

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1678 OF 1996

Raman Sriram Gore,
Age 39 years, Occ. Service
Deputy Director of Social
Forestry Division, Jalna.

..Petitioner

Versus

1. Parme Gangaram Bindewale,
Age 23 years, Occupation Nil.
r/o Jambwadi, Tq. & Dist. Jalna.

2. Bansilal Mansing Phulzade,
Age 30 years, Occ. Nil,
R/o Dharkalayan, Tq. & Dist. Jalna.

3. Natha Genu Nikalje,
Age 50 years, Occ. Nil,
r/o Jambwadi, Tq. & Dist. Jalna.

4. Baban Sudam Borde,
Age 25 years, Occ. Nil
r/o Gondegaon, Tq. & Dist. Jalna.

5. Kaduba Kishan Pandhavy,
Age 23 years, Occ. Nil
r/o Gundewadi, Tq. & Dist. Jalna.

6. Babanrao Shamrao Wakhre
Age 20 years, Occ. Nil
R/o Hankar Deolgaon,
Tq. and Dist. Jalna.

..Respondents

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Advocate for Petitioner : Shri S.V.Warad
Advocate for Respondents : Smt. M.B.Gangwal

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 20, 2016

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ORAL JUDGMENT:-

1. The petitioner / department has challenged the judgment of the Industrial Court dated 8.6.1995, delivered in a group of cases Complaint (ULP) Nos. 325, 334, 335, 346, 352 and 353 of 1994. By the impugned judgment, the Industrial Court has set aside the retrenchment of the complainants and has granted them reinstatement in service with backwages and regularization in service in any scheme if is available with the petitioner.

2. By order dated 17.6.1996 this Court admitted this petition and granted interim relief in terms of prayer clause (E), which reads as under:-

“(E) Pending hearing and final disposal of this Writ Petition, the execution and implementation of the order dated 8.6.1995 and 22.2.1996 kindly be stayed. ”

3. The respondents had moved Civil Application No.4965 of 1995 praying for vacating the interim relief granted. The petitioner filed its affidavit in reply and specifically contended in paragraph No.26 that *“Whenever the work is available, the same will be provided to them on job work basis under various schemes.”* By order dated 26.6.1997, this Court disposed off the civil application by refusing to vacate the interim relief and by listing the Writ Petition for final

hearing.

4. Though it is settled law that the petitioner should have filed individual writ petitions and not a single petition, I am not considering the said issue as this petition has been admitted in 1996.

5. Learned Advocate for the petitioner / department submits that two objections were specifically raised before the Industrial Court with regard to the maintainability of the complaint. Firstly, that all the complainants were already retrenched from the employment pursuant to the notice dated 23.3.1990. Each of these complaints were filed on/or after 16.4.1990. Secondly, that the petitioner is a Social Forestry Department and hence is not an “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

6. I find from the impugned order that the Industrial Court has exercised its jurisdiction under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”) and assumed jurisdiction to go into the legality of the retrenchment and has finally held the retrenchment to be illegal and has granted reinstatement with continuity of service to the complainants.

7. Sections 4 and 5 of the said Act define an “Industrial Court”

and its powers”. Sections 6 and 7 define the “Labour Court and its powers”. Section 5 read with Section 7 indicate that the Labour Court shall have the jurisdiction to deal with cases of retrenchment, termination, dismissal, discharge or otherwise removed from service. The Honourable Supreme Court in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326], has concluded in paragraph Nos.53 and 54 of the judgment that the Labour Court can exercise its jurisdiction even against the proposed or apprehended termination and can interfere with the proposed termination even at the penultimate stage. Section 7 of the said Act indicates that the Industrial Court shall have the jurisdiction to decide cases falling under Schedules II, III and items 2 to 10 of Schedule IV of the said Act. As such, the complaints filed by the respondents were not tenable before the Industrial Court.

8. Notwithstanding the above and the fact that this Court has refused to vacate the interim relief granted to the petitioner, it cannot be ignored that the petitioner had made a statement before this Court that it would offer work to the respondents as may be available on job work basis. A specific affidavit has been filed by the petitioner on 5.3.2012 stating therein that the respondent Nos.1, 2 and 5 namely, Parme Gangaram Bindewale, Bansilal Mansing Phulzade and Kaduba Kishan Pandhav have refused to accept work at any place outside Jalna. They are, therefore, not in employment of the

petitioner. Respondent Nos. 3 and 6 namely, Natha Genu Nikalje and Babanrao Shamrao Wakhare have passed away during the pendency of this petition, which therefore, abates. Respondent No.4 Baban Sudam Borde is alone could be working with the petitioner.

9. Considering the above, though the complaints filed by the respondents were untenable in law and this petition deserves to be allowed to that extent, I deem it proper to rely on the statement made by the petitioner in paragraph No.26 of its reply dated 24.4.1997 to Civil Application 4965 of 1995 that the petitioner would continue to offer work as and when it is available to such respondents who may be willing to work.

10. It also needs to be noted that all the respondents were working on Employment Guarantee Scheme ("EGS") and it is settled law that the workers working on EGS cannot file ULP complaints for seeking regularization or continued employment.

11. In the light of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 8.6.1995 is set aside and the Complaints preferred by the respondents numbered as 325, 334, 335, 346, 352 and 353 of 1994 stand dismissed.

12. Nevertheless, the petitioner shall abide by its statement made

in its reply as recorded above and continue to offer work to respondent No.4 namely, Baban Sudam Borde. In the event, respondent Nos.1, 2 and 5 approach the petitioner for work, the petitioner may consider them on any of its scheme, if work is available at any given place. Needless to state that the work offered would be limited to the extent of 60 years of age of the workmen.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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