

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

WRIT PETITION NO. 4469 of 2004

1. The Zilla Parishad, Beed,
through its Chief Executive Officer
2. The executive Engineer,
Zilla Parishad Works Division No.2,
Beed Dist. Beed.

...Petitioners

VERSUS

Marathwada Sarvajanik Bandhkam
Va Zilla Parishad Kamgar Union,
Registration No. AWB-684,
through its General Secretary,
Trade Union Centre, PRB Quarter No. 10,
Medical Campus, Ambejogai Taluka Ambejogai Dist. Beed.

...Respondent

*Mr V.C. Patil, Advocate, holding for Mr U.B. Bondar, Advocate for
petitioners.*

Mr V.D. Gunale, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 14th June, 2018

JUDGMENT :

The Writ Petition has been preferred against decisions rendered by two Courts - Labour Court, Aurangabad, in Complaint No. 110 of 1994 and the Industrial Court, Aurangabad, in Revision (Unfair Labour Practice) bearing No. 17 of 1998.

2. After hearing learned Counsel, position emerges that respondent herein was original complainant before the Labour Court alleging the termination of employees being wrongful causing their retrenchment without following due procedure and law, particularly in contravention of provisions of Sections 25-F, G & H of the Industrial Disputes Act, 1947 (for short "I.D. Act") and committing unfair labour practice as referred to under item 1 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (hereinafter referred to as the "MRTP & PULP Act" for short).

3. The Labour Court had partly allowed the complaint by its order dated 11th December, 1997 declaring that present petitioners/original respondents were engaged in unfair labour practice in terminating services of the complainant-respondent/employees and present petitioners shall desist from continuing unfair labour practices. Present petitioners/original respondents had been directed to reinstate terminated employees except Bharat Pandharinath, who had been listed at serial No. 9 in Annexure 'A', with continuity of service within a period of two months from the date of order.

4. While the matter had been in revision preferred by the

petitioners, the same had been rejected under an order dated 25th November, 2003 by the Industrial Court, Aurangabad.

5. Learned counsel for the petitioners vehemently submits that the complainant/employees have failed to prove their continuous service for 240 days in the preceding year of termination. On that count, orders passed by the two courts are not sustainable. He submits that as a matter of fact, the complaint was not liable to be considered under Sections 25-F, G & H of the I.D. Act or under item No. 1 of Schedule IV to the MRTP & PULP Act, as observed by the Labour Court and in such a case, continuity in service cannot be granted to complainant/employees. He submits that therefore, the complaint would not have been allowed declaring unfair labour practice with reference to Section 25-G of the I.D. Act and item 1 of Schedule 4 of MRTP & PULP Act. Complaint was liable to be dismissed.

6. While aforesaid arguments are advanced on behalf of petitioners, learned counsel appearing for respondent submits that 20 employees under Annexure 'A' to the complaint had been employed as daily rated workmen for more than five years engaged for maintenance of roads. They had been in continuous employment, albeit, observations have been recorded by the

Labour Court differently. It is being submitted by him that the record of working days could not have been expected to be maintained by employees, rather, it would be responsibility of employer to adduce evidence in that respect. He goes on to submit that although the Labour Court had found that list of employees in continuous service had not been brought on record, nonetheless, two courts have indeed found that employers/ present petitioners were engaged in unfair labour practices under two enactments i.e. the I.D. Act and MRTP & PULP Act. He submits that no challenge could be effectively posed to the findings of facts recorded by the two courts.

7. Perusal of the two judgments shows that the Labour Court as well as the Industrial Court have found that there has been breach of provision of Section 25-G of the I.D. Act and Rule 81 of the Bombay Industrial Disputes Rules. The petitioners/employers had not been able to overcome the position about retention of junior employees by the petitioners and about new recruitment. The courts have also found that there had been violation of the principle of "Last come, first go". The Labour Court has also observed that a few employees have been terminated by petitioners/employers after appointing new employees engaging them on daily-wages. The Labour Court has also further observed

that although on behalf of employer an argument had been advanced about difference in nature and work, however, said argument could not be substantiated by production of any material in support of the same. The Labour Court has also referred to the citations on either side and had found that on facts, decision relied on behalf of the petitioners/ employers is distinguishable. The cited judgment on behalf of the petitioners/employers in the case of *Chemical Mazdoor Sabha Vs. Vitthal Organics Private Ltd. and another*, reported in 1995 II Mah.L.J. 620 had been found to be on different set of facts, wherein there had been compliance of provisions of section Section 25-F and 25-G of the I.D. Act and there had been also a publication of the seniority list. Whereas, in the present case, during the course of evidence, it has emerged that the employers had not maintained any seniority list of employees. The Labour Court had unequivocally found that there had been violation of principle of "Last come, first go". With reference to decision relied on by employees, namely, *Navbharat Hindi Daily Vs. Navbharat Shramik Sangh* reported in 1964 II LLN page No. 132, Lower Court found that the termination of employees had been unsustainable. The Revisional Court as well has considered these aspects and has found that there had been violation of provisions of Section 25-G of the I.D. Act and has further found that there had been engagement by the petitioners/employers of new employees after

disengagement of employees under the complaint. There had been no rebuttal evidence produced by the petitioners/employers. The Industrial Court, thus, found no illegality or impropriety in the judgment and order passed by the Labour Court. Aforesaid position has not been dislodged in the writ petition on behalf of the writ petitioners. In the circumstances, there is no case made out for indulgence into request made in the writ petition. The writ petition is, therefore, dismissed.

8. Rule stands discharged.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar