shilegaon, Tq. Rahuri,
District Ahmednagar.

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

..Respondents

WITH

WRIT PETITION NO. 5382 OF 2015

1. Shri Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tq. Rahuri, Dist. Ahmednagar
Through its President.

2. Adarsha Vidyalaya, Brahmni,
Run by Shri Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tq. Rahuri, Dist. Ahmednagar
Through its Head Master.

..Petitioners

VERSUS

1. Shri Rahul Balasaheb Hapse,
Age 24 years, Occ. Service,
R/o Brahmni, Tq. Rahuri,
District Ahmednagar.

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri Patil Vikramsinh P.
Advocate for Respondent 1 : Shri Gholap Ajit M. and
AGP for Respondent 2 : Shri Jadhav S.M.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 21, 2015
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ORAL JUDGMENT :-

1. Rule.
2. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
3. The petitioners in both these petitions are the same educational society. The issue involved is practically identical. Hence, I have heard both these petitions together.
4. The petitioners are aggrieved by the judgment and order dated 24.7.2014 passed in Complaint (ULP) No. 70 of 2011 and the judgment dated 25.7.2014, delivered in Complaint (ULP) No.65 of 2011 by the Industrial Court, Ahmednagar.
5. Both the respondents herein have been issued with the appointment orders dated 19.10.2010 and 16.6.2010 respectively. Both the respondents are stated to have been appointed as Peons, purely on temporary basis and till the end of the academic year. The clause of

automatic termination by efflux of time is mentioned in both the appointment orders. Both preferred Complaint (ULP) No.65 and 70 before the Industrial Court for claiming regularization and benefits incidental and consequential thereto. Both claimed to have completed 240 days in continuous employment as on date of the filing of their complaints. Both the complaints were allowed

6. The petitioners submit that it was specifically canvassed that the Industrial Court has no jurisdiction to deal with these complaints since they are not maintainable in the light of the applicability of the the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the MEPS Act" for short). No issue has been framed to deal with this objection pertaining to the jurisdiction of the Industrial Court.

7. It is further submitted that the petitioners have specifically averred in the Written Statement that both the respondents had been terminated orally prior to the institution of their complaints. No issue was cast to deal with this objection.

8. It is also submitted that the terms and conditions of appointment set out in their appointment orders indicate that the respondents were appointed on temporary basis and not as probationers. They were paid consolidated wages. The Industrial Court has erroneously concluded that they have a right to permanency and deserve the status of

permanency and benefits incidental and consequential thereto.

9. The petitioners rely upon the judgment of this Court delivered in the case of Adarsh Shikshan Sanstha Beed and another Vs. Jaiprakash Ramvilas Lohia and another [2009 III CLR 961 = 2010 (2) Mah. L.J. 924], to contend that the Labour Court or the Industrial Court can have no jurisdiction if a claim is put forth by a Peon, who has a remedy available under Section 9 of the MEPS Act.

10. It is, therefore, prayed that these petitions be allowed, impugned judgments be quashed and set aside and the Complaints of the respondents be dismissed.

11. Both these petitions are strenuously opposed by Shri Gholap, learned Advocate. He points out that no remedy is available to the respondents under Section 9 of the MEPS Act, since it deals with termination, dismissal, discharge, reversion or supersession. The case before this Court in the Adarsh Shikshan Sanstha's judgment (supra) was with regard to the oral termination of the Peon, who had the remedy available under Section 9 of the MEPS Act. Shri Gholap, therefore, submits that the respondents were not before the Industrial Court seeking any such relief in relation to any such cause of action, which would fall within the ambit of Section 9 of the MEPS Act. Ex facie, I find that Shri Gholap is right in his contentions.

12. Shri Gholap further submits that the petitioners themselves continued the respondents in service even after the conclusion of the academic year 2010-11. The respondents had not approached the petitioners with any request. It is of their own accord that the respondents were continued by the petitioners and both of them were in employment on the date of the institution of the complaint.

13. He further submits that though a proper issue was not framed, considering the contention of the petitioners, there was no application or suggestion by the petitioners to the Industrial Court for adding an issue with regard to the alleged termination of the respondents. The respondents therefore, cannot be made to suffer the rigours of litigation owing to the approach of the petitioners.

14. He further submits that the petitioners did not bring on record any such evidence to indicate that the respondents were not in employment when the complaints were instituted. Since it was the pleading of the petitioners that the respondents have been terminated, the onus and burden to prove termination lay on the shoulders of the petitioners. He, therefore, submits that the impugned judgments do not call for any interference as they cannot be termed as being perverse or erroneous.

15. Having considered the submissions of both the sides, I find that the Industrial Court should have framed issues considering the pleadings of the litigating sides. Casting of issues is not to be done proforma or perfunctory. It is a legal exercise in order to enable the litigating sides to note as to the issues involved in the matter and which are to be considered by the Court. It gives the litigating sides a clear idea for leading evidence in connection with the said issues.

16. This Court in the case of Permanent Magnets Vs. Vinod Vishnu Wani and others [2002 (3) Mh.L.J. 413], has held that the Court cannot absolve itself from the responsibility of framing proper issues. The observations of the Court in paragraph No. 12 are as under:-

“12. The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which

otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in Makhan Lal Bangal v. Manas Bhunia and others reported in, 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/petition and written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.” (Emphasis supplied).

17. In the light of the above, it was incumbent upon the Industrial Court to cast the two issues touching the jurisdiction of the Court, so as to ensure that the litigating sides are made aware of the issues that would be considered by the Court and which in turn would have enabled the litigating sides to lead proper evidence.

18. The Industrial Court should also have considered the ambit of the appointment orders and gone into the aspect of whether the respondents were continued in employment despite the conclusion of the academic year. I find from the impugned judgment that the Court

has simply proceeded on the presumption that both the respondents have continued in employment since there was no termination order on record, oblivious of the Clause of Termination by efflux of time and the contention of the petitioners that there was oral termination. When the pleading was of oral termination, the conclusion of the Industrial Court that there was no written termination order on record has led to an erroneous conclusion.

19. The Industrial Court could have gone into the factum of termination only to ensure whether it had jurisdiction to be exercised in the matter. If it was convinced that the respondents / employees were in employment on the date of the institution of the complaint, it could have exercised jurisdiction.

20. In the light of the above, these two petitions are partly allowed. The impugned judgments of the Industrial Court, dated 24.7.2014 in Complaint (ULP) No. 17 of 2011 and 25.7.2014 in Complaint (ULP) No.65 of 2011 are quashed and set aside. Both the Complaints are remitted to the Industrial Court for framing of proper issues. Both the sides are permitted to lead additional documentary and oral evidence in support thereof. It is stated that the respondents today are not in employment. Notwithstanding the same, the Industrial Court will have to deal with the complaint as on the date of its institution and the cause of action put forth by the respondents / complainants.

21. The litigating sides have assured cooperation with the Industrial Court for the expeditious disposal of the complaints and shall refrain from seeking adjournments on trifle and unreasonable grounds. As such the Industrial Court shall decide such complaints as expeditiously as possible and preferably on or before 5.3.2016.

22. All contentions of the litigating sides, set out in their pleadings and if further raised in the light of subsequent events, are kept open to be considered by the Industrial Court on its own merits.

23. Rule is accordingly made partly absolute. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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