

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2574 OF 2006

U.P. Handloom Corporation Petitioner

Vs.

Santosh Kumar & Anr. Respondents

Mr. R.S. Upadhyay, Advocate for the Petitioner.
Mr. K.P. Anilkumar, Advocate for the Respondents.

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

Date : 10th July, 2015

P.C.

1 This petition arises out of the order dated 28th April, 2005 passed by the Industrial Tribunal in Complaint (ULP) No.1122 of 1997 filed by respondent no.1- workman. The complaint had been filed alleging unfair labour practices under Items 6, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act ("MRTU & PULP Act" for short). The petitioner is the Uttar Pradesh Handloom Corporation, owned by Government of Uttar Pradesh and it is concerned with weaving of cloth and its sale. The petitioner arranges for the sale of cloth through various sale

depots spread over in various cities in India including city of Mumbai.

2 Respondent no.1 was issued letter of appointment dated 18th February, 1988 by the petitioner to work as Sales Attendant on daily-wages of Rs.20/-. It is his case that he continued thereafter until the end of February, 1998. After which he was not allowed to resume the duties. He claimed to have completed 240 days of continuous service in the preceding year and alleged that despite having served the petitioner-corporation for more than 10 years, no permanency status was given to him. It was alleged by the respondent that permanency is denied only to avoid payment of wages to him at par with other permanent employees. In February, 1998, he was being paid Rs.1080/- per month, whereas the regular Sales Attendant was receiving salary of Rs.4300/- per month.

3 The respondent examined himself in support of the case, and the petitioner examined Mohamed Saeed Ansari, it's Assistant Marketing Manager. It is the case and evidence of the petitioner that Mohamed Ansari was working at Mumbai in the Chembur Showroom during the period 9th December, 1997 to 26th August, 2001. Thus the period of his personal knowledge as regards the employment of the respondent is only between 9th December, 1997 to February, 1998. Secondly, he did not produce any letter of authority from the petitioner to depose on it's behalf though in the cross-examination, he had claimed that he was given letter of authority by the Managing Director.

Consequently, the evidence of the witness generally on the basis of the record needs to be ignored which includes his evidence on the employment of the respondent prior to 9th December, 1997. This would mean that there is, as good as, no evidence on behalf of the petitioner in the proceedings.

4 As regards the evidence of the respondent, he has stated that he joined the services of the petitioner on 1st April, 1986 and he was appointed as a Salesman. He started working as such in Chembur showroom. Then, he got letter of appointment from the Head Office of the petitioner on 18th February, 1988. He was given a Code number from the Head Office. His salary which was earlier of Rs.14/- per day was enhanced to Rs.20/- per day. The salary was drawn from the Head Office and disbursed at the Chembur office. The respondent used to put his signature on the payment slip / vouchers and on the muster. There was deduction of provident fund from his salary. He was given bonus and also uniform. He further deposed that all the employees appointed along with him were confirmed in January, 1992 and he was denied the permanency. When he enquired with the manager of the Chembur showroom, he was told that his supersession was a mistake and the same would be rectified. The respondent then continued to work with the petitioner. He was given his salary only till February, 1998. Thereafter, he was neither paid his salary nor his daily attendance was marked in the muster. As no steps were taken for rectification of the mistake, he filed the complaint on 5th December,

1997. Within a short time thereafter, i.e. in February, 1998, the petitioner stopped paying him salary and also allowing him to sign the muster. There is virtually no cross-examination of the respondent no.1 on these facts stated by him in evidence. His cross-examination was limited to giving suggestions that from time to time he was given short breaks and after the breaks, he was given fresh letter of appointment for work. It was also suggested to him that the petitioner was declared as sick industry by Uttar Pradesh Government and since February, 1998 it has not made any new recruitment. The other suggestion was that, regularisation in service was only of persons appointed upto the year 1998.

5 Thus the evidence on record establishes that the petitioner has worked from the date of his appointment continuously till February, 1998. This automatically establishes the fact of he having worked for 240 days in every year. It is undisputed position that the petitioner has not been given permanency benefits despite having worked for such a long period. It is also not disputed that the persons, who were appointed with the respondent have been regularised in service. This would only mean that the respondent has been deliberately not given permanency benefits. Therefore, the misconduct under Item 6 of Schedule IV of MRTU & PULP Act stands established and no interference with the impugned order is noted.

6 Mr. Upadhyay, the learned advocate for the petitioner submits that the order impugned in the petition cannot be justified

because it does not consider the aspect of completion of 240 days of work to be established by the respondent. As also the finding as regards the action of the petitioner being deliberate, in not confirming the respondent. I find no substance in the submissions. It has already been observed that the respondent has continuously worked from the year 1988 till 1998. The petitioner has failed to establish that he was given any break in service. It is also not disputed that the other employees have been made permanent in service. In that case singling out the respondent against whom there is no complaint whatsoever in denying permanency benefits would undisputedly be a mis-conduct under Item 6 of MRTU and PULP Act. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)