

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4621 OF 2019
WITH WP/4622/2019 WITH WP/4623/2019
WITH WP/4624/2019 WITH WP/4625/2019
WITH WP/4626/2019 WITH WP/4627/2019

MALHAR PRABHAKAR KELGANDRE
VERSUS
BHARAT SANCHAR NIGAM LTD AND OTHERS

...

Advocate for Petitioners : Shri Barde P.V.
Advocate for Respondent 1 : Shri Golewar V.P. a/w Shri Patil A.V.
Advocate for Respondent 5 : Shri Khandagale-Patil P.P.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 19, 2019

...

PER COURT :-

1. In all these petitions, the petitioners are aggrieved by the identical orders passed by the Industrial Court, Ahmednagar, dismissing the ULP Complaints filed by these petitioners, seeking regularization with respondent No.1 / Principal Employer and for causing the elimination of respondent No.5 / Labour Contractor.
2. This Court (Coram : P.R.Bora, J.) has passed an order on 12.4.2019, protecting the petitioners against termination at the hands of the Contractor except by following the due process of law.
3. I have heard the submissions of the learned Advocates for the

petitioners and respondents 1 to 4.

4. It is visible from the records that these petitioners have approached the Industrial Court seeking permanency / regularization with the Principal Employer on the ground that the Labour Contractor was sham and bogus and it was purely a paper arrangement between the Principal Employer and the Contractor in order to camouflage the actual relations of Employer - Employee between the petitioners and BSNL. The Industrial Court has concluded that such complaints are not maintainable.

5. I find that this issue is no longer res integra, considering the observations of the Honourable Apex Court in paragraph No.5 of the judgment dated 9.1.2001, delivered in Vividh Kamgar Sabha Vs. Kalyani Steels Limited, [(2001) 2 SCC 381= 2001[1] CLR 532], paragraph Nos.8 and 9 of the judgment dated 21.2.2001 delivered in the matter of Cipla Ltd. Vs. Maharashtra General Kamgar Union and others [(2001) 3 SCC 101], and the judgment of the Honourable Apex Court (5 Judges), delivered in the matter of Steel Authority of India Limited and others Vs. National Union Water Front Workers and others [2001 III CLR 349].

6. The learned Division Bench of this Court had an occasion to

deal with such matters, pursuant to the above judgments, in the matter of Hindustan Coca Cola Bottling S/W Pvt. Ltd. Mumbai and another Vs. Bhartiya Kamgar Sena, Mumbai and others [2002 (1) Mh.L.J. 559].

7. The petitioners have raised an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 and it is informed that the conciliation proceedings have already commenced in the matter. The Principal Employer has already appeared. The Labour Contractor is yet to cause an appearance in the said proceedings at Pune, before the Conciliation Officer (Central), at Pune. The learned Advocate for Respondent No.5 submits that the said contractor shall cause an appearance in the conciliation proceedings.

8. This Court has already delivered a judgment on 24.8.2017 in a group of petitions bearing Writ Petition Nos. 1524, 1525 and 1526 all of 2009 - Nilesh Baburao Jadhav and others Vs. The Chief General Manager, Tele-communications, BSNL. This Court had not granted any relief to the workers during the pendency of the conciliation proceedings.

9. The learned Advocate for the petitioners submits that the distinguishing feature in these matter is that under fortuitous

circumstances, the Industrial Court itself has granted little protection to these petitioners by directing the Contractor not to terminate their services without following the due process of law, till they raise an industrial dispute.

10. This Court (Coram : Sunil P. Deshmukh, J.) has delivered a judgment on 20.7.2018 in a group of matters bearing Writ Petition Nos. 8090 to 8095 of 2018 (Dilip Bhaskar Medhe and others Vs. BSNL and others), in which, a similar relief for a limited period has been granted. He further points out that in the order dated 12.4.2019, this Court has continued the relief as was granted by the Industrial Court.

11. In view of the above, I conclude that the order passed by the Industrial Tribunal, indicating that if the Contractor desires to terminate these workers, he shall follow the due process of law, is an equitable relief. The law always expects any employer, be it a Contractor or a regular employer, to follow the due process of law before taking any steps vis-a-vis the employee. These observations would indicate to the Contractor that he is expected to follow the due process of law, if he desires to terminate the contract labourers.

12. Since the Industrial Dispute has been raised in May, 2019, the

Conciliation Officer shall deal with the said issue expeditiously and would follow the due procedure to complete the conciliation proceedings preferably within 60 days from today.

13. If the Conciliation Officer / appropriate Government does not find that any Industrial Dispute Exists, the petitioners would be at liberty to seek a remedy as against such a conclusion. If the concerned authorities conclude that an Industrial Dispute exists and the matter deserves to be referred to the Tribunal, this shall be done expeditiously and preferably within a period of 30 days from receiving the failure report from the Conciliation Officer.

14. The Writ Petition stands disposed off in view of the directions and observations made above.

(RAVINDRA V. GHUGE, J.)

...

akl/d