

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

WRIT PETITION NO.1749 OF 2001

Balwant M.Bhosale

.. Petitioner

vs

Dynamix Dairy Industries

.. Respondents

None for Petitioner

Mr.Kiran Bapat for Respondent no.1

Coram : S.C.GUPTE, J

Date : 7th JUNE 2018

P.C

1. Heard learned counsel for respondent no.1. The petitioner is absent. Since, however, the matter pertains to the year 2001, I am not inclined to adjourn the matter.

2. The petition challenges an order passed by the Industrial Court at Pune on an unfair labour practice complaint under Item 9 and 10 of the MRTP and PULP Act,1971. It is the case of the petitioner that he was initially employed as a helper through one M/s Ajinkya Enterprises who were the contractors of the respondent-undertaking. It is submitted that from April 1998, he was given training as an operator and immediately after a month, he was directed to go to work as an operator on the churner and boiler in the Butter and Ghee department of the respondent. It is an admitted

position that the appointment was through one M/s Ajinkya Enterprises who were the contractors of the respondent-undertaking. It is also an admitted position that till 1.7.1999, the petitioner worked in the respondent's factory as an employee of the contractor. It is his case that from 1.7.1999, he was taken on the muster roll of the respondent and allowed to sign the Attendance Register. It is submitted that on 3.7.1999 or 4.7.1999, the respondent directed the petitioner to get himself medically examined from a doctor on the panel of the respondent, who in turn appears to have directed him to get certain pathological report done from a laboratory. It is submitted that he carried out the said test but, when he went to resume his duties on 1.8.1999, he was not allowed to attend work; that no letter was issued to him on resumption of his duties; and that he was kept out of employment.

3. The petitioner's case essentially is that he had completed uninterrupted 240 days service within the last 12 months in the undertaking of the respondent and therefore, as per clause 4-C of the Model Standing Orders, he was entitled to be made permanent and on the respondent's failure to do so, it amounted to unfair labour practice under Item 9 and 10 of Schedule IV of MRTU and PULP Act, 1971. The Industrial Court has rightly refused to entertain the complaint on the ground that on his own showing the petitioner never worked as a worker of the respondent at any time prior to 1.7.1999 and that in the premises, he could not be said to

have permitted completed 240 days in the employment of the respondent.

4. On the other hand, if the petitioner's case is that the contract under which he was engaged was sham and bogus and that in fact he was a direct employee of the respondent, the remedy chosen by him, namely, complaint of unfair labour practice under the MRTP and PULP Act, 1971 is not maintainable. If at all, the petitioner must raise an industrial dispute and have the same referred to an Industrial Adjudicator. The reasoning of the Industrial Court in this behalf also does not suffer from any infirmity.

5. There is accordingly no merit in the petition. Petition is dismissed. No order as to costs.

(S.C.GUPTE, J)