

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 83 OF 2015
IN
WRIT PETITION NO. 8262 OF 2009
WITH
CIVIL APPLICATION NO. 2390 OF 2017

Kinetic Engineering Ltd.,
Nagar Daund Road,
Ahmednagar.

....Appellant.

Versus

Dilip s/o. Bhikaji Londhe,
Age 48 years, Occu. Service,
R/o. Baban Bhaskar Chal,
Savedi, Ahmednagar.

....Respondents.

Mr. V.S. Bedre, Advocate for appellant.

Mr. K.M. Nagarkar, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : 16/02/2018.**

ORDER : [PER T.V. NALAWADE, J.]

1. The appeal is filed against the order of learned Single Judge of this Court made in Writ Petition No. 8262/2009. The learned Single Judge has dismissed the petition filed by appellant under Article 226 and 227 of Constitution of India. The petition was filed by the appellant to challenge the decision given by Industrial Court, Ahmednagar in Complaint (ULP) No. 589/1995. The complaint was filed by respondent worker before the Industrial Court,

Ahmednagar is allowed. The Industrial Court has given decision that the respondent worker is entitled to get permanency benefits after completion of 240 days of work which is to be accounted from 1.3.1987. The Industrial Court has declared that the appellant company had engaged itself in unfair labour practice and to avoid to make the temporary employee permanent, it had given technical breaks to the employee even when work was available. Both the sides are heard.

2. It is the case of respondent worker that he has been working with appellant company since 1.3.1987. It is his case that he had completed 240 days of work in continuous one year and so, he was entitled to get permanency benefits. It is the case of respondent worker that appellant company engaged itself in unfair labour practice which falls under Item No. 5 and 9 of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971 and it avoided to make respondent worker a permanent employee.

3. It is the case of respondent worker that at the relevant time, permanent employees were given Rs. 2500/- per month, but company was paying him only Rs.55/- per day. It is his contention that initially he was unskilled worker, but subsequently after gaining experience, he worked in all sections and departments of appellant

company and appellant company had no complaint whatsoever in respect of his work. The respondent worker has given the particulars of the work taken from him in various sections since the year 1987. It is the case of respondent worker that at the relevant time, there were more than 1500 permanent employees working with the appellant company and as there was much more work, the appellant company had employed around 1000 temporary workers regularly.

4. It is the case of respondent worker that in the year 1995 the appellant company stopped giving him work without giving any reason. The petition was filed on 15.9.1995. It is the case of respondent worker that the workers who were junior to him were retained, many were given permanency benefits and only in respect of him, necessary procedure was not followed. Respondent has given names of the workers who were junior to him and who were either made permanent or who were retained by the appellant company after stopping giving work to the respondent.

5. The submissions made and the record produced show that after filing of the complaint in the year 1995 before the Industrial Court, the appellant company had again appointed respondent and such orders of the year 1996, 1997, 2000 and 2001 are produced on the record. It appears that Industrial Court has not

considered these circumstances. However, decision is given in favour of respondent worker.

6. In written statement, appellant company admitted that the respondent worker was working with it since the year 1987. It is the contention of the appellant company that it had entered in to agreement with recognized Union of workers on 5.10.1987 and under that agreement, it had agreed to make temporary employees as permanent employees as per the terms of the agreement. It is contended that as per those terms, the temporary workers, who were giving quality work, were made permanent. Thus, the appellant company has indirectly admitted that the workers, who were junior to the respondent were made permanent. The appellant company has specifically admitted that it had made 288 temporary employees permanent employees.

7. It is the case of appellant company that the subject matter in respect of respondent worker comes under Item No. 6 of Schedule IV of the aforesaid Act and as the complaint is not filed under that item, it is liable to be dismissed. It is the contention of the appellant company that Bhartiya Kamgar Sena is recognized union of workers and individual like respondent cannot file complaint.

8. The appellant company denied before the Industrial Court that it had engaged in unfair labour practice. It, however, admitted that around 900 daily rated employees were there and they were employed in manufacturing activity like production of two wheelers like Luna moped. It is admitted that other temporary workers were also appointed by the appellant company. It is the contention of the appellant company that after the year 1990 due to gulf war, there was effect on demand of auto vehicles and due to that, the production came down. It is also contended that there were other factors like rise in fuel prices, Government policy and due to that, demand came down and so, there was no sufficient work for temporary workers.

9. Before the Industrial Court, the respondent worker examined himself. The appellant company examined its Assistant Manager one Shri. Gulve.

10. The evidence of respondent worker is as per the aforesaid contentions. The Assistant Manager, who is examined by the company admitted that he never worked in the supervisory capacity where the respondent worker was working. The appellant company did not examine the immediate superior of respondent

worker, who could have said as to whether there was work available or not available as it is the case of respondent worker that technical breaks were given only to deny the permanency benefit.

11. The record shows that the company did not dispute that atleast initially there was sufficient work available and due to that the workers were working in three shifts. The evidence of aforesaid Assistant Manager shows that he could not give details of workers with initial dates of appointment. The seniority list on that basis was also not filed before the Industrial Court. Thus, on one hand, the appellant company had admitted that some workers, who were junior to the respondent were made permanent and also retained, but necessary record is not filed. In view of the aforesaid circumstances, the Industrial Court has given findings in favour of respondent worker. Inference is possible against the appellant company due to aforesaid circumstances. In view of this record and admitted position, this Court holds that it cannot be said that Industrial Court has committed error in giving findings in favour of the respondent worker.

12. The learned counsel for appellant submitted that there is no record with the worker to prove that he had worked for 240 days in any calender year. This submission is not acceptable as there are

aforesaid circumstances. When there was work available and almost equal number of temporary workers were engaged by appellant company and rotation system was used, these circumstances are sufficient to infer that even when work was available, it was not given to employees like respondent as per the seniority and the company avoided to give permanency benefits to the respondent. The period for which the company avoided to give work, notional period, can be considered for accounting 240 days in one calendar year. Thus, there was sufficient material before the Industrial Court to give finding that appellant company had engaged itself in unfair labour practice as contended by the labour. The learned Single Judge has considered the aforesaid material and circumstances. Reliance is placed on the observations made by this Court in similar case of appellant company like **Writ Petition No. 1275/1994 and L.P.A. No. 86/2005 [Kinetic Engineering Ltd. Vs. Raju s/o. Mahadeo Shinde]**.

13. The learned counsel for appellant company placed reliance on observations made by the Apex Court in following cases :-

(i) (2005) 8 SCC 750 [Surendranagar District Panchayat Vs. Dahyabhai Amarsinh],

(ii) AIR 2006 SC 1806 [Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.],

(iii) AIR 2001 SC 3228 [Mahatma Phule Agricultural University and Ors. Vs. Nasik Zilla Sheth Kamgar Union and Ors.], and

(iv) 2009 (5) ALL MR 242 [The Divisional Controller, M.S.R.T.C., Osmanabad Vs. Maruti Bapurao Lokhande].

The facts and circumstances of each and every case are always different. In all the cases, on which reliance is placed by the learned counsel for appellant, either public body or public corporation or State or instrumentality of State was involved and so, more points were involved. This Court holds that due to these circumstances, the observations made by the Apex Court and this Court in the cases cited *supra* are of no help to the appellant. Further, in view of the scope of L.P.A., further appreciation of the material is not possible. In the result, the appeal stands dismissed. Civil Application is disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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