

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3443 OF 1996

1. The State of Maharashtra,
Through Executive Engineer,
Purna Irrigation Division,
Basmatnagar, Dist.Parbhani,
 2. The Administrator,
Command Area and Development Authority,
(CADA) Nanded.
- PETITIONERS

VERSUS

Maharashtra Rajya Laghu Vetan
Sarkari Karmachari Sangh, Bombay,
Tq. Branch : Basmatnagar,
District Parbhani,
Through its President,
Shri Satyanarayan Bhurmal Verma

RESPONDENT

Mr.A.P.Basarkar, AGP for the petitioners.
Mr.B.R.Warma, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/04/2016

ORAL JUDGMENT :

1. This petition was admitted on 24/04/2000, but interim relief was refused to the petitioner. Consequent to the same, the two employees at issue represented by the respondent Union namely Ashok Nagorao Deshmukh and Ramchandra Satyanarayan Warma

have been reinstated in employment and are today continued in service.

2. I have heard the learned Advocates for the respective sides. In the light of the order that I intend to pass, I am not required to advert to their entire submissions.

3. The respondent/Union had filed Complaint (ULP) no.39/1994 before the Industrial Court, Jalna under Item Nos. 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. The Union had come before the Industrial Court with a categorical stand that both the employees have been terminated from service on 31/08/1987 without compliance of Section 25-F and 25-G of the I.D.Act, 1947. It was also stated that both of them were working under the Employment Guarantee Scheme (EGS).

4. The jurisdiction and powers of the Labour Court and the Industrial Court are set out in Section 5 and 7 of the MRTU and PULP Act, 1971. The cause of action pertaining to termination, retrenchment, discharge or otherwise removal from service falls under Item 1 of Schedule IV. The Labour Court is vested with the jurisdiction to deal with the cause of action under Item 1 of Schedule

IV.

5. It is trite law that the Industrial Court cannot go into the legality of a termination under Item 1 of Schedule IV. It is trite law that the Industrial Court cannot go into the legality of a termination which falls under Item 1 of Schedule IV. This Court in the matter of National General Mazdoor Union Vs. M/s Nitin Casting Ltd., and others 1990(61) FLR 315 = 1990(II) CLR 641 has concluded that the jurisdiction to deal with the termination or removal from service is with the Labour Court and the Industrial Court would have no jurisdiction.

6. In the instant case, the Industrial Court has considered the cause of action with regard to the termination of both the employees on 31/08/1987 and has invoked Item 9 of Schedule IV to set aside the termination and order the reinstatement with continuity and full back wages of these 2 employees. The impugned judgment of the Industrial Court is without any jurisdiction and is unsustainable. The judgment dated 09/06/1995 is, therefore, quashed and set aside and Complaint (ULP) No.39/1994 is dismissed for being untenable before the Industrial Court under Items 5, 6, 9 and 10 of Schedule IV.

7. So also, this Court in the matter of State of Maharashtra Vs. Bhausahab Nathu Phalke Etc. 2002(1) MLR 74 has concluded that workers working on employment guarantee scheme cannot raise a challenge to their termination and cannot seek regularization in service.

8. Mr. Warma, learned Advocate for the respondent/Union submits that both these employees are in employment for the last about 16 years. They may opt for a remedy if available for the redressal of their cause of action as regards their termination w.e.f. 31/08/1987. However, considering the fact that they have been working for the last 16 years, the petitioner establishment may consider regularizing their services.

9. He further submits that a GR dated 07/06/2001 was issued for regularizing the services of the employees as like these two employees in this matter. However, by a corrigendum dated 29/09/2001, the name of these two employees, which was being considered for regularization, has been subsequently removed from the list of the employees who are under consideration.

10. Learned AGP, without expressing/offering any assurance,

submits that if the petitioners make a representation to the competent department and indicate that similarly situated employees are being considered for regularization, their representation would be considered on its own merits and in accordance with the policy decision of the State.

11. Considering the above and the fact that the concerned two employees are working for the last 16 years, their services shall stand protected for a period of 6 months, provided both of them make a representation to the concerned Department for considering their absorption. In the event, if they tender such representation within one month, the petitioners shall decide the same in accordance with their rules and their policy within a period of 4 months.

12. If these employees are aggrieved by any decision of the petitioners, they would be at liberty to seek remedy for the redressal of their grievance.

13. Needless to state, they shall not be terminated solely for the reason that they are temporaries. This protection shall, however, not apply to a case of disciplinary action.

14. This petition is, therefore, allowed. Rule is made absolute.
15. Pending civil application, does not survive, and is disposed of.

(RAVINDRA V. GHUGE, J.)