

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11630 OF 2014

Tata Institute of Social Sciences ... Petitioner

Vs.

1. Kiran K.Kedari
2. The Registrar,
Tata Institute of Social Sciences
3. Kalpataru Hospitality and Facility
Management Services ... Respondents

Mr.Rahul Nerlekar, Advocate for Petitioner.

Ms.Nayna Buch i/b Mr.Shailesh K.More, Advocate for Respondent No.1.

Ms.Rita K.Joshi a/w Mr.Swapnil PKamble i/b Mr.Ashok D.Shetty, Advocates for Respondent No.3.

CORAM : R. G. KETKAR, J.

DATE : 25th FEBRUARY, 2015

P.C. :

. Heard Mr.Rahul Nerlekar, learned Counsel for the petitioner. Ms.Nayna Buch, learned Counsel for respondent No.1 and Ms.Rita K.Joshi, learned Counsel for respondent No.3 at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 02/08/2014 passed by the learned Judge, Ninth Labour Court, Mumbai in Complaint (ULP) No. 252 of 2013 below Exhibit U-2 as also the judgment and order dated 15/11/2014 passed by the learned Member, Industrial Court, Mumbai (for short 'Tribunal') in Revision Application (ULP) No. 98 of 2014. By these orders, the

Courts below allowed the application Exhibit U-2 filed by the first respondent and directed the petitioner and second respondent herein to allow him to resume duties by maintaining status quo ante, pending disposal of main complaint.

3. In support of this petition, Mr.Nerlekar submitted that at an interim stage, the Courts below have granted final relief by directing them to reinstate first respondent during the pendency of the complaint. It is well settled law that final relief cannot be granted at an interim stage. He further submitted that in any case, there is no employer-employee relationship between the petitioner on one hand and first respondent on the other. He invited my attention to paragraph 3 of the affidavit in reply filed on behalf of the petitioner and second respondent herein. It is set out therein that respondent No.1 was never a workman in the organisation of the petitioner within the meaning of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'). It was further denied that respondent No.1 was in employment with the petitioner since last 6 years. In short, he submitted that respondent No.1 ceased to be an employee of the petitioner with effect from 01/02/2010 and he was appointed by respondent No.3 herein with effect from 01/02/2010. He submitted that the Labour Court did not decide preliminary issue as regards maintainability of the complaint in view of the stand of the petitioner

that there is no relationship of employer-employee. He submitted that the petitioner is declared as an institution for higher education as deemed University for the purpose of University Grants Commission Act, 1956. The University Grants Commission pays grants for maintenance of the staff and accordingly issued directions to the petitioner for reduction of vacant non-teaching course in the Deemed Universities and not to sanction new non-teaching posts in Universities and the work related to transportation, cleanliness shall be assigned to a private agency instead of engaging regular staff for this purpose.

4. Mr.Nerlekar further submitted that certain important documents were not produced before the Labour Court and were produced before the Tribunal in Revision Application. The Tribunal, however, rejected the Revision Application on the ground that under section 44 of the Act, it has very limited jurisdiction. Mr.Nerlekar further submitted that the petitioner will take out appropriate application for framing issue viz. whether there is employer-employee relationship between the petitioner and first respondent and the Labour Court may be directed to decide this issue as a preliminary issue before deciding other issues in the complaint.

5. On the other hand, Ms.Joshi, while adopting the submissions advanced on behalf of the petitioner, submitted that having regard to the nature of the duties performed by the first respondent, he can not be termed as a 'workman'

and consequently, 'employee' under section 3(5) of the Act.

6. On the other hand, Ms.Buch supported the impugned orders. She submitted that the first appointment order was issued by the petitioner to the first respondent on 27/07/2007 followed by appointment orders dated 27/03/2008, 08/12/2008, 28/08/2009. In the meantime, on 25/02/2009, the post on which the first respondent was appointed, namely 'Lower Division Clerk/Typist-Clerk', was re-designated as the 'Upper Division Clerk'. She submitted that all through out the appointment orders were issued by the petitioner and not a single appointment order was issued by the third respondent. On some occasions, even salary was deposited by the petitioner directly in the account of the first respondent.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the material on record, prima facie, shows that the petitioner had issued appointment letters dated 27/07/2007, 27/03/2008, 08/12/2008 and 28/08/2009. Mr.Nerlekar relied upon clauses 2 & 12 of the appointment order dated 27/07/2007 which are to the following effect.

2. The duration of your engagement will be from 23/07/2007 to 11/03/2008. The contract may be terminated at any time without assigning any reason therefore.

12. It is not an appointment in TISS, temporary or otherwise. It is purely a job contract. It does not,

therefore, confer any right, claim, implicit or explicit, for your continuation/regulation/absorption in TISS against any post/position.

He submitted that clauses 2 & 12 are identical except the period in other appointment letters.

8. It is also evident from record that though respondent No.1 was appointed as Lower Division Clerk/Typist-Clerk, his appointment was purely on temporary basis. He was re-designated as Upper Division Clerk by order dated 25/02/2009. The said order was also issued by the petitioner. It is also relevant to note that not a single appointment order issued by third respondent is produced on record. Prima facie, it is difficult to accept submission of Mr.Nerlekar that respondent No.1 was not employed by the petitioner and the fact that after he ceased to be an employee with effect from 01/02/2010, he was appointed by third respondent. The Courts below have considered this aspect while passing the impugned orders. In paragraph 12, the Labour Court observed that “even if it is considered for a while that since February 2010, respondent No.3 became employer of respondent No.1, some documents in the form of his appointment letter having been issued by respondent No.3 ought to have been made available, if not, any termination letter issued by petitioner and respondents 2. But without any sort of documents to establish relationship of employer-employee in between respondent No.3 and respondent No.1 herein, respondent

No.3 issued termination letter, which in itself cannot be held justifiable on any count”. The Labour Court, therefore, held that there exists a prima facie case in favour of first respondent.

9. The Labour Court further observed in paragraph 13 that documents on record, prima facie, show that first respondent worked with the petitioner for a period of six years right from 2007 to 2013. In paragraph 14, the Labour Court recorded that neither any appointment letter issued by respondent No.3 in favour of first respondent nor any letter in the form of transfer of the first respondent by respondents No. 1 & 2 to the establishment of the third respondent, was produced.

10. After hearing the learned Counsel appearing for the parties and considering the material on record, I am of the view that, the findings recorded by the Courts below cannot be said to be perverse being based upon no evidence or contrary to the material on record. In view thereof, I do not find any merit in the submissions advanced by Mr.Nerlekar that the Courts below were not justified in granting interim relief which is in the nature of granting the final relief. The Courts below have directed the petitioner to allow respondent No.1 to resume duties by maintaining status quo ante, pending disposal of main complaint. The said arrangement is during the pendency of the complaint and therefore, no case is made out for invoking powers under Articles 226 & 227 of the Constitution of

India. Hence, Petition fails and the same is dismissed.

11. It is, however, made clear that the petitioner and respondent No.3 will be at liberty to take out appropriate applications for framing issue as regards relationship of employer-employee between petitioner and first respondent as also whether first respondent is a workman or not. If such applications are taken out, the Labour Court will decide the applications in accordance with law. If the applications are allowed, it shall try those issues first by permitting parties to lead evidence and thereafter proceed to decide the complaint on other issues. Order accordingly.

(R. G. KETKAR, J.)

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