

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 12791 OF 2015

Mr.Krishnat Gundu Deualkar

.. Petitioner

Vs.

State of Maharashtra & anr.

.. Respondent

Mr.M.S.Topkar, for the Petitioner.

Ms.Vaishali Nimbalkar- Assistant Government Pleader, for Respondents.

***CORAM: N.M. JAMDAR, J.
Wednesday, 03 February 2016.***

PC. :

The Petitioner challenges the order passed by the Industrial Court Kolhapur, dated 16 September 2013, dismissing the Complaint (ULP) No.187 of 1999, filed by the Petitioner.

2. The Petitioner filed a Complaint on 3 May 1999 in the Industrial Court under Item No.9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioner contended in the Complaint that he was working since last three years and he was not made permanent even when he had completed 240 days in each calendar year. The Petitioner sought permanency in services of the Forest Department of the State of Maharashtra. He relied on an government resolution dated 16 October 2012. The Respondents filed Written Statement and opposed the Complaint.

It was denied that the Petitioner had completed 240 days. It was also denied that the work entrusted to the Petitioner was of permanent nature. The contention that the Petitioner was entitled to protection of the Government policy regarding permanency was denied. The Petitioner filed an affidavit and placed on record number of days he had worked from 1997 to 1998, 1998 to 1999 and from 1999 to 2000. In the examination-in-chief he asserted that he joined on 1 February 1997. The Industrial Court, after considering the evidence on record, found that the Petitioner had not completed 240 days as required. It also found that the work carried out by the Petitioner was not similar to the permanent employees. The Industrial Court took note of various decisions of this Court and the Apex Court as regards law governing grant of permanency in public services and rejected the Complaint by the impugned order.

3. The learned counsel for the Petitioner submitted that the Petitioner had called for records to demonstrate that the Petitioner was working since 1994 and since the record was not produced, adverse inference should have been drawn. He submitted that since Petitioner was working since 1994 and had completed 240 days, he was entitled to the benefit of Government Resolution dated 16 October 2012. These submissions cannot be accepted. It is the Petitioner's own case on oath that he started working since 1997. He filed the Complaint in May 1999. Therefore, the initial burden being on the Petitioner, no adverse inference can be drawn against the Respondents in view of clear assertion by the Petitioner himself in examination in-chief. Even in the affidavit,

the Petitioner has given the number of days from 1997 onwards. The findings on the factual aspects reached by the Court that the Petitioner started working from 1997, cannot be termed as perverse. As regards the number of days in a year, on assessment of evidence Court found that the Petitioner had not completed 240 days. After filing of the Complaint it appears that the Petitioner was continued on the basis of the interim orders, which is nothing but litigious employment. In the circumstances, no interference is warranted in writ jurisdiction. The Writ Petition is **rejected**.

(N.M.Jamdar, J.)