

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5392 OF 1997

1. Manager,
Ambad Taluka Kharedi Vikri Sangh
Ltd., Ginning Pressing Unit,
Tq.Ambad, Dist.Jalna,

2. The Chairman,
Ambad Taluka Kharedi Vikri Sangh
Ltd., Ginning Pressing Unit,
Ambad, Tq. Ambad, Dist.Jalna,

3. Shri Ghogare,
Ginning Supervisor,
Ambad Taluka Kharedi Vikri Sangh
Ltd., Ginning Pressing Unit,
Ambad, Tq.Ambad, Dist.Jalna.

-- PETITIONERS

VERSUS

Marathwada Serva Shramik Sanghatana,
(Registration No.AWB-121),
Trade Unions Centre, Kolwalpura,
Aurangabad

-- RESPONDENT

Mr.V.D.Salunke, Advocate for the petitioners.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 07/05/1997 by which complaint (ULP) No.2/1994 (Old No.26/1986) has been allowed and the Industrial Court has

concluded that the petitioner is guilty of ULP under Items 4(a) and 4(f) of Schedule II and Item 9 of Schedule IV of the MRTU and PULP Act, 1971.

2. While admitting this petition, this Court stayed the grant of back wages by directing the petitioners to employ the 20 workers at issue. It is stated that the Ginning Factory operated by the petitioners was closed down some time in 2007.

3. The respondent/Union had approached the Industrial Court by filing the ULP Complaint alleging that because the Union was established, the petitioners started threatening the workers with discharge or dismissal. No sooner had the Union become active on behalf of these workers, they were denied work on 03/04/1986 and thereafter. The Union had addressed the petitioners through their letters dated 07/04/1986, 10/04/1986 and 11/04/1986 seeking permission to allow these workers to work as the season had already commenced. Since the petitioners declined to allot work to them, the respondent/Union preferred its ULP complaint on 21/04/1986 through the Union office bearer. After recording oral and documentary evidence, the Industrial Court has allowed the complaint.

4. The petitioners have raised 17 grounds in the petition. It is contended that the Union did not have the authority to file the complaint. The complaint was not maintainable under Schedule II. The workmen at issue were neither terminated nor denied any work. They themselves stop reporting for duties. The petitioners do not have any grievance against any Union. All the workmen were seasonal employees and therefore the law of retrenchment would not be applicable to them.

5. After considering the submissions of the learned Advocates and upon going through the record available, I find that pursuant to the order dated 03/04/1986, these 20 workers have not been in employment for the last about 31 years. They had worked in the seasons from 1981 till 02/04/1986 which could be about 5 seasons. Ever since, despite the interim orders of the Industrial Court as well as this Court, it is contended that they were not offered any work. The petitioner/society is in operation and existence, though the Ginning Pressing Unit where these 20 workers were working, has been closed down.

6. In so far as the objection of the petitioners that the Union

could not have filed the ULP complaint is concerned, the said objection need not be sustained as Section 22 of the MRTU and PULP Act, 1971 permits a registered Union to espouse the cause of its members. There is no prohibition for inducting seasonal workers as members of the Union. There is no dispute that there was no recognized union in the petitioner/Establishment. The complaint was, therefore, rightly held to be tenable by the Industrial Court.

7. The petitioners had objected before the Industrial Court that as the Union had claimed that the workers were not allowed to work from 03/04/1986, the complaint was untenable in law as the Industrial Court did not have the jurisdiction. This objection also has been rightly rejected by the Industrial Court for reasons assigned. Firstly, that this Union had invoked Item 4(a) and 4(f) of Schedule II and Item 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. Item 4(a) and 4(f) of the Schedule II and Item 9 and 10 of Schedule IV read as under :-

“Item 4(a) of Schedule II - discharging or punishing an employee because he urged other employees to joint or organise a union ;

Item 4(f) of Schedule II - discharging office-bearers or active union members on account of their union activities.

Item 9 of Schedule IV - Failure to implement award, settlement or agreement.

Item 10 of Schedule IV - To indulge in act of force or violence.”

8. As such, when allegations of threats of discharge or dismissal or actual discharge or dismissal for the formation of a Union are concerned, the Industrial Court can investigate into the said allegations. The complaint, therefore, has been rightly entertained.

9. Secondly, it was stated in the written statement by the petitioner that none of these workers have been removed or terminated by the Management. They had gone to attend some marriage at some village namely Bori and thereafter did not report for duties. It is also stated in paragraph Nos. 6 and 7 of the written statement that none of these workers have been terminated or refused employment. In this backdrop, the Industrial Court rightly entertained the complaint as the defence of the petitioners was that none of these workers have been terminated or dismissed or refused work.

10. In the written statement, the petitioners have not denied that these workers were working during the seasons from 1981 till 1986. Notices were issued to some of these workers in March 1986 calling upon them as to why they should not be discharged from

employment. The Management witness Mr.Ghogare admitted these facts and clarified that the Management could have removed these workers if they were not working properly.

11. The Management witness admitted in his cross-examination that the petitioners were not paying wages according to the prescribed minimum wages under the Act. He admitted that these workers were the members of the Union. He further admitted that the Management had informed the Union on 13/03/1986 that the Union is illegally formed and is not a recognized Union.

12. In so far as the case of abandonment is concerned, it is settled law that before presuming abandonment of service, the employer has to issue notices to the employees calling upon them to report for duties. All these workers were working in the season of 1986. They alleged refusal of work from 03/04/1986 and filed their complaint on 21/04/1986 which is on the 18th day of the refusal of employment. This period of 18 days is not enough for any employer to presume abandonment of service and that too without any notice to any of the workers. It was in this backdrop that, in my view, the Industrial Court has rightly concluded that the concerned workers were being refused work and were unlawfully kept away from him. The

declaration of ULP under Item 9 of Schedule IV, therefore, cannot be faulted, though the defence of the petitioners that none of these workers were discharged or terminated for the formation of a Union, would put to rest the controversy about oral termination or discharge.

13. Notwithstanding the above, the subsequent events cannot be ignored. These 20 workers had worked for 5 seasons and are said to be out of employment for the last 31 years. Some of them may have crossed the age of superannuation and the chances of treating them as seasonal permanent and subsequently permanent in service has also dwindled since the Ginning Factory got closed down in 2007. It is informed that 4 amongst these 20 workers have passed away.

14. In the cases of employment for short duration and unemployment for longer duration, the Hon'ble Apex Court has held in following 4 cases that compensation @ Rs.30,000/- per year of service put in would be more practicable than granting reinstatement after a long period of unemployment :-

“1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],*

3. *BSNL Vs. man Singh [(2012) 1 SCC 558] and*

4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327]. ”*

15. In the instant case, these workers had put in 5 seasons. They are out of employment for about 31 years. Proportionately, I feel that an amount of Rs.15,000/- per season would be an appropriate compensation to these workers. Each of them therefore would stand to earn an amount of Rs.75,000/- by way of compensation.

16. In the light of the above, this petition is partly allowed only to the extent of modifying the direction of reinstatement in service with continuity and back wages by directing the petitioners to pay compensation of Rs.75,000/- to each of these 16 workers and similar compensation would be paid to the legal heirs of the deceased 4 workers, within a period of 8 (eight) weeks from today, failing which the said amount would attract interest @ 6% p.a. from the date of this judgment until actual payment is made.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)