

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

WRIT PETITION NO. 7258 OF 2016

Associate Dean @ Sahayogi Adhithatha
and Principal,
Veterinary College, Udgir,
District Latur.

...PETITIONER

-VERSUS-

1 The General Secretary,
Marathwada Lal Bawata
Kamgar Union,
Trade Union Office, Vidyanagar,
Jalkot Road, Udgir,
District Latur.

2 The Registrar,
Marathwada Agricultural University,
Parbhani.

...RESPONDENTS

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Advocate for Petitioner : Shri Rodge Pratap G.

Advocate for Respondent 1 : Shri B.B.Yenge h/f Shri A.V.Patil and Shri
A.N.Gaddime.

Advocate for Respondent 2 : Shri S.G.Sangle.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner is aggrieved by the judgment dated 13.04.2016 delivered by the Industrial Court, Latur in Complaint (IT) No.1/2004 (old No.1/2002) by which the act of termination of the Respondent dated 27.02.2001 is held to be in contravention of Section 33(1) of the Industrial Disputes Act, 1947. Consequentially, the relief of reinstatement with continuity and other monetary benefits including back wages has been granted w.e.f. 01.04.2001.

3 I have heard the learned Advocates for the respective sides at length.

4 The admitted factors are as under:-

- (a) Reference (IT) No.1/2000 with regard to the general demands put forth by Respondent No.1/ Union were subject matter of adjudication before the Industrial Tribunal at Latur.
- (b) The list of it's members was not furnished by the Respondent/ Union before the Tribunal.
- (c) 11 employees for whom the Respondent/ Union is espousing the cause are said to have been taken into contractual employment in between June, 1976 till October, 1991.

- (d) All of them were terminated on 01.04.2001.
- (e) The Petitioner has taken a specific stand that all these workmen were contractual employees.
- (f) Upon being aggrieved by the termination, all these employees preferred Complaint (ULP) No.19/2001 before the Labour Court at Latur.
- (g) None of them approached the Industrial Tribunal for contending that they are covered by Section 33(1)(a) of the Industrial Disputes Act, 1947.
- (h) Complaint (ULP) No.19/2001 was dismissed by the judgment of the Labour Court dated 12.12.2001 concluding therein that all the concerned workmen have been terminated by the Petitioner/ Management by following the law of retrenchment under Section 25-F of the Industrial Disputes Act, 1947 and were paid their retrenchment compensation.
- (i) The Respondent/ Union thereafter, filed Revision (ULP) No.8/2002 (renumbered as 183/2004) for challenging the judgment of the Labour Court.
- (j) In the meanwhile, the Respondent Union filed Complaint (IT) No.1/2002 (renumbered as 1/2004) on 17.01.2002.
- (k) By the impugned judgment dated 13.04.2016, the Industrial Court has allowed Complaint (IT) No.1/2002 by concluding

that Section 33(1) of the Industrial Disputes Act, 1947 has been violated.

5 The strenuous contention of Shri Yenge, learned Advocate for the Respondent/ Union, is that since the demands put forth by the Union were pending adjudication in Reference (IT) No.1/2000, the Petitioner/ Management could not have altered their service conditions by terminating their services. These workmen, who were led by the Union, were agitating for their absorption in service of the Petitioner. Even if there was any contractor through whom they were deployed, their demands were for absorption in service with the Petitioner Management. It is, therefore, contended that Section 33(1)(a) of the Industrial Disputes Act, 1947 was squarely applicable and the Industrial Court has rightly allowed their complaint and has granted consequential reliefs.

6 Shri Yenge has placed reliance upon the judgment of the Honourable Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Limited vs. Shri Ram Gopal Sharma and others*, **2002 (I) CLR 789**, to support his contention that the moment Section 33(1) is violated, the concerned workers are required to be reinstated in service since the termination is non-est and void ab-initio.

7 I do not find any merit in the submissions of the Respondent/ Union. Reference (IT) No.1/2000 was pending wherein it is claimed that the Union was demanding regularization of services of these contractual workers. When these contractual workers were terminated on 01.04.2001, none of them approached the Industrial Tribunal where the reference was pending for lodging the complaint under Section 33(1)(a) of the Industrial Disputes Act, 1947. Instead, the Respondent Union and the said workers chose to approach the Labour Court for challenging their termination by invoking Section 28(1) and Item (1) of Schedule IV of the MRTU & PULP Act, 1971. They subjected their termination to the adjudicatory process before the Labour Court on their own free will and accord. They set the process of law in motion and subjected their terminations to judicial review by challenging the said terminations before the Labour Court under the MRTU & PULP Act, 1971.

8 It is trite law that no litigant can avail of two remedies by setting the law in motion and assailing the same termination order before two different forum and under two different provisions of law. After the ULP complaint was dismissed on merits by the Labour Court, the Respondent Union preferred the revision petition under Section 44 of the MRTU & PULP Act, 1971. Neither was it stated in the revision petition that they desired to withdraw their challenge and question the legality of their

termination under Section 33(1) of the Industrial Disputes Act, 1947, nor did they disclose their intention before the Industrial Court that they were planning to file the complaint under Section 33(1) of the Industrial Disputes Act, 1947 before the Industrial Tribunal.

9 It is evident from the record that the legality and validity of the termination of these workers was tested before the Labour Court and their complaint was dismissed on merits. Their revision petition before the Industrial Court was also dismissed on merits. In this backdrop, once the legality and validity of the termination was tested by the Labour Court and then by the Industrial Court, the Respondents could not have prosecuted their complaint under Section 33(1) for challenging the same termination on the ground that their reference was pending. It appears from the judgment of the Labour Court as well as the Industrial Court that the pendency of the reference proceedings was mentioned. Even before the Industrial Court, the pendency of Reference (IT) No.1/2000 was canvassed inasmuch as, Section 33 was also pressed into service.

10 At this juncture, Shri Yenge, learned Advocate for the Respondent/ Union, submits on instructions that the impugned judgment of the Industrial Tribunal dated 13.04.2016 in Reference (IT) No.1/2002 (new number 1/2004) be set aside by consent. He further submits that the

Associate Dean of the Petitioner College, by letter dated 27.11.2012 addressed to the Registrar of the Maharashtra Animal and Fishery Sciences University, Nagpur informed therein that these 11 workers, who have been removed from service, could be reallocated the work on temporary basis by considering their earlier seniority.

11 Shri Yenge, therefore, submits that the Petitioner may consider their case for allocation of temporary/ seasonal work on the same conditions on which they were working earlier.

12 Shri Yenge further points out that by orders dated 19.06.2015 and 31.07.2015 passed on Civil Application Nos.1697/2014 and 3415/2015 in Writ Petition No.6435/2009, this Court has recorded the statement of similarly situated contractual employees that they would work through the concerned contractors.

13 Shri Rodge, learned Advocate for the Petitioner, submits that in the event such contractual workmen are allotted the work and if similarly situated contractual employees are being allocated the work through the contractors, the Petitioner has no objection if these workmen get work allotted to them through any contractor and they would be at liberty to make such representation to the contractor and to the Petitioner.

If such representation is made as like in the cases of other workers in Civil Application Nos.1697/2014 and 3415/2015, the request of these 11 workers would also be considered as per their seniority.

14 In the light of the above, this Writ Petition is partly allowed by setting aside the impugned judgment of the Industrial Tribunal dated 13.04.2016 by consent and with the observation that the Petitioner Management would consider allocation of work to these 11 workmen on the same conditions as before.

15 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)