

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1974 OF 1995

1. Krushi Sanchalak,
Maharashtra Rajya,
Madhyawarti Imarat,
Pune-1

2. Vibhagiya Krushi Sahsanchalak
(Vistar), Aurangabad Vibhag,
Aurangabad.

3. Zilla Biyane Adhikari,
Behind Shakti Sahakar Building,
Aurangabad.

..Petitioners

Versus

Aurangabad Zilla Shet Majdoor
Union, Trade Union Center,
Khokadpura, Aurangabad.

..Respondent

WITH

WRIT PETITION NO. 1987 OF 1995

1. Krushi Sanchalak,
Maharashtra Rajya,
Madhyawarti Imarat,
Pune-1

2. Vibhagiya Krushi Sahsanchalak
(Vistar), Aurangabad Vibhag,
Aurangabad.

3. Zilla Biyane Adhikari,
Behind Shakti Sahakar Building,
Aurangabad.

..Petitioners

Versus

Aurangabad Zilla Shet Majdoor
Union, Trade Union Center,
Khokadpura, Aurangabad.

..Respondent

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AGP for Petitioners : Shri D.R.Korde
Advocate for Respondents : Shri A.S.Shelke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 14, 2016

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ORAL JUDGMENT:-

1. In both these petitions, the common judgment and order dated 29.7.1994, delivered in Complaint (ULP) Nos.147 and 192 of 1988 have been challenged. The first petition has been admitted on 25.4.1995 with a direction to the petitioner that the employees concerned should not be discontinued till the disposal of the petitioner. Similar order dated 25.4.1995 is passed in the second petition, while admitting it.

2. The learned AGP has strenuously criticized the impugned judgment. Contention is that unless there are sanctioned and vacant posts, the Industrial Court could not have issued the direction in the impugned judgment. He further submits that the petitioner is not an "industry" and therefore, the complaint filed before the Industrial Court was untenable in law.

3. It is further contended that without sufficient evidence of continued employment, the Industrial Court could not have presumed continuous service and hence, should have dismissed the complaint. He also relies upon an order delivered by the Apex Court, dated 18.8.1994 in SLP No. 4658 of 1993 and 5717 of 1993 in the matter of Gramsevak Prashikshan Kendra Vs.

The Workmen Employees under them, represented by the Manjari Farm Kamgar Union and others.

4. Shri Shelke, learned Advocate for the respondent Union, representing the respective workers has supported the impugned judgment. He points out that the petitioner has preferred Review Application Nos. 5 and 6 of 1995 and both have been rejected by judgment dated 9.3.1995.

5. He further submits that all the workmen involved in these two petitions, barring Sakhubai Asaram Ghodke and Bababai Suryabhan Sarobar, have superannuated on attaining the age of retirement. Majority amongst them are above 65 years of age. The learned AGP confirms the said statement. On instructions, both the learned Advocates clarify that one employee - Bhaskar Tanaji Jadhav has passed away.

6. I have considered the submissions of the learned Advocates.

7. It is not in dispute that ever since the passing of the impugned order, the workmen concerned are in employment till they attained the age of superannuation barring the two mentioned above.

8. In so far as the issue as to whether the petitioner is an "industry" or not, the Industrial Court has dealt with the said issue in details in paragraph No.6. The view taken by the Apex Court in the case of Shri S.S.Tilekar Vs.

Smt. Indubai Awasti Makeshare and others - Special Civil Application No.26-9 of 1976 has been relied upon. Similarly, the judgment of the Apex Court in the matter of D.N.Bannerji Vs. R.R. Mukherjee [AIR 1953 SC 58], Harisagar Cane Farms Vs. The State of Bihar and others [AIR 1964 SC 903] and the judgment of the Apex Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others [AIR 1978 SC 548], has been followed, while concluding that the petitioner is an “industry”.

9. The Industrial Court has not directed the petitioner to confirm the services of the workmen without considering the availability of the permanent vacant post. Relying upon the Kalelkar Settlement, the Industrial Court has issued certain directions to the petitioner in paragraph No.12 in the nature of preparing a proposal and forwarding the same for absorption of these employees. As interim relief was granted only to the extent of the implementation of the said order, it appears that the petitioners have not forwarded the proposals of these employees. Nevertheless, since I am not causing an interference in the impugned judgment, directions of the Industrial Court, as set out in paragraph No.12 of the impugned order, shall be made effective from the date of the judgment of the Industrial Court.

10. Considering the above, I do not find any reason to interfere with the impugned judgment. Both these petitions are therefore, dismissed. Rule is discharged. No order as to costs.

11. Barring the two employees, mentioned above, all other employees have worked with the petitioners and have superannuated. The chart indicated by the learned AGP confirms the said position. For the sake of clarity, the said chart is taken on record and marked as Exhibit "X" for identification. It shows that these workers were working for decades. The petitioner, therefore, is required to implement the judgment of the Industrial Court, within sixteen weeks.

(RAVINDRA V. GHUGE, J.)

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