

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

WRIT PETITION NO.9257 OF 2004

The Chief Executive Officer		
And Another	...	Petitioners
Versus		
Smt. Sangeeta Surve	...	Respondent

**ALONGWITH
WRIT PETITION NO.2781 OF 2005**

Smt. Sangeeta Surve		...	Petitioner
Versus			
The Chief Executive Officer			
And Another	...		Respondents

.....

Ms. K.R. Kulkarni, AGP for the Petitioner in Writ Petition No.9257 of 2004 and Respondent Nos.1 and 2 in Writ Petition No.2781 of 2005.
Ms. N.P. Buch i/b S.K. More for the Respondent in Writ Petition No.9257 of 2004 and for Petitioner in Writ Petition No.2781 of 2005.
Mr. A.J. Gambre, Account Assistant, CEO Office present.

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CORAM : PRASANNA B. VARALE, J.

DATE : 28 SEPTEMBER 2017

P.C. :

. This petition is filed by the State of Maharashtra, challenging the order passed by the Member of the Industrial Court, Mumbai dated 6 October 2003, thereby allowing the revision application filed by the

Respondent, namely, Smt. Sangeeta Surve. A very limited controversy is involved in the present petition. The Respondent was one of the co-complainant in Complaint (ULP) No.498 of 1997. The complaint was filed seeking declaration that the Respondents are guilty for committing an unfair labour practices under Item 5, 6 and 9 of Schedule IV of the MRTU & PULP Act and directions to the Respondents to give status, benefits and privileges of permanent workmen to the complainants in this complaint from the date of filing of the complaint together with all monetary and consequential benefits of service conditions at par with the other permanent workmen of Respondents.

2 Learned Member of the Industrial Court on the rival submission of the parties, framed issues for consideration, which reads thus :

- i) Whether the complaints prove that the respondents have engaged in unfair labour practices under items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971 ?
- ii) Whether the Respondents prove that there is no employer-employee relationship between the complainants and the Respondents ?
- iii) Whether the complainants are entitled to the status of permanent workers ?
- iv) To what relief the complainants are entitled to ?

v) What order ?

The findings on these issues were recorded as below
:

i) Proved to the extent of item 6 and 9 of Schedule IV of the MRTU & PULP Act.

ii) Negative.

iii) Affirmative.

iv) As per order.

v) As per order.

3 The parties placed on record evidence in the form of documents and were also subjected to examine oral evidence. To the complaint, the Respondent, namely, Chief Executive Officer, Aarey Milk Colony, Government of Maharashtra, placed on record documents in respect of working days of these complainants. Learned Member of the Industrial Court found that except complainant No.6-Smt. Sangeeta Surve, rest complainants completed 240 days in a calendar year. It was observed by learned Member that complainant No.6-Smt. Sangeeta Suve worked only in the year 1984-1985 and except complainant No.6, all have worked for more than 240 days during the period from 1982 to 1988. Then learned Member dealt with the aspect of the entitlement and claim of the

complaints in view of the provisions of Item 6 of Schedule IV of the MRTU & PULP Act. Learned Member also referred to the judgments relied on by learned Counsel appearing for the complainants in support of claim of these complainants. On appreciation of the material in the form of documentary evidence, oral evidence as well in view of the judgments of High Court and Hon'ble the Apex Court, learned Member held that Claimant Nos.1 to 5 were entitled to claim the status, benefits and privileges of permanent workmen from the date of filing of the complaint alongwith other monetary and consequential benefits at par with other permanent workmen of the Respondent.

4 Respondent, Smt. Sangeeta Surve being aggrieved by the said order, presented the review application before the learned Member of the Industrial Court. In her detailed application, the applicant explained delay caused in filing the application by assigning reasons and submitted that there is record available to show that the review-applicant worked for more than 240 days during the period from November 1984 to October 1985. It was the submission of the review-applicant that the necessary material in the form of attendance register was not brought before the learned Member while deciding the application. It was then submitted by the

review-applicant that as the material of the Respondent themselves show that the review-applicant had completed more than 240 days in a calendar year, the order passed by the Industrial Court rejecting the claim of the review-applicant cannot sustain and as the learned Member committed an error apparent on the face of record, review-application be allowed. The review applicant placed on record the documents, namely, (a) certified copy of order dated 22 December 1999 passed by the Industrial Court in Complaint (ULP) No.498 of 1997, (b) statement as Exhibit C-4 filed by the Non-Applicants during the proceedings in Complaint (ULP) NO.498 of 1997, (c) judgment dated 22 February 2001 passed by this Court in Writ Petition No.6833 & 6837 of 2000, (d) letter dated 5 January 2001 addressed by the applicant to the Non-Applicants, (e) reply dated 11 January 2001 addressed by the Non-Applicants to the Applicant, (f) attendance registers duly maintained by the non-applicants during the period from September 1984 to October 1985 (*emphasis supplied*) and pay slips issued by the non-applicants to the applicant during the period from September 1984 to October 1985 along with summary statement duly endorsed by the non-applicants.

5 Review application was opposed by the Petitioner. Mere denial of

the contention in the review application and the submission is that the order under review is self explanatory, no other opposition was substantiated in the written statement.

6 Learned Member of the Industrial Court in detailed order took stock of the material and submissions advanced. The aspect of delay caused in filing the revision application was also dealt with by the learned Member. Learned Member also took into consideration that the Respondent had not challenged the order passed in respect of the other complaints, apart from the review applicant. Learned Member on appreciation of material, more particularly, copies of the attendance registers and payments slips, found that there was an error apparent on the face of the record while denying the claim of the review-applicant. Learned then in clear and unambiguous terms stated that the documents which were exhibited, namely, U-11 were admitted by the Respondent. Learned Member by considering the judgments relied on by the review applicant arrived at the finding that it was a fit case for allowing the review application. Resultantly, the application was allowed.

7 Learned AGP appearing for the Petitioner vehemently submitted that

the order passed by the learned Member in the review application is unsustainable on the two grounds, namely, that there was an inordinate delay in filing the review application, the learned Member allowed the application and secondly, the material of working days of the review-applicant was already considered by the learned member along with the case of other complainants. Learned APG also made the attempt to submit before the Court that there was contra material showing that the Respondent i.e. the review applicant had not completed 240 days in a calendar year. Learned Counsel appearing for the Respondent while supporting the order impugned in the present petition, however, submitted that though in the order passed by the learned Member, it is referred that the Petitioner State had not challenged the order passed in favour of other co-complainants. Subsequently, the Petitioner by filing Writ Petition Nos.6837 to 6840 of 2000 challenged the order passed in favour of other co-complainants. Learned Counsel for the Respondent submitted that by the judgment and order dated 22 February 2001, this Court found no favour with the petitioner and in clear words it was observed by this Court that it could not find any reason to interfere with the impugned order. The copy of the judgment and order of this Court dated 22 February 2001 is placed on record in the writ petition filed by the Respondent, namely, Writ

Petition No.9257 of 2004. Learned Counsel for the Respondent further submitted that the order of this Court dated 22 February 2001 was challenged before Hon'ble the Apex Court by filing the special leave petition and SLP was also dismissed by Hon'ble the Apex Court.

8 With the assistance of both the learned Counsel appearing for the respective parties, I have gone through the record placed on record. The submission of the learned AGP that the learned Member erred in allowing the application on belated time, erred in allowing the review application without considering the aspect of delay for review application, cannot be accepted for the reason. The learned Member dealt with the aspect of the matter for delay. The learned Member was of the opinion that the reasons assigned for approaching the learned member by filing the review application, were just and *bona fide* reasons. Learned Member was justified in observing that the Act is beneficial Act protecting the members of weaker sections from exploitation and as there were *bona fide* reasons shown by the review applicant, the review applicant could not have been thrown out of the Court on mere technicalities. The learned Member was justified in taking a view as if the applicant was thrown out of the court merely on technicalities, that too in a case, where the review applicant

came before the learned member with *bona fide* reasons shown for causing delay in approaching the forum, a denial would certainly frustrating the object of the Act. Learned Member on the other aspect, namely, the error apparent on the face of the record, was justified in observing that review applicant placed on record the material which was admitted by the Respondent. As referred above, the review applicant had placed on record the material, more particularly, the copies of the attendance registers and pay slips issued to the review applicant during the period from September 1984 to October 1985. Though the attempt was made by learned AGP to submit before this Court that there was contra material available with the Petitioner, no such material was placed at any point of time before the learned Member. The Petitioner was not prevented from placing on record the contra material, as the material was in possession of the Petitioner themselves. The Petitioner was party to the proceedings i.e. in the review application. The Petitioner submitted their written statement to the review application and except denial of the contention, made no attempt to placed on record any contrary material. For such failure, the Petitioner had to blame themselves and none else. The copies of the said attendance registers forming part of Exhibit U-11, are placed on record and perusal of it clearly show that the Respondent-Smt. Sangeeta Surve had worked for

more than 240 days in a calendar year. The copies of the payment slips also indicate the actual working days in each month from October 1984 to September 1985. These copies also show that there is an endorsement of Office having designation as Head Accountant, Aarey Milk Colony, Goregaon. The copies of the muster roll also forming part of Exhibit U-11. Thus, all these materials clearly were of the indicative fact that the Respondent worked for more than 240 days. On the contrary, the Petitioner utterly failed to produce any contra material. Learned Member placed reliance on the judgment in the case of **Chief Conservator of Forests Vs. Jagannath Maruti Kendhare**¹. It would not be out of place to refer to the order passed by the learned Judge in Complaint (ULP) No.498 of 1997. Learned Judge recorded the finding on the issue that whether the Respondent proves that there was no relationship as employer-employee between the parties and finding was in the negative, thus establishing the factum of the relationship between the parties i.e. employer and employee. Those other co-complaints were similarly situated with the review applicant and claim of the review applicant was rejected only on account of failure to show the material of completion of 240 days in a calendar year, the learned Member proceeded on the material presented by the Petitioner i.e. the Respondent in Complaint (ULP) No.498 of 1997. The Respondent

1 1996-I-CLR-680

by filing the review application contended that the material on which the learned Member placed reliance was not in consonance with the record. The review-applicant was successful in establishing her contention by producing the copies of the attendance certificate, muster roll and pay slips.

9 It was the submission of learned AGP that the learned Member could not have entertained the review application, as the review-applicant was filed challenging the final order and the review application could have entertained only against the interlocutory order. Learned AGP placed reliance on the judgment of **Ahmednagar Municipal Council Vs. Pandit Rambhau Aurkar**² in support of her submission. The submission of learned AGP cannot be accepted for the simple reason that the review applicant had approached the learned Member raising the ground that there was an error apparent on the face of the record, the review-applicant was successful in establishing her case that it was an error apparent on the face of record by place on record relevant material in the form of attendance registers, pay slips etc. In view of this fact, the objection of learned AGP holds no water.

2 2015 BCJ 554

10 Considering all these facts, learned Member allowed the review application and directed the Petitioner to grant status, benefits and privileges of permanent workmen to the Respondents from the date of the Complaint (ULP) No.498 of 1997, together with all monetary and other consequential benefits of service conditions, on par with the other permanent workmen of the non-applicants/Respondents.

11 For the reasons stated above, I find no error committed by the learned Member. The order impugned in the present petition dated 6 October 2003 passed by the learned Member is based on just and legal ground and need no interference at the hands of this Court.

12 At this stage, it is submitted by learned AGP that due to closure of the scheme and due to the Respondent, who must have reached at such an age, wherein the reinstatement of the Respondent would not be possible. The Petitioner may not be directed to reinstate the Respondent, instead, this Court may consider grant of compensation to the Respondent. There is some merit in the submission of learned AGP. Learned Counsel appearing for the Respondent on instructions, fairly submitted that the Respondent was 1954 born person. Learned Counsel for the Respondent then

submitted that if this Court is of the opinion to award compensation to the Respondent, this Court may take into consideration the fact that the Respondent would have been entitled for all benefits and privileges as those were granted to other co-complainants and for no fault of the Respondent, she was subjected to the proceedings and had to await for her rightful claim. While going through the record, it reveals that the Respondent was getting wages in the year 1984-1985 at the rate of Rs.250/- per month approximately as an average wages, because record show that in one month the Respondent drew monthly wages at the rate of Rs.198/- per month, as in other months Rs.266/- per month and in some month Rs.300/- plus. Considering all these aspects, I am of the opinion that the interest of justice would be served by directing the Petitioner to pay the compensation to the Respondent to the tune of Rs.10,00,000/- (Rs. Ten lac only) within six months from today.

13 In view of the order passed in Writ Petition No.9257 of 2004 filed by the State of Maharashtra, no order is required to be passed in the writ petition filed by the Respondent herein i.e. Smt. Sangeeta Surve, namely Writ Petition No.2781 of 2005. The Respondent if entitled for any other benefits, may avail the appropriate remedy for seeking those benefits by

approaching the appropriate forum, is so advised.

(PRASANNA B. VARALE, J.)