

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7584 OF 2014

Chief Officer,
Municipal Council, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon

PETITIONER

VERSUS

Prashant Ashok Bhole,
Age-33 years, Occu : Nil,
R/o Hanuman Nagar, Bhusawal,
Tq. Bhusawal, Dist.Jalgaon

RESPONDENT

WITH

WRIT PETITION NO.7586 OF 2014

Chief Officer,
Municipal Council, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon

PETITIONER

VERSUS

Ravindra Arun Patil,
Age-31 years, Occu-Nil,
R/o Professor Colony, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon

RESPONDENT

WITH

WRIT PETITION NO.7587 OF 2014

Chief Officer,
Municipal Council, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon

PETITIONER

VERSUS

Vijay Govinda Sapkale,
Age-47 years, Occu-Nil,
R/o Khadka, Tq.Bhusawal,
Dist.Jalgaon

RESPONDENT

WITH
WRIT PETITION NO.7588 OF 2014

Chief Officer,
Municipal Council, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon

PETITIONER

VERSUS

Digambar Chagan Yeole,
Age-33 years, Occu : Nil,
R/o Hanuman Nagar, Bhusawal,
Tq. Bhusawal, Dist.Jalgaon

RESPONDENT

Mr.G.V.Wani, Advocate for the petitioner.
Mr.S.B.Yawalkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner in all these four petitions is the same Municipal Council, Bhusawal. All the respondents in these petitions are identically situated employees. Considering the common issue involved in these matters, I have heard these matters together.

3. The petitioner seeks to challenge the impugned judgments of the Industrial Court in the Revision Petitions filed by the respondents

which are as under :-

Name	Complaint (ULP) No.	Date of judgment of the Labour Court	Date of Revision of (ULP) No.	Date of judgment of the Industrial Court	Date of Impugned order
Prashant Ashok Bhole	19/2009	28/03/2011	19/2011	02/04/14	Revision is allowed.
Ravindra Arun Patil	18/2009	28/03/2011	18/2011	02/04/14	Revision is allowed.
Vijay Govinda Sapkale	23/2009	28/03/2011	17/2011	02/04/14	Revision is allowed.
Digambar Chagan Yeole	20/2009	28/03/2011	20/2011	02/04/14	Revision is allowed.

4. I have considered the submissions of the respective sides. Since I find that the only issue that was available for adjudication before the Labour Court was with regard to Section 25-B, 25-F, 25-H and 25-G of the Industrial Disputes Act, 1947, I am not required to advert to the entire submissions of the learned Advocates.

5. All the respondents have filed the above stated complaints before the Labour Court at Jalgaon invoking Item 1(a), (b), (d), (e), (f) and (g) of Schedule IV of the MRTU and PULP Act, 1971 (1971 Act in short). Each of the alleged oral termination was without notice and without payment of retrenchment compensation. Each of them

averred that they have completed 240 days in the continuous and uninterrupted service of the petitioner preceding the date of reference, which is the date of their termination.

6. I find that there is no dispute with regard to the date of appointment and the date of termination of these respondents. I also find that there is no dispute that each of these respondents was terminated without notice and without an opportunity of hearing. In this backdrop, the case rests only on the compliance of Section 25 and its sub sections as stated hereinabove.

7. The petitioner submits that the Labour Court framed an issue "*Whether the appointment of the complainant is legal ?*" The said issue was answered in the negative and the Labour Court concluded that the appointments of these respondents were illegal and unsustainable. The complaints were, therefore, rightly dismissed by the Labour Court vide judgments noted above.

8. The respondents preferred the Revision Petitions u/s 44 of the MRTU and PULP Act, 1971 before the Industrial Court. By the impugned judgments, the Industrial Court has allowed the revision petitions on the basis that the petitioner has violated Section 25-F.

So also, the Industrial Court has made certain observations about the procedure, manner and legality of the appointments of the respondents as “Fireman” in the Fire Brigade Department, who were supposed to drive heavy vehicles in the Fire Brigade Department.

9. In my view, in the light of the judgments of the Apex Court in the case of Ajaypal Singh Vs. Haryana Warehousing Corporation, [(2015) 6 Supreme Court Cases 321], Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation, [(2015) 2 Supreme Court Cases 317] and Mackinnon Mackenzie and Company Limited Vs. Mackinnon Employees Union [(2015) 4 Supreme Court Cases 544], the Labour Court is required to consider whether the complainant is entitled for the protection of Section 25-F subject to completing 240 days in continuous employment as enunciated u/s 25-B.

10. It is trite law that even if the engagement of an employee is irregular, the action of terminating his services on such grounds has to be a legal action. In short, an employer cannot illegally terminate an employee even if his appointment is irregular in nature or if he is a “casual” or a “temporary” or a “daily wager”. This would, however, not apply to “Badli Employees” as defined under the Standing Orders.

11. In my view, therefore, neither the Labour Court nor the Industrial Court was required to look into the legality of the appointments of the respondents. Both the Courts were required to consider whether an opportunity of hearing was given to the respondents and as to whether Section 25-F and 25-H of the I.D.Act r/w Rule 81 of the I.D.(Bombay) Rules, 1957 were complied with while dispensing with their services.

12. Mr.Wani, learned Advocate for the petitioner has strenuously criticized the impugned judgment of the Industrial Court. Notwithstanding his criticism, the petitioner is unable to point out whether a notice of hearing was issued and compliance of Section 25-F was resorted to prior to terminating the services of the respondents, specifically in the light of the fact that the tenure of work performed by the respondents has not been disputed. In the absence of such evidence, rather in the face of an admission that no hearing was given to the respondents and Section 25-F of the I.D.Act, 1947 was not complied with, brings the instant cases squarely within the ratio of the Apex Court judgments in the matters of Ajaypal Singh, Sudarshan Rajpoot and Mackinnon Mackenzie and Company Limited (supra).

13. In the light of the above, though the Industrial Court has rightly interfered with the judgment of the Labour Court, I am unable to agree with the observations of the Industrial Court that the appointments of the respondents were legal and in accordance with the procedure. When the Labour Court itself was not required to consider this aspect, for the similar reasons, the Industrial Court was not required to go into this aspect.

14. Suffice it to say, since Section 25-F has not been complied with by the petitioner and no opportunity of hearing was given to the respondents, the termination of the respondents has rightly been set aside by the Industrial Court. I am sustaining the impugned judgment of the Industrial Court only to the extent of holding the oral termination of the respondents as being unsustainable on account of non-compliance of section 25-F of the I.D.Act, 1947 in the light of the judgment of the Apex Court in the cases of Ajaypal Singh, Sudarshan Rajpoot and Mackinnon Mackenzie and Company Limited (supra).

15. In the result, these petitions are partly allowed. The order of reinstatement with 25% back wages granted by the Industrial Court is sustained. Direction to pay 25% back wages is sustained in the

light of the judgment of the Apex Court in the case Gauri Shanker Vs. State of Rajasthan, 2015(2) CLR 497.

16. However, the petitioner is granted the liberty to resort to an appropriate procedure in the event the petitioner is of the view that the appointments of the respondents have been illegally / irregularly made. Observations of the Industrial Court that their appointment is sustainable as Fireman on the vehicles in the Fire Brigade Department, shall not be an impediment for the petitioner to initiate appropriate steps in this regard. The observations of the Industrial Court and especially those set out in paragraph Nos.14, 15 and 16 are set aside.

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

(RAVINDRA V. GHUGE, J.)