

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

WRIT PETITION NO.8055 OF 2015

**Sport Secretary
Maharashtra Government Mumbai and ors. : Petitioners.**
versus
**Prashant Shankarrao Chauhan
Through M V Bhaite Shivamhika Sada
Forest Society and ors. : Respondents.**

**Mr. P G Sawant AGP for the Petitioners.
Mr. P D Dalvi for the Respondents.**

**CORAM : R. M. SAVANT, J.
DATE : 16th August 2016**

P.C.

1 The writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the judgment and order dated 20/07/2011 passed by the learned Member of the Industrial Court, Thane by which order the Complaint (ULP) No.380 of 2005 came to be partly allowed and a declaration came to be issued that the Respondents in the said Complaint have committed unfair labour practice in so far as Item 6 and 9 of Schedule IV of the MRTU and PULP Act 1971 are concerned and further directions were issued that the Respondents in the said Complaint to consider cases of the Complainant Nos.1 to 4 i.e. the Respondent Nos.1 to 4 for permanency and rejected the Complaint in so far as the Complainant Nos.5 to 8 i.e. the Respondent Nos.5 to 8 herein on the ground of the jurisdiction of the Industrial Court, Thane as the said complainants were working in Nashik.

2 The Complainant Nos.1 to 4 have founded their case of alleged unfair labour practice against the Respondents in the Complaint under Item 6 and 9 of Schedule IV on the basis that they have been appointed for the first time in the year 1998 and thereafter by issuing periodic letters of termination and thereafter appointment have been continued till the date of filing of the Complaint. It was therefore the case of the Complainants that they had worked for more than 240 days in a calendar year and were therefore required to be extended the benefit of permanency.

3 The Respondents in the Complaint i.e. the Petitioners herein filed their written statement and denied the claim of complainants. It was the case of the Respondents in the Complaint that the Complainants have been engaged on the basis of payment of honorarium from time to time and therefore could not claim permanency.

4 The Complaint proceeded to trial. The Complainant Prashant Shankarrao Chauhan examined himself. Significantly there was no cross examination of the said complainant by the Respondents/Petitioners. The complainants thereafter closed their evidence. The Respondents in the Complaint did not lead any evidence.

5 On the basis of the material on record the learned Member of the Industrial Court held that the complainants have proved that they were working for more than 240 days in a calender year and that by terminating them and issuing fresh letters of appointment from time to time since the year 1998, the Respondents in the Complaint have committed unfair labour practice as contemplated by Item 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971. The Respondents as indicated above did not lead any contra evidence to rebut the case of the complainants that the work carried out by them was of a permanent nature. The Industrial Court held that since in the present case the provisions of the MRTU and PULP Act, 1971 have been invoked, the judgment in Umadevi's case would have no application. As indicated above, in so far as complainant Nos.5 to 8 are concerned, the Industrial Court did not deem it appropriate to exercise jurisdiction in respect of the said complainants as they were admittedly working in Nashik, and therefore, the Industrial Court, Thane did not have jurisdiction.

6 The learned counsel for the Petitioners herein i.e. the Respondents in the Complaint Shri P G Sawant would seek to re-iterate the case of the Petitioners i.e. the Respondents in the Complaint as urged before the Industrial Court. The learned counsel would also seek to place reliance on the judgment of the Apex Court reported in AIR 2006 1806 in the matter of Secretary, State of Karnataka and ors v/s. Umadevi and ors.

7 Per contra, the learned counsel for the Respondents herein i.e. the original complainants Shri P D Dalvi would support the impugned judgment and order. The learned counsel would draw this Court's attention to the orders passed by this Court in identical cases being Order dated 01/09/2005 in Writ Petition No.3519 of 2005 which was confirmed by the Apex Court by the order dated 18/09/2009 passed in Special Leave Appeal (Civil) No.11886-11887 of 2009, the Order dated 11/12/2009 passed in Writ Petition No.4044 of 2009, the Order dated 21/03/2011 passed in Writ Petition No.2019 of 2011, and lastly the Order dated 26/03/2012 passed in Writ Petition No.2696 of 2012. The learned counsel for the Respondents herein would therefore contend that no interference is called for with the impugned order.

8 In so far as the orders (supra) are concerned, the said orders have been passed in Writ Petitions which involve the identical facts wherein also the complainants were engaged since long past and were continued from time to time on the basis of fresh letters of appointment issued. The learned Single Judges of this Court have confirmed the orders passed by the Industrial Court holding that the Respondents in so continuing the complainants for a long time have thereby indulged in unfair labour practice covered by Item 6 of Schedule IV of the MRTU and PULP Act, 1971. In so far as the order dated 01/09/2005 passed in Writ Petition 3519 of 2005 is concerned, the said order has been

confirmed by the Apex Court. In so far as the judgment of the Apex Court in *Umadevi's* case (supra) is concerned, the same would not aid the Petitioners as in the instant case the adjudication is under the MRTU and PULP Act, 1971.

9 In my view, having regard to the findings recorded by the Industrial Court in the impugned judgment and order, as also having regard to the precedents as above, no case for exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]