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WP-1053-2015
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Thursday, 6.8.2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1053 OF 2015

1. The State of Maharashtra through
Dy. Conservator of Forests
West Division Trimbak Road, Nashik

2. Range Forest Officer
Nanashi Range
Taluka-Dindori, Dist. Nashik

.....Petitioners
(Orig. Respondents)

: V/S :

Jayram Ram Shekhare
Residing at Gandola,
Tal. Dindori, Dist. Nashik

.....Respondent
(Original Complainant)

ALONGWITH
WRIT PETITION NO.1054 OF 2015

1. The State of Maharashtra through
Dy. Conservator of Forests
West Division Trimbak Road, Nashik

2. Range Forest Officer
Nanashi Range
Taluka-Dindori, Dist. Nashik

.....Petitioners
(Orig. Respondents)

: V/S :

Popat Kisan Gaikwad
Residing at Dhondalpada, Post-Nanashi
Tal. Dindori, Dist. Nashik

.....Respondent
(Original Complainant)

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West Division Trimbak Road, Nashik

2. Range Forest Officer
Nanashi Range
Taluka-Dindori, Dist. Nashik

.....Petitioners
(Orig. Respondents)

: V/S :

Ramchandra Chimna Padvi
Radtondi, Post-Nanashi
Tal. Dindori, Dist. Nashik

.....Respondent
(Original Complainant)

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Mr. A.D. Kango, Advocate for the petitioners.

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Coram :- Smt. R.P. SondurBaldota, J.

6th August, 2015.

P.C. :-

1). This is a common order on the above three petitions challenging identical concurrent findings of the Courts below in the complaints filed by the respondents under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

("MRTU & PULP Act" for short). The Labour Court allowed the complaints by its judgment and order dtd. 30th May, 2007 and directed the petitioner to reinstate the respondents with continuity of service and payment of 50% of the back-wages. The petitioner had challenged the order by preferring separate revision applications to the Industrial Tribunal. The revision applications were dismissed by the order dtd. 25th January, 2010. Four years thereafter i.e. on 9th October, 2014, the petitioner has filed the present petitions.

2). The respondents to the petition i.e. Jairam, Popat and Ramchandra were employed by the petitioners on daily wages. Jairam and Ramchandra were employed on 1st July, 1990 and worked until 1st April, 1999 when their services were orally terminated. Popat joined the employment in the year 1983 and his services were orally terminated from 25th January, 1999. They filed complaints under the MRTU & PULP Act being Complaint (ULP) No. 62 of 1999, Complaint (ULP) No. 61 of 1999 and Complaint (ULP) No. 60 of 1999 respectively for unfair labour practices under Items-1(a), (b), (d), (f), (e) and (g) of Schedule-IV of the MRTU & PULP Act alleging that though they were in continuous and uninterrupted service for more than 5 years, they were not taken on

“Converted Regular Temporary Establishment” by the petitioner and thereby deprived them of the benefits of regular establishment. The names of the respondents were not included in the seniority list and their services were terminated in breach of Sections 25(F) and 25(G) of the Industrial Disputes Act (for short “the I.D. Act”). Since the petitioner employed more than 500 workers, they were required to obtain permission of the Government under Section 25(N) of the I.D. Act before terminating the respondent's services. No such permission was obtained by the petitioner.

3). The petitioners opposed the complaints denying the relationship of employer and employee with the respondents. According to them, the respondents were appointed on daily wage basis for the work of plantation under a Scheme introduced by the State of Maharashtra, which Scheme was implemented by the Department for a specific purpose and a specific period. The respondents were provided with work as long as the same was available under the scheme. The petitioners also claimed that the petitioners are not an industry within the meaning of Section 2(j) of the I.D. Act. Therefore, the provisions of the I.D. Act are not attracted to the facts of the case.

4). The Courts below, on the evidence produced by the parties

noted that though the petitioner claimed that the respondents were employed under the Scheme of the State of Maharashtra on temporary basis for a specific work, for specific period no particulars thereof have been either pleaded or proved. The petitioner did not adduce evidence as to the nature of the work done by the respondents, as also, the nature of the work/activities carried out by it. Consequently, the Courts below held that the petitioner is an “industry” within the meaning of Section 2(j) of the I.D. Act. Since these observations are borne out by the record, the same need no interference.

5). As regards the claim of the petitioners that the respondents were not even temporary workers and had been employed in a particular scheme for specific period, the courts below have noted that there is absolutely no evidence on record to establish the claim. It has further been observed that the department of the petitioner being the Forest Department, the work of plantation can be treated as the work of permanent nature. Unless it is shown by the petitioners that the respondents were employed for a specific work and for specific period, there can be no infirmity in this finding either.

6). Next is the claim of the respondents of having put in more than 240 days of work in the preceding year. The witness of the respondents

specifically stated in his deposition that the respondents had worked for more than 240 days in the preceding year. The cross-examination of the witness on this aspect was limited to simply giving suggestion that the respondents had not worked for 240 days. The courts below noted that although the petitioner would be in possession of documents relating to the employment of the respondents, it led no positive evidence. It filed abstract of the working days of the respondents, but did not prove it. The very fact that it was an abstract means it was not the original document. Even the abstract produced was only a carbon copy. It did not bear certificate from anybody that the contents therein was correct. Further the extract did not disclose the working days of the respondents in each month. The abstract simply showed the work done by the respondents in each year. Therefore, it was held that even if document of abstract were to be considered in evidence, it did not support the case of the petitioner.

7). One of the grievances of the respondents was that the petitioner had not published seniority list. It is not the case of the petitioner that any seniority list was published by it. As was rightly submitted before the courts below that when it came to termination of service, it was necessary for the petitioner to follow the principle of "last-come-first go".

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8). Thus, there is no substance in the challenge to the concurrent findings of the courts below. Hence, the petitions are dismissed.

(SMT. R.P. SONDURBALDOTA, J)