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

WRIT PETITION NO. 4344 OF 2014

Arun Rambhau Phatak,
Age : 49 years, Occ : Labour,
R/o Sade, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Mahatma Phule Krushi Vidyapeeth,
Rahuri, Taluka Rahuri,
District Ahmednagar.
Through its Registrar.

...RESPONDENT

**WITH
WRIT PETITION NO.4565 OF 2014**

Sarjirao Mahadeo Bhalerao,
Age : 56 years, Occ : Labour,
R/o Digras, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Mahatma Phule Krushi Vidyapeeth,
Rahuri, Taluka Rahuri,
District Ahmednagar.
Through its Registrar.

...RESPONDENT

...

Advocate for Petitioner : Shri Barde Parag Vijay.

Advocate for Respondents : Shri Shahane Pradeep L. and Shri Shahane Parag.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th October, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 In the light of the order that I propose to pass, I am not required to refer to the extensive submissions of the learned Advocates in their entirety since it is likely to lead to certain observations which would affect the respective rights of the litigating sides.

3 The facts relevant for deciding these two petitions are as under:-

- (a) Both the Petitioners were working as Helpers to the Cooks on daily-wage basis from 1984 to 2001.
- (b) In 2001, the Agricultural Universities in the State of Maharashtra resorted to mass retrenchment.
- (c) Several of such employees are litigating against such Agricultural Universities.
- (d) By an advertisement dated 21.07.2004 issued under the signature of the Registrar of the Respondent/ University, all the retrenched daily-wagers were informed about the recruitment of four posts as Cooks.

- (e) The advertisement was locally circulated in the University and the intention of the University appears to be that the retrenched daily-wagers be given preference while causing such recruitment.
- (f) The advertisement dated 21.07.2004 is self explanatory.
- (g) A specimen copy of the interview call letter is placed on record dated 07.08.2004.
- (h) Neither in the advertisement, nor in the interview call letter, has the University indicated, in any manner whatsoever, that these four posts of Cooks are being sought to be filled up purely on temporary basis and in an emergent situation.
- (i) Both these Petitioners were issued 11 months' appointments on two occasions in the year 2004-2005 and 2005-2006.
- (j) Since the Petitioners were orally terminated, they preferred industrial disputes which were referred to the Labour Court and registered as Reference (IDA) Nos.30 and 32 of 2009.
- (k) The Respondent/ University filed it's Written Statement and took a stand that though the Petitioners have completed 240 days in continuous and uninterrupted service of the University, Section 2(oo)(bb) of the Industrial Disputes Act, 1947, which carves out an exception to retrenchment, is squarely applicable in this case.

- (l) By the impugned judgments and awards dated 06.08.2013, though the Labour Court concluded that the Petitioners have completed 240 days, both the reference cases have been answered in the negative concluding that Section 2(o)(bb) applies to these cases.

4 The grievance of the Petitioners in a nutshell is that they were neither claiming regularization with the Respondent/ University, nor were they appointed on any project. They were made to believe that the recruitment is being undertaken strictly in accordance with the procedure prescribed and in pursuance to the four vacant posts of Cooks.

5 Shri Shahane, learned Advocate for the Respondent/ University, has strenuously supported the impugned awards. He submits that 11 months appointment orders were issued on two occasions to these Petitioners. There were breaks in between the first termination and the second appointment.

6 Shri Shahane submits that the appointment order has been reproduced in the impugned judgment by the Labour Court and which clearly indicates that these Petitioners were appointed as per Statute No.84 of the Maharashtra Agricultural Universities Statute, 1990. The said

Statute enables the University to appoint persons on adhoc basis considering an emergent situation (Apatkaleen Vyavastha). Neither have the Petitioners been recruited by following the due procedure of law, nor can their appointment be said to be regular appointment as against permanent vacant posts.

7 Shri Shahane relies upon the judgment of the Apex Court in the case of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1**, to contend that the appointments of the Petitioners can be said to be back door entries.

8 He submits that as they were appointed for 11 months in one stroke, their oral termination would not amount to an illegal retrenchment merely because Section 25F of the Industrial Disputes Act, 1947 has not been complied with. They would fall under Section 2(oo)(bb) and the said disengagement was purely by efflux of time and therefore, did not require an express order of termination.

9 He further submits that the Petitioners were made aware that their appointments are for 11 months and they stand to gain no right for continued engagement, much less a substantive right to seek reinstatement only on account of violation of Section 25F. The moment

Section 2(oo)(bb) applies to this case, the allegation of violation of Section 25F falls to the ground as Section 2(oo)(bb) is an exception carved out to retrenchment.

10 I have considered the submissions of the learned Advocates as have been recorded herein above.

11 Though the Labour Court has taken pains to deliver the judgment running into 52 pages, I find that the following judgments were not cited before the Labour Court in relation to retrenchment:-

- (a) 2015 II CLR 278, Rajasthan Housing Board & Ors. v/s Judge, Industrial Disputes Tribunal.
- (b) 2015 II CLR 285, Executive Officer, Nagarpalika Takatgarh v/s Judge, Labour Court, Jodhpur.
- (c) 2015 II CLR 497, Gauri Shanker v/s State of Rajasthan.
- (d) 2015 II CLR 691, Om Prakash Tiwari v/s Judge, Labour Court, Bhilwara.
- (e) (2015) 2 SCC 317 Sudarshan Rajpoot V/s U P S R T Corp.
- (f) (2015) 4 SCC 544 Mackinnon & Co.Ltd., V/s Mackinnon Employees Union.
- (g) (2015) 6 SCC 321 Ajaypal Singh V/s Haryana Warehousing Corp.

12 I also find that the Labour Court has missed a vital issue pertaining to an advertisement that was published. Shri Barde has raised

the grievance that in the advertisement and in the interview call letters, the Respondent/ University has made all the candidates to believe that the University seeks to recruit four persons as four permanent posts of Cooks are vacant and available. The Respondent/ University has also taken a stand before this Court that now the University intends to cause recruitment of four persons for the said posts on regular basis.

13 The Labour Court should have considered as to whether, the Respondent/ University could be permitted to take a complete opposite stand in relation to the advertisement and interview call letters and make appointment for 11 months on temporary basis.

14 So also, the Labour Court should have considered whether, such a situation would require quantification of compensation to meet the ends of justice in the event there cannot be reinstatement considering the ratio laid down by this Court in the case of *Keru Kisan Rokade v/s Geoffery Manners & Company Limited*, **2011(7) All MR 590** (paras 14, 15, 17, 19 and 20). This Court in the case of Keru Kisan Rokade (supra) had considered the contentions in relation to Section 2(o)(bb) and had remitted the matter to the Labour Court for quantifying compensation.

15 In the light of the above, I deem it proper to remit the matter

back to the Labour Court so as to enable the parties to lead evidence on the aspect of advertisement, interview call letters and whether, the Respondent/ University could be permitted to appoint the Petitioners for 11 months despite the advertisement not indicating such a manner of appointment.

16 As such, these petitions are partly allowed. The impugned judgments and awards dated 06.08.2013 in both the reference cases are quashed and set aside. Reference (IDA) Nos.30 and 32 of 2009 are remitted to the Labour Court to enable it to frame issues in the light of the above aspects and permit the litigating sides to lead additional oral and documentary evidence.

17 The learned Advocates for the respective sides are agreeable to appear before the Labour Court on 02.11.2015. Formal notices need not be issued by the Labour Court.

18 Both the litigating sides fairly state that they would extend cooperation to the Labour Court for the expeditious disposal of the reference cases. In view of the same, the Labour Court shall endeavour to decide these two reference cases as expeditiously as possible and preferably on or before 31.03.2016.

19 Needless to state, the contentions of both sides in relation to the manner of recruitment are kept open. The Labour Court shall decide the matters without being influenced by the observations made in this judgment.

20 Rule is partly made absolute in the above terms.

21 No costs.

(RAVINDRA V. GHUGE, J.)