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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10253 OF 2015

Smt. Mangal Bharat Shinde

...Petitioner

vs

Pimpri Chinchwad Municipal Corporation and Anr.

...Respondents

.....

Ms. Neeta Karnik, for the Petitioner.

Mr. G.H. Keluskar, for Respondent Nos. 1 and 2.

.....

CORAM : S.C. GUPTE, J.

DATED: JUNE 22, 2018

(ORAL JUDGEMENT) :

. Heard learned Counsel for the parties.

2. This petition challenges an order passed by the Industrial Court at Pune dismissing a complaint of unfair labour practice filed under Item Nos. 5, 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971.

3. The Petitioner is a sanitation worker ('safai kamgar') working for a hospital known as Talera Hospital, Chinchwad. It is alleged that Respondent No.1 Municipal Corporation and its medical officer have the responsibility to manage this hospital, as it is owned by the Municipal Corporation. A total number of about 24 sanitation workers were working in this hospital, including the Petitioner herein. It was

their case that they were deliberately employed in the hospital through contractors and their engagements were purposely kept as temporary for years together. It is their case that they were in real terms employees of Respondent No.1 Corporation; that they were working continuously for more than 240 days in a year for a number of years and still benefits of permanency such as leave, bonus salary, etc. were denied to them. Out of these 24 workers, 20 workers filed a complaint, being Complaint (ULP) No.177 of 2005. Under an interim order passed in their case, the complainants were continued in service. The Petitioner, however, did not go to Court at that stage, but, according to her, was continued in service on their own by the Respondents. When the Respondents decided to terminate her services, the Petitioner claims to have filed the present complaint and sought a declaration that the Respondents had engaged in unfair labour practices listed in Items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act. The Industrial Court in its impugned order passed in the Petitioner's complaint held, firstly, that model standing orders, under which permanency and other benefits were claimed by the Petitioner, were not applicable to the establishment where the Petitioner claimed to be working, and secondly, that the complainant had not proved any unfair labour practice on the part of the Respondents.

4. On the question of applicability of model standing orders, the Court held that a local body such as Respondent No.1 is not an industrial establishment as defined in the Industrial Employment (Standing Orders) Act, 1946; and even otherwise, hospital is not included in the list of services and establishments in the definition provided under Section 2 of the Payment of Wages Act and, accordingly,

provisions of Industrial Establishment (Standing Orders) Act did not apply to the hospital in which the Petitioner was working. The Court, in the premises, held that the relevant standing order, namely, the order providing for permanency upon completion of 240 days continuous service in a year, did not apply to the Petitioner's case. On the issue of unfair labour practice, the Industrial Court held that since model standing orders were not applicable in the Petitioner's case, denial of benefit of permanency cannot be termed as an unfair labour practice under item 6 of Schedule IV of the Act. Secondly, the Court held that the appointment of the Petitioner was purely temporary; she was not even appointed as per prescribed rules and, in the premises, even if she were to be treated as having completed years of service, she would not be entitled to the benefit of permanency in accordance with the law laid down in the case of **Secretary, State of Karnataka vs. Umadevi**¹ and thus, denial of benefits of permanency cannot be termed as an unfair labour practice under item 6 of Schedule IV. As for item 5 of Schedule IV, the Court held that there was nothing to show that the Respondent Corporation had made any discrimination between the Petitioner and other casual employees similarly situated and no unfair labour practice could be ascribed to the Respondent Corporation in this behalf. On the ground that model standing orders were not applicable, even the case of unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act was repelled by the Court.

5. On the question of applicability of standing orders, it must be noted that the Industrial Establishment (Standing Orders) Act is

¹ (2006) 4 Supreme Court Cases 1

framed to provide for certainty of service conditions in industrial establishments. Establishment here means an 'industrial establishment' as defined in clause (ii) of Section 2 of the Payment of Wages Act, or a 'factory' as defined under clause (m) of Section 2 of the Factories Act, or a 'railway' as defined in clause (ii) of Section 4 of the Indian Railways Act. Clause (ii) of Section 2 of the Payment of Wages Act *inter alia* defines an industrial establishment as an establishment in which any work of the nature referred to in its various clauses is carried on. It is the submission of learned Counsel for the Petitioner that the establishment she was working in, namely, Talera Hospital, Chinchwad, was an industrial establishment because the Corporation, which owns it, carries on work relating to construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or supply of water, or generation, transmission and distribution of electricity or any other form of power. In the first place, there is nothing in the evidence in this case to indicate that the Respondent Corporation in fact carries on any of these works. But even if it were to be assumed that it does carry on these works, since those are its responsibilities under Maharashtra Municipal Corporations Act, there is nothing to indicate that the hospital run by the Corporation, which is clearly a separate activity or enterprise run by the Corporation, is entitled to be treated as an industrial establishment. Under Section 2(ii)(g) the phrase used is an 'establishment'. The word 'establishment' is used in many labour law statutes. The dictionary meaning of the word is "an institution or place of business, with its fixtures and organised staff; as, large establishment, a manufacturing establishment" (See, Webster's International Dictionary). The word 'establishment', thus, by itself can

signify, on the one hand, a body of persons (generally an organised body) or, on the other hand, premises (see, the case of **Lord Advocate vs. Babcock & Wilcox Ltd.**² decided under (English) Selective Employment Payments Act, 1966, Section 1(2)). Two decisions of the Supreme Court under Sections 16 and 3 of the Payment of Bonus Act, 1965 particularly deal with the word 'establishment' used therein. In **Alloy Steel Project vs. Workmen**³, the Supreme Court held that the word 'establishment' used in Section 16 (which deals with special provisions relating to payment of bonus in certain establishments) does not mean the company itself. The company in that case was Hindustan Steel Ltd., which was running several projects or plants such as alloy steel project besides the head office, Rourkela Steel Plant, Bhilai Steel Plant, Durgapur Steel Plant, Coal Washeries Project and Bokaro Steel Project. They were all treated as separate establishments, though controlled by one single company. In **Central Inland Water Transport Corpn. Ltd. vs. Workmen**⁴, the Supreme Court again considered 'establishment' under Payment of Bonus Act, in the context of Section 3 of that Act. The Court acknowledged that the word 'establishment' there was not synonymous with 'undertaking', which was defined, though in a different context, by the Supreme Court in **Gymkhana Club Employees' Union vs. Management**⁵ to mean “any business or any work or any project which one engages in or attempts as an enterprise analogous to business or trade”. The Court noted that 'establishment' may consist of different departments or undertakings. The Court held that 'establishment' means “*the whole trading, business or manufacturing*

² (1972) 1 All ER 1130, 1136 (HL)

³ (1971) 1 SCC 536

⁴ (1975) 4 SCC 348

⁵ AIR 1968 SC 554

apparatus with a separate identifiable existence. This apparatus which is used for the purpose of carrying on trade or business or undertaking may change hands and pass from one owner to another. The workers operating this apparatus and working in it may change; new workers may take the place of the old or come as additional workers. When the ownership of the establishment, which is nothing but another name for this apparatus, is transferred from one person to another, the establishment remains the same; merely its ownership is changed and it cannot be said to be a new establishment in the hands of the transferee". Payment of Wages Act occupying practically the same field and providing for the same subject as Payment of Bonus Act, these observations can conveniently be used even for construction of the word 'establishment' appearing therein. Any establishment within its meaning has to do more with the apparatus or enterprise including its place of work, movables and organised body of employees rather than the owner or management which runs the apparatus or enterprise. Even in the definition in Section 2(ii), an establishment is that whole apparatus or enterprise "*in which*" the activities referred to in Section 2(ii) of the Payment of Wages Act are carried on. Merely because the Corporation, which runs several such apparatuses or enterprises including the apparatus or enterprise where works relating to the items enumerated in clause (g) of Section 2(ii) are carried on, owns a particular apparatus or enterprise, namely, in this case, Talera Hospital, Chinchwad, the latter hospital cannot be termed as an industrial establishment under clause (g) of Section 2(ii) so as to qualify as an "industrial establishment" within the meaning of Industrial Employment (Standing Orders) Act. The apparatus or enterprise of this hospital is different from the other apparatuses or enterprises which the

Corporation owns and runs.

6. Learned Counsel for the Petitioner relies on the case of **S. G. Chemicals and Dyes Trading Employees' Union vs. S.G. Chemicals and Dyes Trading Limited**⁶ and particularly lays stress on paragraph 16 of that judgment which discusses the meaning of the word “undertaking” in the expression 'an undertaking of industrial establishment' and the tests to determine what constitutes one establishment in a case where the establishment consists of parts, units, departments, branches etc. The Supreme Court in this case has quoted the various tests to determine what constitutes one establishment as per the law laid down by the Court in the case of **Associated Cement Companies Ltd. vs. Workmen**⁷. The Court held that what constitutes one establishment in an ordinary industrial or business sense depends on a combination of several tests such as unity of ownership, management and control, functional integrality or general unity, unity of employment, etc. Learned Counsel submits that based on each of these tests, the undertaking of Talera Hospital, Chinchwad must be treated as part of the establishment, namely, Respondent No.1 Corporation, which carries on activities mentioned in clause (g) of Section 2(ii); it is nothing but one unitary establishment. In the first place, the question of unity of ownership or management or control or functional integrality or general unity or unity of employment are all essentially mixed questions of law and fact. It must be established as a matter of fact upon evidence first that there are elements or circumstances in the case, which lead one to conclude, by applying the law laid down by the Supreme Court as above,

6 (1986) 2 Supreme Court Cases 624

7 (1960) 1 SCR 703

that the establishment functions as one integrated whole and there is unity of ownership, management and control or functional integrality or general unity or unity of employment. There is nothing in the evidence before the Court in the present case which suggests any of these factual elements. Learned Counsel for the Petitioner seeks to rely on the evidence in the other case, namely, the case of twenty similarly placed employees. I am afraid that cannot be permitted. Evidence led in another case, even if it pertains to the same establishment, cannot be borrowed to arrive at a factual basis for determining any pure or mixed question of fact. There is, thus, no merit in this contention. Even otherwise, our Court in **Sandip Baliram Sandbhor vs. Pimpri Chinchwad Municipal Corporation**⁸, whilst dealing with the same undertaking, namely, Talera Hospital, Chinchwad, has not found favour with the submission that Talera Hospital, Chinchwad was part of the industrial establishment of Pimpri Chinchwad Municipal Corporation, which fell within clause (ii) of Section 2 of Payment of Wages Act. There is, thus, no factual foundation for concluding the hospital to be a part of the same establishment, which carries on the activities covered under clause (ii) of Section 2 of Payment of Wages Act and, accordingly, treat the undertaking, namely, Talera Hospital, Chinchwad, as an industrial establishment within the meaning of Industrial Establishment (Standing Orders) Act.

7. In the premises, there is no merit in the writ petition. The writ petition is dismissed. Since the Petitioner has, however, worked in the hospital for all these years, and even during the pendency of the

⁸ [2016(3) Mh.L.J. 562

complaint and the petition herein under interim orders passed by the Court, her employment shall be protected for a period of six weeks from today. It is also made clear that the Respondent Municipal Corporation, as and when it appoints any sanitation worker (safai kamgar) whilst filling its regular posts, shall consider the Petitioner for such appointment. The Respondents shall treat the Petitioner as having worked in a similar capacity for a number of years and not hold any age restriction against her.

(S.C. GUPTE, J.)

Smita
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