

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5140 OF 1997

Nagar Parishad,
Jalna.

...PETITIONER

-VERSUS-

Smt.Durpatabai d/o Malhari Dive,
Age : 28 years, Occupation : Nil,
R/o Jiyabhai Bhatiwale,
Opp. of Godown, Ambad Road,
Nutan Vasahat,
Taluka and District Jalna.

...RESPONDENT

...
None for the parties.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 The Petitioner/ Municipal Council, Jalna is aggrieved by the judgment and order dated 10.03.1997 delivered by the Industrial Court, Jalna by which Complaint (ULP) No.129/1995 has been allowed. The Respondent is granted reinstatement with continuity and back wages. She is also granted permanency in the service of the Petitioner from 17.04.1995 when another employee Smt.Parvatibai Tulshiram Kamble was

granted regularization.

2 None has appeared for the Petitioner/ Municipal Council despite the matter being on the final hearing board and which is being taken on every Thursday. Despite service of court notice, the Respondent has not entered an appearance either through an Advocate or in person. Instead of dismissing the matter in default, I am deciding this petition on its merits.

3 While admitting this petition, this Court granted status-quo on 01.12.1997 and the said order was continued.

4 The Respondent was before the Industrial Court in the ULP Complaint under Items 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971. It was specifically contended that she was engaged in 1984 and was orally terminated in 1987. Thereafter, she was taken back as daily wager on 31.08.1991 and was continued till 30.05.1992. From that date, she is not in employment.

5 It was claimed by the Respondent that the co-worker Smt.Parvatibai Kamble, who was at Sr.No.30 below the Respondent, was granted permanency on 17.04.1995. Though the Respondent worked from

1984 to 1987 and 1991 to 1992, her claim was overlooked.

6 The Industrial Court has concluded that the Respondent has a continuous cause of action as a junior person was regularized in service and therefore, she has a right to regularization and reinstatement with continuity.

7 The powers of the Labour Court and the Industrial Court are defined in Sections 4, 5, 6 and 7 of the MRTU & PULP Act, 1971, which read as under:-

“4. *Industrial Court*

(1) *The State Government shall by notification in the Official Gazette, constitute an Industrial Court.*

(2) *The Industrial Court shall consist of not less than three members, one of whom shall be the President.*

(3) *Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:*

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

(4) *Every member of the Industrial Court shall be a person who is or has been a Judge or a High Court or*

is eligible for being appointed a Judge of such Court :

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. *Duties of Industrial Court.*

It shall be the duty of the Industrial Court:-

- (a) to decide an application by a union for grant of recognition to it;*
- (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;*
- (c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;*
- (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;*
- (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;*
- (f) to decide references made to it on any point of law either by any civil or criminal court and*
- (g) to decide appeals under Section 42.*

6. *Labour Court*

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts;

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7. *Duties of Labour Court*

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act.”

8 It is trite law that even apprehended termination or threat of termination can be assailed under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 before the Labour Court. The Honourable Supreme Court in the matter of *Hindustan Lever v/s Ashok Vishnu Kate*, 1995(6) SCC 326, has concluded that even if there is a threat of termination, an employee can approach the Labour Court and seek protective orders.

9 In my view, after the Respondent was terminated in 1987 and then again after working from 31.08.1991 to 03.05.1992, she was discontinued, the ULP complaint filed in 1995, at the most, could have been entertained by the Labour Court as against the termination of the Respondent and violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. The Industrial Court has exercised jurisdiction not vested in it by law and has set aside the termination of the Respondent concluding that it amounts to illegal termination. Reinstatement with continuity and full back wages have been granted from 10.07.1995 which is the date of filing of the complaint. The Industrial Court could not have exercised the said jurisdiction looking to the scheme of the 1971 Act.

10 In the light of the above, this Writ Petition is allowed. The impugned judgment dated 10.03.1997 delivered by the Industrial Court is quashed and set aside. Complaint (ULP) No.129/1995 stands dismissed.

11 Needless to state, in the event, the Respondent has been reinstated in service and has continued in employment, this judgment shall not entitle the Petitioner to dispense with the services of the Respondent.

12 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)