

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7227 OF 2019

1. The Director,
Sports and Youth Services,
Pune [M.S.]
2. The Deputy Director,
Sports and Youth Services,
Soot Girni, Krida Sankul,
Garkheda Parisar, Aurangabad.
3. The District Sports Officer,
Soot Girni, Krida Sankul,
Garkheda Parisar, Aurangabad. ...Petitioners.

VERSUS

Haroon Khan Sher Khan,
Age. 36 years, Occ-Service,
R/o. Budhiline, Aurangabad. ...Respondent.

AGP for Petitioner : Mr. S.W. Munde.
Advocate for Respondent : Mr. V.P. Golewar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 03.04.2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioners are aggrieved by the judgment of the Industrial Court dated 08.12.2017, by which, Complaint (ULP) No. 82/2010, filed by the respondent, has been partly allowed and the petitioners

are directed to extend the benefits of permanency to the complainant from the date of filing of the complaint.

3. I have considered the strenuous submissions of the learned AGP appearing on behalf of the petitioners and the learned counsel appearing on behalf of the respondent. With their assistance, I have gone through the petition paper book and the impugned judgment.

4. The respondent was working from 1992 as a Maidan Sewak (Grounds Man). He claims to be in employment for the past 18 years. Initially, he was paid a consolidated amount of Rs. 250/- per month, which was gradually increased to Rs. 700/- per month. Learned counsel for the original complainant submits, on instructions, from the complainant present in the Court that after he filed Complaint (ULP) No. 82/2010 before the Industrial Court, seeking regularization in service, he was orally terminated. The moment the petitioners/Department received the notice from the Industrial Court, he was orally disengaged, after putting in more than 18 years in employment.

5. Learned AGP submits, on instructions, that the original complainant has voluntarily left employment and is not reporting for duties. He has not been terminated and is not in service since 1997.

6. A peculiar situation has arisen in this matter. The petitioners failed to cross-examine the complainant before the Industrial Court. No evidence was laid. So also, no such stand that the complainant has stopped reporting for duties and is not in employment, was raised in the written statement dated 20.11.2010 filed before the Industrial Court. The petitioners went to the extent of commenting upon the intellectual ability of the complainant stating that the complainant has a fertile brain, but did not state in the written statement as to whether he is not in employment. Nevertheless, it was admitted in the written statement that he was paid honorarium as per the Government Resolution and he is in service on the basis of fixed wages.

7. The impugned judgment of the Industrial Court indicates that several ULP complaints were decided by the Industrial Courts at Pune, Sangli and Kolhapur, against the same petitioners /establishment. Similarly situated employees, who were also on daily wages and honorary basis, were declared to be 'Workman' by the Industrial Court and the petitioners were declared to be an "Industry". As against the judgment delivered by the Industrial Court, Kolhapur, the petitioners/establishment preferred Writ Petition No. 4044/2009, which has been dismissed by this Court at the Principal Seat at Bombay.

8. In the above backdrop, the petitioners now contend that the complainant was engaged in a different scheme and the complainants who were before the Industrial Courts at Pune, Kolhapur and Sangli, were engaged in a different scheme. This matter was adjourned on 02.04.2019, to enable the petitioners to inform this Court the details of such scheme and the exact description of such scheme. The learned AGP submits today, on instructions from a representative present in the Court, that he cannot describe the scheme under which the complainant was working.

9. It is undisputed that the complainant was not cross-examined and the petitioner did not lead any evidence before the Industrial Court.

10. Learned AGP submits, on instructions, from the Officer present in the Court that Aurangabad was already a part of the scheme of the State Government under its Government Resolution dated 07.10.1992, as regards establishment of District Sports Training Centres. By the Government Resolution dated 11.02.1993, further 19 districts were added and as such, such scheme was operated in 31 districts under which the complainant was engaged. The said scheme is still in operation.

11. Considering the above, and keeping in view that similarly situated employees were granted benefits of permanency by various Industrial Courts and those judgments have not been set aside by this Court, I do not find that the Industrial Court, Aurangabad has committed any error in directing the petitioners to grant benefits of permanency to the complainant from the date of the filing of the complaint, which is 14.07.2010.

12. Keeping in view the above aspects and the fact that this Court, at its Principal Seat, has negated the challenge posed by these petitioners and has confirmed the judgment of the Industrial Court, Kolhapur, I find no distinguishing factors being pointed out by the petitioners. I do not find that the impugned judgment could be termed either perverse or erroneous or likely to cause gross injustice to the petitioners.

13. This petition, being devoid of merit, is therefore, dismissed by concluding that the complainant is a deemed permanent employee. Rule is discharged.

14. Needless to state, as the original complainant submits in the Court that he was disengaged by the petitioners after receiving the notice from the Industrial Court in his ULP Complaint, it is left open

for the complainant to take recourse to the provisions of the Industrial Disputes Act, for assailing his termination on the basis of he being a deemed permanent employee and for the recovery of his difference of wages and for seeking reinstatement in service with continuity and back wages.

(RAVINDRA V. GHUGE, J.)

S.P.C.