

AS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5602 OF 2019

Maharashtra Paricharya Parishad	..Petitioner.
V/s.	
Smt. Kalpana Ravindra Pawar	..Respondent.

Mr.R.R.Salvi I/b. Suvvarna Telegote for the petitioner.

Mr.T.G.Vartak for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 25, 2019

P.C.:-

Heard respective counsel.

2. At the outset, learned counsel for the petitioner submits that the petitioner body is superseded by Administrator of the State Government. This Court takes note of the same.

3. A reference was made under section 12 before the Labour Court under the Industrial Disputes Act ('the Act' for short) on the issue of termination of service of respondent. In the statement of claim, the respondent sought relief of reinstatement with continuity of service and full back wages.

4. By the award impugned, the Labour Court answered the reference in affirmative in favour of the respondent, thereby ordering continuity of service with full back wages effective from October 31, 2014. As such, this petition.

5. According to the respondent, the petitioner is governed by the provisions of Maharashtra Nurses Act No.40 of 1966 i.e. Maharashtra Nurses Act, 1966 ('the Nurses Act' for short). According to him, she had completed 21 years of service and her services were terminated. The reference in question was made and it was answered in the affirmative in favour of the respondent.

6. In the aforesaid backdrop, the submission of learned counsel for the petitioner that the provisions of section 16 of the Nurses Act, the post on which the respondent was working was not sanctioned. That being so, the order of the Labour Court awarding continuity of service with full back wages virtually amounts to conferring the status of permanency on the respondent, which is not permissible. He would try to draw support from the Division Bench judgment of this Court in *State of Maharashtra and Anr. V/s. Pandurang Sitaram Jadhav*¹,

¹ 2008 III CLR 151

particularly paragraph 18.

7. *Per contra*, learned counsel for the respondent submits that the respondent is working with the petitioner since 1997 to be more precise from January 10, 1997 till the date of her termination. She has completed 21 years of service and suddenly, service of respondent are terminated. According to him, learned Labour Court while considering the reference has appreciated the evidence of the petitioner and has rightly answered the award in favour of the respondent. As such, dismissal is sought.

8. Considered rival submissions.

9. It is not in dispute that in the reference to the Labour Court the issue as regards reinstatement in service with full back wages and continuity of service effective from October 31, 2014 of respondent-employee is required to be addressed.

10. It is claimed that since November, 1994 the respondent was not in service till October 31, 2014 and initially she was getting Rs.100/- per day and on the date of termination the amount was Rs.200/- per day. It is also brought to the notice of the Labour Court that there are permanent as well as temporary employees working with the petitioner. It is further claimed that

after termination of service of the respondent by the petitioner, one Ganesh Gore came to be appointed for the same post.

11. For the aforesaid claimed put forth by the respondents before the Labour Court, the defence is based on section 17 of the Nurses Act. It is claimed that there is no sanctioned posts on which respondent was appointed. It is also claimed that the respondent was working as a sweeper on part-time basis and as such, her name was not included in the Muster Roll of the permanent employee.

12. In the evidence, the petitioner has examined Mrs. Mangala Anchal at Exhibit C-4 wherein she has admitted that respondent was appointed by the petitioner as a part-time sweeper on daily wages. She has admitted that respondent has lastly drawn her wages of Rs.247/- per day. She has admitted in her cross-examination that the petitioner were giving artificial break to the respondent.

13. The aforesaid evidence, in the backdrop of the pleadings in the application is found to be basis by the Labour Court for recording a finding that the respondent was in continuous employment of the petitioner. The Labour Court then

proceeded to analyse the evidence and noticed that the respondent had put more than 21 years of service with the petitioner and completed 240 days in each preceding year and also noticed that there is no compliance of section 25F of the Act.

14. The aforesaid findings of the Labour Court are based on the material available on record viz. evidence of the witnesses of the petitioner and also that of the respondent-employee. Once such finding are based on evidence which are brought on record, this Court hardly notices any infirmity or material irregularity in the said findings recorded by the Labour Court. In my opinion, the Labour Court held that the services of the respondent was illegally terminated and as such, proceeded to grant reinstatement with back-wages with effect from October 31, 2014 with continuity of service.

14. So far as the claim of the petitioner that the Labour Court has granted permanency to the respondent, the said submission, in my opinion, is misplaced for the reason that the Labour Court has recorded a finding in the light of terms of reference made and accordingly, the Labour Court has recorded a finding on the issue of continuity of service and not given a finding

on permanent status of the respondent. That being so, reliance placed by learned counsel for the petitioner on the case of *State of Maharashtra and Anr. (cited supra)* will be of hardly any assistance. That being so, no material illegality can be noticed in the order impugned. The petition, in my opinion, lacks merits and is dismissed.

(NITIN W.SAMBRE, J.)