

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.415 OF 2015

1.Chembur Mahila Samaj & Anr. ...Petitioners.
V/s.

Mrs.Nandita M Gothankar ...Respondent.

Mr.Abhay L. Patki, Advocate for the Petitioners.
Mr. A.G. Nagwekar, Advocate for the respondent.

CORAM : Smt. R. P. SondurBaldota, J.
DATE : 6th July, 2015.

PC.:

1. This petition challenges the order dated 6th September, 2014 passed by the Labour Court on the Complaint (ULP) No. 177 of 2012 filed by the respondent under Item Nos.1(a), (b), (d) & (f) Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 seeking, *inter-alia*, reinstatement in service and backwages. By the impugned order, the petitioner is directed to pay compensation of Rs.2,00,000/- to the respondent in lieu of reinstatement and 50% backwages from 3rd July, 2012 till the date of the order.

2. The petitioner had contested the complaints challenging the jurisdiction of the Labour Court to entertain the complaints, as well as, on merits. It had contended that, it is a Charitable institution registered under the Bombay Public Trusts Act engaged in social activities like running working women's hostel,

poli-bhaji kendra, library, educational and cultural activities. All the activities are carried out with donation from the public at large, contributions from Bombay Municipal Corporation, State Government and Central Government. It works on “no profit no loss” basis and therefore it is not an “Industry” as defined under the Industrial Disputes Act (“I.D. Act” for short).

3. The submissions advanced for challenge to the impugned orders are essentially on the question of jurisdiction. Mr. Patki, the learned Advocate appearing for the petitioner refers to the decision of the Apex Court in **Bangalore Water Supply and Sewerage Board V/s. A. Rajappa, 1978 Lab I.C. 467 S.C.** to submit that the Labour Court has not properly appreciated the principles laid down in the decision while deciding the applications. According to him, out of several categories describing the “Industry” stated in the decision, the Labour Court has referred to only one of them i.e. category no.3. He submits that, the Apex Court in the decision cited has narrated the dominant nature test wherein the complex activities that would qualify for exemption have been enumerated. According to him, the essential ingredient to decide whether an establishment is an “Industry” would be an systematic activity organised between an employer and employee for production and distribution of goods. Since the activity conducted by the petitioner does not fall in any of the categories as enunciated by the Apex Court, it ought to have been held by the Labour Court that the petitioner is not an “Industry” within the definition of the I.D. Act.

4. Admittedly, there is no evidence on record to establish that the activities conducted by the petitioner are purely social activities and they are not for commercial purposes and

whatever income generated by the petitioner is utilized solely for its activities, as also, for several social purposes which include grant of donation, education aid, providing uniform to under privilege children etc. The evidence on record, infact shows that, there are several commercial activities conducted by the petitioner. It runs women's hostel, bhajan classes, poli-bhaji kendra etc. The relevant evidence on this aspect has come on record in cross-examination of the witness of the petitioner. The witness admitted that, building of the petitioner consists of ground plus three floors. On the ground floor, there is a Hall known as "Ranade Hall". On the first floor, there is "Aneja Hall". On the second and third floor there is "Working Women's Hostel". There are 17 rooms available in the hostel which accommodate 34 working women. Each occupier of the room has to pay Rs.4,500/- per month for accommodation, Rs.100/- for rent of laptop and Rs.20/- for use of mobile. The petitioner earns Rs. 18,36,000/- per year from the hostel activities. The other two Halls, are also rented out for different purposes earning income for the petitioner. Besides, the respondents have been serving with the petitioner not out of any passion or job satisfaction but for their livelihood. In view of these facts, the Labour Court held that, the petitioner is an "Industry" for the purposes of the Industrial Disputes Act. Considering the evidence noted above, in my opinion, there is no infirmity in the view of the Labour Court. Though the petitioner does some social work, it cannot be said that it is exclusively for social work and there is no commercial activity undertaken by it. Therefore, there can be no substance in the contention that the petitioner is not an "Industry" within the definition of the I.D. Act.

5. The Industrial Court had, by an interim order passed

in Complaint (ULP) No. 249 of 2012 directed the petitioner not to terminate the services of the respondent without following due process of law. The respondent alleged that despite the order, the petitioner terminated her services without following due process of law and published advertisement in the newspaper for recruitment to the post of “Matron”. It selected one Madhavi Pradhan and appointed her to the post of the respondent on higher salary. The respondent's request for reinstatement was not considered. Therefore, according to her the termination from service was illegal. The Labour Court considered the order of restraint of the Industrial Tribunal, termination of the respondent from service, the advertisement issued by the petitioner and appointment of a new Matron to observe that, though the respondent had made out a case of unfair labour practice, she cannot be granted the relief of reinstatement as the post of “Matron” is no longer vacant for reinstatement and awarded compensation in lieu of reinstatement. The respondent was awarded 50% backwages because the Labour Court felt that she might be working somewhere. Thus, on merit also no case is made out by the petitioner for interfering with the impugned order. There is no denial of the order of restraint, termination of the respondent, issuance of advertisement and appointment of new “Matron” in the place of the respondent.

6. For the reasons stated above, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)