

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 793 OF 2002**

The Deputy Director of Social Forestry, Solapur ...Petitioner
VS.
Smt.Tarabai Chandrakant Kannure Respondent

None for Petitioner.
Ms.Seema Sarnaik for Respondent.

CORAM : S.C. GUPTE, J.

7 APRIL 2016

P.C. :

The Petitioner seeks to challenge a judgment and order dated 10 November 1998 passed by 2nd Labour Court at Solapur and a judgment and order dated 16 August 2001 passed by the Industrial Court at Solapur confirming the order in revision. The impugned orders are passed on a complaint filed by the Respondent under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act"). The complaint challenged a wrongful termination of the Respondent along with another. It was the case of the complainants before the Labour Court that both the complainants having worked for more than 240 days in the relevant calendar years and acquired the status of permanent employees, the termination of their services on the basis of oral termination treating them as temporary employees amounted to unfair labour practices under Item Nos.1(a), (b), (d) and (f) of Schedule IV of the Act. After considering the evidence led by the parties before it, the Labour Court accepted the complainants' case that the termination of their services attracted Item 1(b) of the schedule, since services could not have been terminated except after following the procedure of a show cause notice, charge-sheet, etc. Accordingly, it was held that the termination was not in good faith, but in colourable exercise of the employer's rights. Further considering that there was no reason to deny the

reliefs of reinstatement as well as back-wages, the complainants were directed to be reinstated with continuity of service and full back-wages from the date of termination till the date of their actual reinstatement. This order was carried in revision by the Petitioner before the Industrial Court at Solapur. By its order dated 16 August 2001, the Industrial Court rejected the revision applications in respect of each of the two complainants.

2 It appears from the order of the Industrial Court that the only ground of challenge before the Industrial Court on merits of the matter was that the establishment of the Petitioner was not an industry within the meaning of the definition under Section 2(j) of the Industrial Disputes Act, 1947 presumably on the ground that the work carried out by the Petitioner amounted to a sovereign function of the State. The contention was rejected by the Industrial Court. The Industrial Court held that the oral termination of the concerned employees amounted to termination in colourable exercise of the employer's rights. The Industrial Court also rejected the Petitioner's contention that he was punished for a fault of his Advocate. The judgments cited by the Petitioner before the Industrial Court, which according to it could not be cited before the Labour Court due to a fault of its Advocate, were considered by the Industrial Court. The Industrial Court proceeded to hold that there was nothing on record to show that the Petitioner was performing any sovereign function of the State. No fault can be found with the conclusion of the Industrial Court. In the case of **Chief Conservator of Forests vs. Jagannath Maruti Kondhare**¹, the Supreme Court considered the question as to whether the Forest Department of a State Government was an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. After applying the dominant nature test spelt out by the Supreme Court earlier and also considering the case of **Bangalore Water-Supply**, the Supreme Court held the Forest Department of the State Government to be an industry within the meaning of the definition under the Act.

3 None appears for the Petitioner to support the grounds raised in the petition. On the last occasion, i.e. on 31 March 2016, the Petitioner through

1 AIR 1996 SC 2898

its counsel sought time and the matter was stood over to today's date as a last chance. Despite that none is present on behalf of the Petitioner. Perusing the grounds raised in the petition, it is clear that none of the grounds makes out any case for interference with the concurrent orders of the two courts below. The grounds that the Social Forestry Department works on community lands or that the work carried out depended on the permission of land owners or was of a temporary nature, are merely required to be stated to be rejected. There is no merit in the contention that the Petitioner's establishment is not industry as stated hereinabove.

4 There is no merit in the petition and the same is dismissed.

5 The Petitioner shall, accordingly, reinstate the Respondent, in case the Respondent has not crossed the age of superannuation, with continuity of service. In the event, the Respondent has crossed the age of superannuation, he will be given retirement benefits on the basis of full continuity of service as directed by the Labour Court.

6 In pursuance of an order passed by this Court on 19 June 2002, the Petitioner has deposited back-wages from the date of the termination till the date of the order of this Court. The Respondent is permitted to withdraw the amount deposited by the Petitioner with accrued interest, if any. Office is, accordingly, directed to permit withdrawal. Further back-wages upto the date of superannuation or upto date, whichever is earlier, shall be paid by the Petitioner to the Respondent within a period of three months from today.

(S.C. Gupte, J.)