

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3371 OF 2015

Hemraj Rupchand Gharu,
Age-36 years, Occu-Nil,
R/o At Shriram Nagar Satod,
Kolwad Road, Yawal, Tq. Yawal,
Dist.Jalgaon

PETITIONER

VERSUS

Municipal Council, Yawal,
Office of Municipal Council,
Yawal, Tq.Yawal, Dist.Jalgaon,
Through its Chief Officer

RESPONDENT

Mr.S.R.Patil, Advocate for the petitioner.
Mr.G.V.Wani, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment and order dated 13/09/2013 by which his Complaint (ULP) No.17/2010 was dismissed by the Labour Court and his challenge to the oral termination dated 25/06/2009 has been rejected. He is also aggrieved by the judgment of the Industrial Court dated 23/06/2014 by which his Revision

(ULP) No.55/2013 was dismissed.

3. Mr.Patil has strenuously criticized both the impugned judgments. He submits that the petitioner was engaged as a “Driver” in the Fire Brigade Department from 17/04/1998. He was orally terminated on 25/06/2009. He had worked continuously in the uninterrupted service of the respondent and had put in 240 days in each calendar year and in the period of 12 calendar months preceding the date of reference. The post of a Driver is vacant. Section 25-F was not complied with while orally terminating the petitioner.

4. Mr.Patil further submits that the petitioner adduced oral and documentary evidence before the Labour Court. His appointment orders from Exhibit U-17 upto U-65 were placed on record. Continuous service was proved. Four witnesses who were co-workers, were also examined. Despite voluminous evidence, the Labour Court has dismissed the complaint.

5. He further submits that the perversity and error in the judgment of the Labour Court was lost sight of by the Industrial Court, which has erroneously dismissed the revision petition with

costs. The Industrial Court should have gone into the record and proceedings before the Labour Court and should have appreciated the voluminous record available. By the impugned judgment, the Industrial Court has mechanically dismissed the revision petition merely relying upon the judgment of the Apex Court in the case of Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors., 2006(4) SCC 44. He, therefore, prays that this petition be allowed and by setting aside the impugned judgments, Complaint (ULP) no.17/2010 be allowed.

6. Mr.Wani, learned Advocate appearing on behalf of the sole respondent/employer has supported the impugned judgments. He submits that there was no vacant post of a Driver. In so far as the petitioner is concerned, he was engaged temporarily on the days on which the regular driver was unavailable. No advertisement was published calling for applications for the post of Driver and no procedure was required to be followed since the petitioner was never recruited by the respondent in its regular employment.

7. He points out Exhibit U-17 to Exhibit U-65 to be such appointment orders which were issued to the petitioner calling upon him to perform the work of a “Driver” for a day or two, whenever the

regular driver proceeded on leave. In short, the petitioner was engaged only to drive the vehicle on the day when the regular driver was on leave.

8. He further submits that Section 25-B of the Industrial Disputes Act would not be attracted since the petitioner was not appointed on regular basis on an available vacant post. Naturally, Section 25-F was also not attracted as the non engagement of the petitioner does not amount to an illegal retrenchment. Concurrent judgments of the Labour Court and the Industrial Court can not be upset by this Court in the absence of any material to indicate that the said judgments are perverse and erroneous and have caused grave injustice to the petitioner.

9. I have considered the submissions of the learned Advocates as are recorded hereinabove.

10. The petitioner is unable to show any such appointment order which could be said to have been issued by the respondent for appointing the petitioner either as a Probationer or for a particular duration. Exhibit U-17 to U-65 are such documents by which the petitioner was called upon to perform the work of a Driver in the

absence of the regular Driver who was unavailable or had proceeded on leave.

11. By the nature of work offered to the petitioner and the manner of his engagement, could be termed to have been in the nature of engaging a “*Badli employee*”.

12. The Industrial Court has considered the record and proceedings and has concluded that whenever the regular driver was on leave, the petitioner used to be engaged. The Municipal Council was engaging him as a “*Badli Employee*”.

13. It is trite law that an employee has to prove completion of 240 days in the continuous and uninterrupted service as is defined u/s 25-B of the I.D.Act, 1947. There was no such material before the Labour Court or the Industrial Court to conclude that the petitioner had fulfilled the ingredients of Section 25-B.

14. The Apex Court, in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and in the case of Surya Dev Rai Vs. Ram Chander Rai, reported at

2003(6) SCC 682, has concluded that this Court in its supervisory or writ jurisdiction can interfere with the judgment of the Lower Court only if it appears to be perverse or has caused grave injustice to any litigant. Observations of the Apex Court in paragraph Nos.7 and 8 in the Syed Yakoob case (supra) and paragraph Nos.38 (1 to 9) in the case of Surya Dev Rai (supra), would preclude this Court from interfering in the concurrent conclusions of the Labour Court and Industrial Court in this case.

15. I do not find that the impugned judgments could be termed as being perverse or erroneous.

16. This petition, being devoid of merits, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)