

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3402 OF 2018

GRAMPANCHAYAT, KASARDUMALA
VERSUS
SWATI PANDHARINATH SAWANT AND ANOTHER

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondents : Shri Salgare S.P. h/f Shri Gaware N.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 01, 2018

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ORAL JUDGMENT:-

1. The petitioner / Grampanchayat is aggrieved by the interlocutory order dated 4.7.2017, passed by the Labour Court, Ahmednagar, by which, application Exhibit U-2 filed by the respondent No.1 - Complainant in Complaint ULP No.13 of 2016 has been allowed. The petitioner is also aggrieved by the judgment of the Industrial Court, Ahmednagar, dated 6.2.2018, by which, Revision (ULP) No.29 of 2017 filed by the petitioner has been rejected.

2. I have considered the submissions of the learned Advocates for the respective sides at length on 29.8.2018 and today. Considering the conspectus of the matter, I am not required to advert to the entire submissions of the litigating sides as I find that a peculiar issue is before this Court.

3. The original complainant was appointed by the Gram Panchayat vide appointment order dated 12.2.2015. A resolution bearing No.5 dated 12.2.2015 was passed by the Grampanchayat and she was appointed. She was issued with an order of permanency on 30.3.2015, by virtue of resolution No.7, passed by the Grampanchayat.

4. By a communication dated 31.12.2015, which was served on the complainant on 1.1.2016, signed by the Sarpanch and Up-sarpanch, the complainant was informed that it has been resolved in the monthly meeting on 29.12.2015 that her appointment would stand stayed until further orders. The complainant carried this order before the Labour Court alleging, "Otherwise termination." The petitioner tendered its written statement and specifically averred in paragraph No.3 that the complainant has neither been terminated nor retrenched and her case would not be covered under item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). It is further averred in paragraph No.7 that the words 'Sthagiti' used in the impugned order, does not amount to a termination or retrenchment.

5. Learned counsel for the petitioner strenuously submits that the impugned interim order of the Labour Court cannot be sustained for

two reasons. Firstly, that the employer has specifically denied any termination / retrenchment or discharge and secondly, that interim relief in the nature of final relief cannot be granted.

6. The learned counsel for the complainant has opposed this petition contending that the petitioner is not taking a clear stand before the Labour Court. If the complainant is not terminated / retrenched or otherwise removed from employment, the employer has to take a stand as to what would be the status of the employee. The moment an employer denies termination or retrenchment or removal, the employee is deemed to be in employment.

7. He further submits that it is undisputed that the complainant is not allowed to work, is not allotted any duty and is not paid wages by virtue of the order challenged before the Labour Court. The principle of “No Work No Wage” would, therefore, not be applicable in this case.

8. It is then canvassed that, if the complaint is not tenable on account of there being no termination, the complainant is willing to report for duties forthwith and perform work as she has been granted permanency.

9. In the peculiar facts as above, it is obvious that this petitioner is

not coming forth with a clear stand. Though the impugned order issued to the complainant clearly indicates that there is no termination / retrenchment / discharge, what intrigues me is that the employer claims to have stayed the appointment of the complainant.

10. It is alien to service jurisprudence that the employer can stay the appointment, except under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, wherein, if an appointment made by resolution which is said to be against the Rules, the authorities concerned could suspend such a resolution appointment and refer the matter to the Director of Municipal Administration for considering the legality of such resolution. The said provisions are, however, not applicable in the case in hand.

11. In Service Jurisprudence, unless any specific statute or law provides otherwise, the appointment of an employee cannot be placed under suspension. An employee can be suspended strictly as per the Rules applicable, either by way of a punishment for particular number of days, which can be termed as punitive suspension or pending initiation of disciplinary proceedings. The petitioner herein, though has not terminated or retrenched the complainant, has also not placed her under suspension for any reason. She is, therefore, deemed to be in employment.

12. At this juncture, learned counsel for the complainant submits that the complainant is willing to withdraw the pending complaint before the Labour Court as it would be rendered untenable in view of the specific stand taken by the Grampanchayat and by virtue of the conclusions of this Court in this order, may challenge the order dated 31.12.2015 before the Industrial Court.

13. Learned counsel for the petitioner hastens to add that the Grampanchayat would follow the due procedure laid down in law and initiate an enquiry against the complainant for the reason that her appointment is a backdoor entry and is covered by the law laid down by the Honourable Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1].

14. It appears to me that the Grampanchayat is likely to cause undue hardships to the complainant by initiating such action, without paying her monthly wages from January 2016. In order to ensure that the petitioner does not perpetuate unfair labour practices, it would be appropriate to observe that the Grampanchayat may initiate action as may be advised against the complainant provided entire backwages are paid to her as long as her status as an employee continues.

15. In the light of the above, this petition is partly allowed and Complaint (ULP) No.13 of 2016 stands disposed off since there is no termination / retrenchment / discharge of the complainant. The complainant is at liberty to challenge the order dated 31.12.2015, by virtue of this order, either before the Industrial Court under the 1971 Act or by raising an industrial dispute before the Conciliation Officer. The time spent by the complainant before the Labour Court and this Court till today, shall be a good ground for condonation of delay, if the complainant approaches the Industrial Court within six weeks from today. It is made clear that if the petitioner intends to initiate any disciplinary action against respondent No.1 / employee, or even otherwise, it shall be obliged to pay the entire backwages to her from January 2016.

(RAVINDRA V. GHUGE, J.)

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akl/d

Ajay
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Losarwar

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signed by Ajay
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