

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7973 OF 2017

State of Maharashtra

Through the Dy. Director,

Sports and Youth Services, Kolhapur

& Anr.

.. Petitioners

Vs.

Devdas N. Bagade

.. Respondent

**WITH
WRIT PETITION NO.2050 OF 2018
WITH
WRIT PETITION NO.2051 OF 2018
WITH
WRIT PETITION NO.2052 OF 2018
WITH
WRIT PETITION NO.8036 OF 2017
WITH
WRIT PETITION NO.13381 OF 2017**

Mr. Sachin Kankal, AGP, for the petitioner-State.

Mr. Kiran Bapat a/w Kedar P. Lad for the respondent in WP/7973/17,
2050/18, 2051/18, 2052/18 & 13381/17.

Mr. Manoj Patil for respondent no.1 in WP/8036/17.

CORAM : A.K. MENON, J.

DATED : 9TH APRIL, 2018.

P.C. :

1. This common order disposes of identical orders passed by the Labour Court no.1, Kolhapur in complaints filed under Section 28 of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1977 (MRTU Act) complaining of unfair labour practice under items (a), (b), (d) and (f) of Schedule IV of the PULP Act and the order dated 17th October, 2016 passed in Revision Application (ULP)no.155 of 2015 and 9 of 2016 by the Industrial Court, Kolhapur.

2. The impugned judgment of the Labour Court allowed the complaint partly and quashed and set aside the termination order dated 9th November, 2011 by directing the petitioners to reinstate the complainants at their respective posts vide impugned orders of the same date. For the purposes of this judgment the facts in Writ Petition no.2051 of 2018 are being referred. The respondents and the other petitioners were also subject to similar orders of termination. The dates of appointment are as follows:-

sr.no.	Writ Petition no.	Date of appointment
1	2051 of 2018	31/05/2010
2	2050 of 2018	14/07/2010
3	2052 of 2018	04/06/10
4	7973 of 2017	04/01/11
5	8036 of 2017	29/05/2010
6	13381 of 2017	14/07/2010

3. At the outset, the learned AGP submitted that the complaint was not maintainable since the respondents were required to approach the

Administrative Tribunal for relief and could not have approached the Labour Court or Industrial Court which had no jurisdiction to try and entertain in the cases of these petitioners. It is submitted that the appointment orders of the respondents were unauthorized, without following due process and in the teeth of the Government Resolution dated 5th June, 2010 which was extended till 20th June, 2012. It is further contended that since due process of law not been followed and since the Government Resolution is specifically prohibited, the recruitment of the appointees came to be cancelled by the orders of termination dated 9th November, 2011. The learned AGP therefore submitted that the order passed by the Labour Court and Industrial Court are perverse which has failed to consider these aspects of the defence.

4. On behalf of the respondents, Mr. Bapat states that the objections now sought to be raised were never raised in the Courts below i.e. neither before the Labour Court nor before the Industrial Court. Save and except for the contention that the Government Resolutions prohibited further recruitment, the issue of maintainability was never taken up. Mr. Bapat submits that in any event by virtue of the provisions of Chapter IV of the Industrial Disputes Act, 1947 the Labour Court and Industrial Court would continue to have the jurisdiction. Therefore on

this legal issue, there is no question of the respondents being non-suited.

5. In any event, perusal of the impugned judgments do not indicate that this aspect of the matter was pressed into service before the Labour Court or before the Industrial Court. It is seen that the first respondent Dy. Director of Sports & Youth Services, Maharashtra State, Kolhapur Division, the predecessor in office of the deponent in this petition had at the material time filed a written statement in Complaint (ULP)no.98 of 2011 in April 2012 wherein he has stated that the appointment of the respondent was after following due process and after the respondents had applied in the prescribed form seeking appointment to the posts. This was followed by a written examination and an interviews. All documents concerned were scrutinized before issuance of the order of appointment dated 14th July, 2010 and only thereafter an appointment order came to be issued.
6. It is also pointed out by Mr. Bapat during the course of the hearing today that copy of written statement filed by the first petitioner at the material time has not been annexed to the petition. I have perused the copy of the written statement filed along with affidavit in reply of the respondent dated 27th February, 2018. In reply to paragraph 3(a) confirms the appointment date of the respondent as 31st May, 2010

and the effect that he had completed more than 240 days of service.

7. In reply to paragraph 3(c) the Predecessor of the first petitioner has confirmed that due process has been followed and all necessary documents have been submitted. In the circumstances, the contentions of the petitioner cannot be accepted. Although Mr. Kankal submitted that there were two written statements were filed one each on behalf of the first petitioner and second petitioner, the contentions taken up in the written statement of first petitioner were contrary to the statements made by the second petitioner in his written statement filed in April 2012. It is seen that in the course of the proceedings before the Labour Court, the Presiding Officer considered the stand taken in the written statement of the second petitioner to the effect that the appointment of the respondent herein was illegal since no procedure has followed and in this respect the second petitioner has adduced evidence of a District Court Officer which revealed that the witness had no personal knowledge of the recruitment process.
8. The impugned order records that the Dy. Director was a competent person for appointing the employees in Category III and IV and that the appointment order was issued under the signature of then Dy. Director who had later expired prior to the trial. The impugned order goes on to record that the successor in office of the first petitioner had

been examined and in which it was contended that the averments in the written statement filed by the erstwhile Dy. Director, Kolhapur Region Shri N.V. Desai were not correct as per the record (emphasis supplied) and therefore, contents were not binding on the then incumbent office of the Dy. Director.

9. In view of the statement that two contradictory statements were taken on behalf of the State it was in my view necessary for the Labour Court to look into the said record at the material time to ascertain the correctness of the averments with the written statement of the first petitioner and thereby check the veracity of the statements in the said written statements. No such attempt seen to have been made prior to arriving at the conclusion on issue nos.2, 3 and 4. In paragraph 19, the impugned judgment of the Labour Court observes as follows:-

“19. As I have already discussed above, though the respondent found that the appointment order issued to the complainant was without following the procedure in cases of recruitment by nomination, but as the Sports Department is an 'industry' and complainant had completed 240 days of his service, therefore, it was obligatory on the part of respondent to comply the mandatory provisions of Industrial Disputes Act but the respondent office without complying the provisions of the Industrial Disputes Act terminated the service of the complainant, therefore, in my considered view, payment of 15% towards the back wages till the date of reinstatement would comply with the requirement of

law.”

10. The impugned order does not deal with the particulars of the record on the basis of which the petitioners witness had deposed and to conclude that the due procedure had not been followed prior to the appointment. The impugned order proceeds on the basis that the respondent had completed 240 days of service and therefore bound to be protected by virtue of provisions of the Industrial Disputes Act. However, this aspect of appointment had not been gone into. In the circumstances, it will be appropriate that the matter is remanded for fresh consideration by the Labour Court on the specific aspect as to whether the appointment of the petitioner was made in accordance with law after following due process as contemplated in the written statements filed in the Labour Court in each of these complaints forming subject matter of these petitions. The impugned order in my view is perverse to that extent. In the circumstances, I pass the following order:-

- (i) Rule is made absolute in terms of prayer clause (e).
- (ii) Impugned order dated 29th October, 2015 and 17th October, 2016 are hereby quashed and set aside.
- (iii) Writ petitions are disposed of on the above terms.

(A.K. MENON,J.)