

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. : 2066 OF 2019

The Joint Director
Higher Education
Aurangabad Regional
Aurangabad

... PETITIONER
(Ori. Respondent)

VERSUS

Sayyad Jamil Ahmed
Maqbool Ahmed,
Age : 33 years, Occu : Service,
R/o. Plot no. 283,
Al-Hilal Colony, Aurangabad.
Tq. & Dist. Aurangabad

... RESPONDENT
(Ori. Complainant)

...

AGP for the Petitioner :- Shri S. R. Yadav – Lonikar
Advocate for the Respondent : Shri V. P. Golewar h/f.
Shri A. R. Joshi

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th SEPTEMBER, 2019.

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith by the consent of the parties and heard finally.

2. I have considered the strenuous submissions of the

learned Advocates for the respective sides and have gone through the petition paper book.

3. The petitioner, Joint Director Higher Education, Aurangabad Region, who is a part of the department of Higher and Technical Education State of Maharashtra, is aggrieved by the judgment of the Industrial Court dated 01/08/2019, by which, Complaint (ULP) No. 2/2014 filed by the respondent under the MRTU and PULP Act, 1971, has been allowed.

4. It is evident from the record that though the petitioner was served with the Court notice, a representative appeared and filed a written say to the application for interim relief. No written statement was filed. The complaint proceeded without the written statement. The original complainant was not cross-examined. The petitioner, as a respondent, did not lead any evidence since there was no participation. The Industrial Court has considered the appointment order placed before the Court by the complainant and concluded that as the complainant has completed 240 days in continuous employment, he was entitled for permanency immediately

after completing one year in service. *Insofar* as whether the petitioner is an industry or not, the Industrial Court has just recorded one sentence in paragraph 7 as " *In the affidavit the complainant has stated that, the respondent is an industry*".

5. The learned AGP submits that the petitioner is not an industry under Section 2(j) of the Industrial Disputes Act, 1947. So also, the Industrial Employment (Standing Orders) Act, 1946 does not apply to the petitioner and the Model Standing Orders are inapplicable. He further contends that as the permanent driver with the department was frequently remaining absent, the respondent was issued with an 11 months order so as to utilize his services during the absence of the driver. It was purely a contractual engagement keeping in view that the permanent driver was remaining absent.

6. The learned AGP further submits that taking advantage of the 11 months order, the complainant approached the Industrial Court with the ULP Complaint, when he had put in about 2 ½ years in employment as a temporary driver. On account of the interim order of the Industrial Court, he has

continued in employment and he is still in employment. The Industrial Court has foisted the respondent complainant upon the petitioner department and it is required to pay the salary of the respondent, as well as, the regular employee.

7. The learned Advocate for the respondent submits that there is enough work available with the petitioner. They need the services of a driver. The respondent is willing to work as per the directions of the petitioner. If the post of a driver is vacant, the petitioner can consider the respondent for regular employment.

8. In my view, in the matters pertaining to state instrumentalities or the state government or the department as like the petitioner herein, the issue of public employment is involved. In view of the judgment of the Honourable Apex Court in the matter of *Secretary, State of Karnataka and others Vs. Umadevi (3) and others* , (2006) 4 SCC, back door entries cannot be permitted.

9. In this backdrop, it will have to be considered as to

whether the petitioner is an industry and whether the Industrial Court can exercise its jurisdiction under the MRTU and PULP Act, 1971. So also, it will have to be assessed as to whether the petitioner has a particular policy of recruiting employees.

10. *Insofar* as permanency is concerned, it is no longer res-integra that the deeming fiction of permanency under Standing Order 4C of the Model Standing Orders, would not be applicable. This Court has delivered several judgments, one of them being *Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, 2015 (5) Mh.L.J. 75*. So also, this issue was referred to the Division Bench of this Court at Nagpur in the matter of *the Municipal Council Tirora and anr. Vs. Tulsidas Baliram Bindhade, 2016 (6) Mh.L.J. 867*. It is now crystalized that such deeming fiction of permanency will not apply to such entities.

11. Considering that the petitioner had not participated in the proceedings before the Industrial Court and is therefore, praying for a remand, normally costs could have been imposed

upon the petitioner. In the instant case, I am not imposing costs since the respondent, who was engaged on contractual basis as per the petitioner, was continued in service under interlocutory orders of the Industrial Court. He has been continued in service even today. The grievance of the petitioner is that he has been foisted upon the petitioner by the Industrial Court. In these circumstances, instead of granting costs, the respondent / original complainant can be continued in employment for a further short period within which period the Industrial Court would decide Complaint (ULP) No. 2/2014.

12. In view of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 01/08/2018 is quashed and set aside and Complaint (ULP) No. 2/2014 is restored to the file of the Industrial Court at Aurangabad, with the following directions :-

- (a) The litigating parties shall appear before the Industrial Court on 07/10/2019.
- (b) The petitioner shall enter its appearance through an Advocate and no formal notices are required.

(c) The petitioner shall file its written statement in the proceedings on or before 14/10/2019 alongwith all documents on which the petitioner places its reliance.

(d) The Industrial Court shall re-frame the issues on or before 22/10/2019 and shall also frame an issue as to whether the complainant proves that the respondent is an industry under Section 2 (j) of the Industrial Disputes Act, 1947, which shall be tried as a preliminary issue.

(e) Since the issue of jurisdiction has cropped up, the litigating sides shall lead evidence on the issue of jurisdiction in between 04/11/2019 and 31/12/2019.

(f) After the recording of evidence on the issue of jurisdiction (which shall be tried pre emptorily) is concluded, the Industrial Court shall proceed to consider the oral submissions of the parties expeditiously and shall deliver its order on the jurisdiction issue, on or before 29/02/2020.

(g) If it concludes that the original respondent is an industry, the parties are at liberty to proceed to lead their oral evidence on the remaining issues, subject to the right of either party to challenge the said issue before this

Court.

(h) In the event, the parties proceed with the matter without challenging the order on the jurisdiction issue, the Industrial Court would endeavour to decide the Complaint (ULP) finally on or before 30/06/2020.

13. Rule is made partly absolute in the above terms.

14. The record and proceedings shall be returned to the Industrial Court, Aurangabad forthwith.

(RAVINDRA V. GHUGE, J.)

shp/-