

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14358 OF 2016

Dr. Shrikant Raghunath Prabhavale	]	Petitioner
Vs.		
Chief Executive Officer & Anr.	]	Respondents

.....
Mr. Rakesh Bhatkar, for petitioner.
Mr. Shashank Mangle, for respondent.

.....
CORAM : R.G. KETKAR, J.

DATE : 3rd AUGUST, 2017.

P.C.

Heard Mr. Bhatkar, learned Counsel for the petitioner and Mr. Mangale, learned Counsel for the respondents at length.

2. Mr. Mangle states that he has instructions to accept and waive service on behalf of the respondents. He assures that within two weeks from today, he will file Vakalatnama on behalf of respondents.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 7th November, 2016 passed by the learned Member, Industrial Court No.1, Kolhapur [for short 'Tribunal'] in Complaint [U.L.P] No. 36 of 2011. By that order, the Tribunal dismissed the

Complaint instituted by the petitioner hereinafter referred to as “Complainant” u/s 28 read with Items 5,6,9 and 10 of Schedule-IV of the Maharashtra Recognition Trade Union and Prevention of Unfair Labour Practices Act, 1971 [for short 'Act'].

4. Rule. Mr. Mangle waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

5. In support of this Petition, Mr. Bhatkar submitted that petitioner is working as Doctor, with the first respondent, Zilla Parishad, Ratnagiri from 1994. He has qualification of D.M. & S (Bom.) equivalent to M.B.B.S. He submitted that the complainant was initially appointed from 16th March, 1994 on purely temporary basis. The said temporary period was extended from time to time till 16th June, 1997. On 16th June, 1997, his services were terminated. The complainant, therefore, filed Complaint [U.L.P] No. 21 of 1997. On 18th December, 2006, complaint was dismissed. The Labour Court held that the complainant is not a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 [for short “I.D Act”]. The Labour Court further held that appointment of the complainant is not as per recruitment rules and that he was appointed on a temporary basis for a fixed period on certain terms and conditions, consequently the complainant cannot claim reinstatement.

6. Mr. Bhatkar submitted that aggrieved by the order of

the Labour Court, the complainant instituted Revision Application [U.L.P.] No. 2 of 2007 before the Tribunal. The Tribunal allowed Revision Application on 19th August, 2009 and set aside the order of the Labour Court. Respondent instituted Writ Petition No. 4203 of 2010 in this Court. It was admitted by issuing Rule on 26th July, 2010. Mr. Bhatkar submitted that the Tribunal dismissed the complaint substantially on the ground that Writ Petition No. 4203 of 2010 is pending in this Court. He has taken me though the impugned order and in particular paragraphs 15 to 17. The Tribunal was of the view that as the matter is *sub judice* before the High Court, order passed by the Tribunal on 19th August, 2009 has not attained finality.

7. On the other hand, Mr. Mangle supported the impugned order. He submitted that basically the complainant is not a workman as also his appointment was not made by following due process of law. Complainant was appointed on temporary basis for a fixed period and, therefore, reinstatement cannot be ordered.

8. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the Tribunal has dismissed the Complaint principally on the ground that Writ Petition No. 4203 of 2010 is pending before this Court and, therefore, matter is *sub judice*. Order passed by the Tribunal on 19th August, 2009 in Revision Application [U.L.P] No. 2 of 2007 has not attained

finality.

9. By a separate order passed today, I have disposed of Writ Petition No. 4203 of 2010. In view thereof, the reasons given in paragraphs 15 and 17, impugned order no longer survive. It is, therefore, necessary to set aside the impugned order by restoring Complaint [U.L.P] No. 36 of 2011 before the Tribunal for deciding it afresh in accordance with law. Impugned order dated 7th November, 2016 is set aside. Complaint No. 36 of 2011 is restored to file of the Tribunal. The Tribunal will decide the complaint on the basis of evidence on record and in accordance with law. All the contentions of the parties on merits are expressly kept open. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]