

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4463 OF 1995

Ahmednagar Municipal Council  
Ahmednagar through it's Chief  
Officer, Ahmednagar.

..Petitioner

VERSUS

Mrs. Ayasha Mukhtar Sardar,  
Age 37 years, Occ. Medical  
Practitioner, R/o 728, Zendi  
Gate, Ahmednagar.

..Respondent

...  
Advocate for Petitioner : Shri V.S.Bedre  
Advocates for Respondent : Shri Prabhakaran T.K.  
a/w Shri Barde P.V.  
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CORAM : RAVINDRA V. GHUGE, J.  
Dated: July 20, 2016  
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and order dated 23.11.1994, delivered by the Labour Court, Ahmednagar, by which, Complaint (ULP) No. 74 of 1989, filed by the respondent was allowed. She was granted reinstatement with continuity of service without backwages from 26.5.1989.

2. This petition was admitted by this Court on 18.9.1995 and interim relief was granted in terms of prayer clause "C" which reads as under:-

*"(C) Pending the hearing and final disposal of this writ*

*petition, the execution and operation o the decision and order passed by the 1st Labour Court, Ahmednagar dated 23.11.1994 in Complaint (ULP) No. 74 of 1989 may kindly be stayed in the interest of justice. ”*

3. I have heard the learned Advocates for the petitioner and the respondent at length.

4. I find that this case rests on two important aspects. Firstly, that the respondent was a B.A.M.S. Doctor. She was appointed during the leave vacancy of an in-service Doctor during the period 20.4.1987 till 21.6.1987, 19.5.1987 to 22.5.1987 and then from 13.8.1987 to May, 1989. As such, the respondent was appointed only during the leave vacancy of a regular Doctor taking into account the emergency medical services of the petitioner / department.

5. The second issue is that the respondent being a registered Medical Practitioner would not be covered by the definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947 in the light of the ratio laid down by the Honorable Supreme Court in the mater of ESIC Medical Officers' Association Vs. ESIC and another [AIR 2014 SC 1259].

6. Learned Advocate for the respondent has strenuously submitted that this petition is not maintainable since the petitioner has

approached this Court against the judgment of the Labour Court delivered under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”), considering that a statutory remedy is available under Section 44 before the Industrial Court. Such objection was taken by the respondent in her affidavit in reply dated 16.11.1995.

7. This issue has already been dealt with by this Court in the case of Engineering Employees Union Vs. Devidayal Rolling & Refinery Pvt. Ltd. [1986 (52) FLR 40 = 1986 Mh.L.J. 331], wherein, a Writ Petition without exhausting the remedy of a revision under Section 44, was held untenable. However, I do not intend to remit the petitioner to the revisional remedy considering the fact that this petition was admitted 21 years ago and it would amount to causing severe hardships to both the litigating sides.

8. Considering the fact that the respondent was appointed in place of a vacancy created by the absence of the in-service Doctor, would not give any right to the respondent to continue in employment. Consequentially, her disengagement after the resumption of duties by the in-service Doctor post his leave, would not render the disengagement illegal. Such disengagement would, therefore, not amount to retrenchment or termination.

9. In the light of the above, the complaint filed by the respondent

deserves to be dismissed.

10. It, however, cannot be ignored that the respondent has been litigating from 1989 till this date. She has succeeded before the Labour Court and was granted reinstatement with continuity of service, which I have concluded as above, to be unsustainable. Nevertheless, considering this aspect of the matter, I deem it proper to grant compensation to the respondent by way of costs of litigation in the light of the backdrop that she had succeeded before the Labour Court.

11. As such, this petition is partly allowed. The impugned judgment dated 23.11.1994 is quashed and set aside and the Complaint (ULP) No.74 of 1989 is dismissed.

12. The petitioner shall therefore, pay a lump sum compensation to the respondent in an amount of Rs.50,000/- (Rs. Fifty Thousand only/-) within a period of twelve weeks from today.

13. Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J. )

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