

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

WRIT PETITION NO. 7561 OF 2015

Miss Kavita Ashok Karanjkar

... Petitioner

v/s

1. The Deputy Director,
Health Services, Pune, & anr.

... Respondents

Mr.Nitin Kulkarni along with Mr.Avinash Belge for the petitioner.

Ms.Vaishali Nimbalkar, A.G.P. for Resp. Nos.1 and 2.

CORAM: N.M. JAMDAR, J.

DATED : 8 FEBRUARY 2016

ORAL ORDER:

Heard learned counsel for the Petitioner.

2 The Petitioner has challenged the order passed by the Industrial Court, Pune, in Complaint (ULP) No.239 of 2010, dated 6 April 2015. By the impugned order, the Industrial Court, Pune, dismissed the Complaint filed by the Petitioner.

3 The Petitioner had filed the Complaint under Section 28(1) read with Items 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. It was the case of the Petitioner that she was appointed initially on 11 October 2000 as a Junior Clerk.

Thereafter, she was given appointments for specific period on temporary basis. She contended that she had completed requisite number of 240 days and as per the provisions of the Industrial Employment Standing Orders Act, 1946 and Model Standing Orders, the Petitioner ought to have been confirmed in service. The Respondents – State filed reply and contended that the Petitioner was appointed in a leave vacancy due to transfer of one of regular employees for the period of three months on temporary basis. It was their contention that the Petitioner was initially protected by an order passed in Complaint (ULP) No.38 of 2002, which protection was granted which was subsequently withdrawn and the Petitioner's services came to be terminated. It was contended that, in the circumstances, the Petitioner was not entitled to the grant of permanency.

4 The Industrial Court relied upon the decision of the Apex Court in the case of *Hari Nandan Prasad v/s Employer I/R to Management of FCE & anr.*¹ and the earlier decisions of the Apex Court on the subject and held that this was not the case where it could be concluded that there was any unfair labour practice under Item 6 of Schedule IV of the Act and there was no deprivation of petitioner's permanent benefits. Accordingly, the Complaint was dismissed.

5 Learned counsel for the Petitioner urged that, in Complaint (ULP) No.38 of 2002 filed by the Petitioner seeking relief to

1 2014 I C.L.R. 919.

restrain the Respondents from terminating her services, the Labour Court had initially granted interim relief by an order dated 15 February 2002, which was not continued. Thereafter the services of the Petitioner were terminated on 26 August 2015. He submitted that the continuance of the Petitioner was not on the basis of any interim order and, therefore, the Court was not correct in coming to the conclusion that the continuation of the Petitioner was litigious employment.

6 This contention of the Petitioner cannot be accepted. The Petitioner was admittedly appointed on a leave vacancy. She was given temporary appointments for specific periods, which she accepted. There was no selection process. For engaging the services of the Petitioner, there was no advertisement and interview. The Petitioner filed a Complaint in the Labour Court for protection of services. Initially, ad-interim relief was granted. The advocate for the Petitioner in the Labour Court filed a purshis for not pressing the interim relief application. The Labour Court thereafter framed the issues. The matter was kept for evidence. After the Complaint was dismissed, the Revision was filed on 30 May 2009. The Labour Court kept the order in abeyance for one month. Thereafter, the Industrial Court disposed of the Revision Application on 22 July 2000, and directed the Respondent State not to terminate the services of the Petitioner without following due process of law.

7 These proceedings clearly show that the Petitioner's

continuance in service was due to the litigation. The State had acted by way of abundant caution, keeping in mind the pendency of the Complaint and the Revision. Even while dismissing the Complaint, the Labour Court had kept the order in abeyance for the period of one month. The Industrial Court had given liberty to terminate the services by following due process of law. Therefore, it is clear that had the Petitioner not filed the Complaint and the Revision, the State would have proceeded to take action in the year 2002 itself. If the contention of the Petitioner that since the ad-interim relief was not continued by the Labour Court, the occupation of the Petitioner in public post, though a back-door entry, be considered as on permanent basis is accepted, it will give rise to another method of bypassing the constitutional mandate of public participation in the employment of the State. The Petitioner has approached this Court in its writ jurisdiction. The Petitioner had worked for a limited period before she invoked the protection of the Court process. In view of the dicta of the Apex Court in the case of *Secretary, State of Karnataka & ors. v/s Umadevi & ors.*², no relief can be granted to the Petitioner in the equity jurisdiction of this Court.

8 The writ petition is accordingly rejected.

(N. M. JAMDAR, J.)