

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8631 OF 2016

Shri. Ravindra Ramakant BarbhaiPetitioner

V/s.

The Assistant Director, Archeology

Department and Ors.Respondents

Mr. Atul P. Vanarse, Advocate for the petitioner.

Mr. Vishal Thadani, AGP for State-respondents no.1 to 3.

CORAM :- **SMT. V.K. TAHILRAMANI, &**
SANDEEP K. SHINDE, JJ.

DATED :- **6th June, 2017.**

ORAL JUDGMENT : (Per :- SANDEEP K. SHINDE, J)

- 1). Heard both sides.
- 2). Rule. Rule made returnable forthwith. Heard finally by consent.
- 3). This petition under Article 226 and 227 of the Constitution of India is preferred by the Original Applicant in O.A. No. 707 of 2011 against the order dated 2nd March, 2015

whereby the Administrative Tribunal dismissed the said O.A.

4). The facts giving rise to this petition to be stated in short are as under :-

. The petitioner holds a Diploma in Arts and was initially appointed on purely temporary basis as a Photographer on 30th November, 1993 through Employment Exchange. That from 30th November, 1993 till 30th May, 1994 he worked as a Photographer with certain breaks in his service, particulars whereof are stated in the petition.

5). The Assistant Director (Archeology), respondent terminated his services, vide order dated 31st July, 1997, which prompted him to file the proceedings before the Labour Court, complaining unfair labour practice under the provisions and items, of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU & PULP Act" for short). It appears, Labour Court at interim stage, directed the respondents to appoint the petitioner for a period of 6 months or till the availability of Candidate selected by the Selection Board whichever event occurs earlier. Though vide order dated 22nd June, 1998 the

petitioner's service was continued but was not granted the status of 'permanency'. The petitioner therefore filed another complaint under the MRTU & PULP Act, bearing Complaint No. 334 of 1999 before the Industrial Court, Pune, seeking the relief of permanency. Before the Industrial Court, he claimed permanency on the ground that he had completed 240 days of continuous service and asserted his claim of permanency on the basis of G.R. dated 8th March, 1999 issued by the respondents. His service was protected initially by granting interim relief. The Learned Member, Industrial Court, however, dismissed his complaint by order dated 9th August, 2002 and vacated the interim relief granted earlier. This order was carried in High Court by filing Writ Petition No. 2341 of 2003. On 23rd June, 2004 the Writ Petition was allowed to be withdrawn as dismissed. Thereafter, the petitioner herein filed O.A. No. 335 of 2005 before the Maharashtra Administrative Tribunal but the same was permitted to be withdrawn by the Division Bench of the Tribunal by order dated 7th December, 2005. It is a matter of record that, against the order dated 23rd June, 2004 passed

in Writ Petition No. 2341 of 2003 a Letters Patent Appeal (St) No. 12054 of 2010 was preferred but the Appeal was dismissed for default on 9th September, 2010. An application was moved to recall the order dated 9th September, 2010, however, the same was also withdrawn on 23rd February, 2012. It is a matter of record that, it is only in the year August, 2011 the petitioner had filed, O.A. No. 707 of 2011 and prayed that the respondents be directed to appoint the petitioner as a Photographer in pursuance to G.R. dated 8th August, 1999 with all other consequential service benefits.

6). It may be stated that the applicant had also relied upon cases of his other employees, particularly that, of one Mr. Deshpande to whom the benefit of the said G.R. was extended.

7). The O.A. was opposed by the respondent, State contending that the Maharashtra Administrative Tribunal cannot scrutinise and/or sit in Appeal over the orders passed by Industrial/Labour Courts. The respondent further contended that, the finding recorded by the Labour Court/Industrial Court and in particular when the order of

the Industrial Court had attained finality, as the writ petition directed against the said order was permitted to be withdrawn by the High Court as dismissed.

8). The Tribunal accepted the contention of the State and recorded a finding that the petitioner could not have invoked the jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 after having lost the battle seeking regularisation of his service before the Industrial/Labour Court. In view of this finding, the original application was dismissed against which the present writ petition was preferred by the petitioner.

9). The Learned Counsel for the petitioner, reiterated the facts of the case but was unable to answer as to how the Tribunal could re-open or review or re-appreciate the findings recorded by the Courts of competent jurisdiction on the same issue which had attained finality. The facts of the case disclosed that, the findings of the Industrial Court were assailed in the Writ Petition before High Court but petition was withdrawn.

10). That considering the facts as aforesaid, that for

regularisation of the services, the petitioner had exhausted all the remedies before the other forums, in our opinion, the Tribunal committed no error of jurisdiction or otherwise. The order impugned herein requires no interference. In view of this fact, Writ Petition is dismissed. Rule is discharged, with no order as to costs.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)