

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 19462 OF 2016

The Managing Director, Vasantdada Patil
Co-operative Sugar Factory Ltd.

...Petitioner

Versus

Shri Devidas Chindha Deore

...Respondent

....

Mr.Sachin Gite, Advocate for the Petitioner.

Mr. M.S. Nevshe, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd JULY, 2017

P.C.

1. Heard Mr.Sachin Gite, learned counsel for the petitioner and Mr.M.S. Nevshe, learned counsel for respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 16.2.2016 passed by the learned Member, Industrial Court, Nashik (for short, 'Tribunal') in complaint (U.L.P.) No.143/2010. By that order, the Tribunal partly allowed the complaint made by the respondent, hereinafter referred to as the 'complainant' and declared that the petitioner, hereinafter

referred to as the 'employer' has engaged in unfair labour practices under Items No.5, 6, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'Act') and directed them to cease and desist from committing such unfair labour practices. The employer was directed to make the complainant permanent in the employment w.e.f. 13.4.2007 as a Mazdoor and extend him all consequential benefits to which he is entitled to under the law, till his superannuation.

3. In support of this Petition, Mr.Gite strenuously contended that the complainant was filed under Section 28 read with Items No.5,6, 9 and 10 of Schedule IV of the Act. By prayer clause (c), the complainant prayed for giving him permanency benefits to the post of either Carpenter or blacksmith, which ever is available. In other words, the complainant did not seek permanency on the post of Mazdoor. He further submitted that the complainant was not appointed by inviting applications through the Employment Exchange. He was appointed as blacksmith on daily wages. By granting him permanency benefits will amount to back-door entry of the complainant in the employment of the employer. He invited my attention to the

certificate dated 18/19.10.1994 issued by the Chief Engineer of the employer certifying that the complainant was working as a blacksmith for last ten years. He further submitted that there no sanctioned post of blacksmith with the employer. As the complainant was not appointed as a Mazdoor, the Tribunal committee an error in directing the employer to make the complainant permanent as a Mazdoor w.e.f. 13.4.2007.

4. On the other hand, Mr. Nevshe supported the impugned order. He invited my attention to the order dated 13.4.2007 passed by the Labour Court, Nashik in Complaint (U.L.P.) No.309/2000 filed by the complainant under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the Act as also paragraphs-2, 6 and operative part of the judgment. He submitted that the Labour Court concluded that there is employer employee relationship between the parties and the Labour Court directed reinstatement of the complainant with continuity of service. He submitted that aggrieved by that order, the employer preferred Revision Application before the Tribunal which was dismissed. The employer did not carry the matter further and thus the order passed by the Labour Court and the Tribunal attained finality. He invited my attention to the appointment letter dated

23.6.2007 issued by the acting Managing Director of the employer reinstating the complainant as a Mazdoor on daily wages, without prejudice to the rights and contentions in Revision (U.L.P.) No.39/2007. He also invited my attention to paragraphs-11, 12 and 13 of the impugned order and submitted that no case is made out for interfering with the impugned order.

5. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the complainant had earlier instituted complaint in the year 2000 in Labour Court. The complaint instituted by the complainant was allowed on 13.4.2007. Aggrieved by that decision, the employer preferred Revision (U.L.P.) No.39/2007 before the Tribunal. It is not in dispute that the Revision was dismissed by the Tribunal. The employer did not carry that matter further. A perusal of the order dated 13.4.2007 passed by the Labour Court in first complaint shows that the Labour Court declared that the employer had committed unfair labour practices while terminating the services of the complainant and directed them to cease and desist from committing unfair labour practices.

Labour Court directed the employer to reinstate the complainant with continuity of service.

6. The complainant thereafter filed present complaint for seeking benefits of permanency. Mr. Gite submitted that no such prayer was made in the first complaint and, therefore, the complainant is precluded from claiming permanency. It is not possible to accept this submission for more than one reason. In the first place, a perusal of the order passed by the Labour Court in the first complaint clearly shows that the Labour Court directed the employer to reinstate the complainant on his original post with continuity of service. Secondly, no such contention was advanced by the employer in the present complaint. Having regard to the fact that by appointment order dated 23.6.2007, the employer reinstated the complainant on the post of Mazdoor. It is also not possible to accept the submission that there is no post of either carpenter or blacksmith with the employer. The complainant was reinstated as Mazdoor. I do not find any merit in this submission. In paragraph-14 the Tribunal referred to the letter dated 23.6.2007 which was produced by the complainant to the list at Exhibit U-8 which refers to the reinstatement of the complainant on the

post of Mazdoor. It was further observed that once the Labour Court declared that the complainant is entitled to the relief of continuity of service. It was obligatory on the part of the employer to extend the benefits of service conditions to which he is entitled to under the law. The Tribunal also referred to the Model Standing Orders applicable to Sugar Industries under the provisions of the Maharashtra Industrial Relations Act which provides for making an employee permanent after completion of 240 days of service in a year. For the reasons recorded in paragraphs-11 to 14 of the order, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)