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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1409 OF 2018

Paschim Maharashtra Devasthan Samitee,

Through Chairman And Ors.

.. Petitioners

V/S

Vasant Antu Sathe And Ors.

.. Respondents

Mr.Sanjiv A Sawant For Petitioners.

Mr.Meelan Topkar For Respondent No.1 to 16.

Mrs. Vaishali Nimbalkar, AGP, for respondent no.17.

CORAM : A.K. MENON, J.

DATED : 12TH FEBRUARY, 2019.

P.C. :

1. The challenge in the writ petition is to an impugned judgment and order of the Industrial Court, Kolhapur, Maharashtra, in Complaint (ULP)no.33 of 2014 dated 22nd October, 2017. The petitioner no.1 is a Devasthan Samitee, petitioner no.2 its Secretary and petitioner no.3 its manager. Respondent nos.1 to 16 are ex-servicemen employed by the petitioner no.1. Respondent no.17 is the State. The petition has been disposed of as against respondent nos.2, 3, 7 to 11, 11(i), 14, 15 and 16 have been deleted pursuant to order dated 11th July, 2018 because they settled their dispute with the petitioners. Therefore the challenge today survives only as against respondent nos.1, 4 to 6, 12 and 13.

These persons have not agreed to the terms of settlement offered and are therefore the petitions proceeded against them.

2. The facts in brief that lead to the present petition are as follows;

The petitioners had engaged the said respondents as security guards. The petitioner no.1 is the Public Trust registered under the provisions of the Bombay Public Trust Act, 1950 and is engaged in managing of temples and their properties. The trust published an advertisement in the local newspaper for recruitment of employees, in response to which the respondent nos.1 to 15 applied, interviews have conducted and the respondents were selected. Respondent no.1 was appointed as a security supervisor with effect from 1st August, 2006 whereas respondent nos.2 to 14 were appointed as security guards also from the same date.

3. The petitioners have contended that although the first respondent was designated as supervisor, he had no supervisory powers such as sanctioning leave or taking any disciplinary action. He was therefore covered by the definition of “workman” under the provisions of MRTU & PULP Act. The petitioners contended that the complaint was filed on the basis that the respondents having completed 240 days of continuous service were entitled to permanency, arrears of pay and all

attendant benefits. The complaint alleged unfair labour practices under items 5, 6, 9 and 10. According to Mr. Sawant, the petitioners are a trust formed under the provisions of Section 56 of the Bombay Public Trust Act is run and managed by the State Government.

4. In their written statement, the petitioners denied liability for any wrong doing and contended that the complaint could not be filed. It was contended that respondents not having sought condonation of delay, the complaint was not maintainable as being barred by law of limitation. At the hearing of the complaint, the Industrial Court framed three substantial issues, firstly; whether the complaint is maintainable under Section 28 of the MRTU & PULP Act, secondly; whether the respondents prove that the petitioners were engaged in an unfair labour practices under items 5, 6, 9 and 10 and thirdly whether the respondents were entitled to relief. All the three issues were answered in the affirmative i.e. in favour of the respondents. The parties had led evidence in support of their respective cases and that is how the Industrial Court came to the aforesaid conclusion.
5. Mr. Sawant submitted that the impugned order is bad by reason that the petitioner no.1 was not an industry and contemplated under Section 2(j) of the Industrial Disputes Act. Secondly, it was contended

that the respondents were all covered under the Maharashtra Private Security Guard (Regulation of Employment & Welfare) Act, 1981 and the Scheme thereunder. It is stated that the scheme covered the district of Kolhapur where the trust was situated. It was further contended by Mr. Sawant that the aforesaid Act governed the service conditions of the respondents and it was not appropriate to consider the complaint under the MRTU & PULP Act when the conditions of service could have been governed by the Maharashtra Private Securities Guards (Regulation of Employment & Welfare) Act. The maintainability of the complaint was raised as a specific issue and the Court erred in coming to the conclusion that the petitioners were an industry. Mr. Sawant in the course of his submission relied upon the judgment of the Supreme Court in the case of *Sccy. State of Karnataka. V/s. Umadevi [2004 (7) SCC 132]*. He submitted that the respondents in the present case were trying to get to a back door entry into service and that this was clearly not permissible in view of the fact that the trust was controlled by the State and therefore the decision in Umadevi (supra) squarely applied. The impugned order would result in employment without following due process of law.

6. Mr. Sawant further submitted that the Industrial Court erred in holding that the Model Standing Orders framed under the Industrial

Employment (Standing Orders) Act are applicable to the petitioners. Furthermore, he submitted that the Industrial Court came to a finding that the respondents were employed for more than 240 days in a calendar year and the entire burden of proving that the respondents were not employed for 240 days was sought to be shifted to the petitioner no.1. In the circumstances, he submitted that it is appropriate that the impugned order be set aside.

7. Mr. Topkar on behalf of the respondent nos.1 to 16 submitted that the challenge is without any merit. He submitted that the respondents were appointed after following due process. It was only pursuant to an advertisement issued by petitioner no.1 that the respondents were selected, interviewed and appointed. He therefore submitted that there is no substance in the contention that the complaint was not maintainable. He further submitted that irrespective of the fact that a settlement may have been arrived at by some of them, the impugned order is enforceable against the petitioners. There is no occasion to dispute the maintainability of the complaint. He has relied upon the deposition of one Vasant Antu Sathe who has filed affidavit in reply in which he stated that respondents were appointed on fixed terms which were continued without a break and that the work being performed by the respondents was of a perennial nature and was continued day to

day. However, the respondents have not been confirmed in their posts and are being discriminated again by denying them the benefits such as pay scale, annual increment, dearness allowance, medical leave, provident fund and low salary. Whereas the petitioners have recruited fresh employees as security guards in August 2013, the terms offered to those new appointees are stated to be much better and therefore the discrimination was blatant. It is on this basis that the complaint has been urged and submitted that the petitioners are admittedly a public trust and the State Government has no control over the creation at the number of posts for appointment of employees. In this behalf, he submitted that the Industrial Court had correctly held that the appointments were legal and the petitioners are not instrumentality of the State. On this basis, Mr. Topkar submitted that the impugned order cannot be faulted.

8. On behalf of the petitioners, Mr. Sawant submitted that several of the respondents have since arrived at settlements as a result of which they have dropped from the array of parties in the writ petition. He submitted that some of them have filed affidavits including respondent nos.2, 3, 7, 8, 9, 10, 11(i), 14, 15 and 16 wherein they have stated that they have compromised the matter and have settled the dispute to that effect that the petitioners had passed a resolution and these respondents had signed a compromise purshis. The affidavits relied

upon the resolution (office order) of the Devasthan dated 22nd May, 2018, copies of which are annexed to these affidavits. In fact the contention is that many of these respondents have compromised the dispute and therefore it would not be proper to uphold the order as against the petitioners.

9. In this behalf, I have perused the impugned order which raises three substantial issues viz. as to maintainability of the complaint, whether the petitioners had engaged in unfair labour practices and whether they are entitled to relief. The issues have been answered in the affirmative and the petitioners have been found engaged in unfair labour practices under items 5, 6 and 9 of Schedule IV of the Act. The impugned order is passed after parties led oral evidence. The petitioners have contended that Samitee is an instrumentality of the State. However, the Court came to a finding that the record and evidence led before it only established that the Collector is a representative of the State Government and had control over the immovable property but the Devasthan Samitee is governed by its own rules and regulations and the entire administration and management is by the members of the Samitee.
10. The terms and conditions of service incorporated under clause 25 clarified that the committee is neither government office nor a service

in such office of government. The impugned order therefore holds against the petitioners on the aspect of maintainability. Around 3,067 temples come within its fold and services in these temples provide through the petitioners Samitee which services included security of the temples and services in respect of property of the temples including the donation boxes wherein large amounts of monies are collected. The impugned order holds that the work of a Samitee is conducted in a systematic manner and the admissions by the petitioners witness clearly establishes that it complies with the definition of industry. The Industrial Employment (Standing Orders) Act was therefore found to be applicable. Furthermore, it is recorded that the respondents were appointed after publication of an advertisement and after having been called for interviews.

11. The Court also considered appointment letters issued to some of the respondents and came to a finding that proper recruitment procedure had been followed and selections were made towards particular posts. The appointments were then continued till 2007 and the respondents had all completed 240 days of service each year. The petitioners made no effort to demonstrate that 240 days service had not been completed. Besides, the nature of work was such that it was said to be continuous and perennial. It is in these circumstances that the impugned order considered the petitioners contention that no

sanctioned posts were available and that they were not appointed against any vacant post. Although reliance was placed on some staffing pattern, it was found that it could not be relied upon since the petitioners' witness admitted that there were more than 100 employees working, many of them had been appointed permanently from time to time. In my view with a large number of temples to manage it is not possible to believe the petitioners' submissions that only 20 posts of security guards were to be filled in. Furthermore, clause 34 of the regulation provided that recruitment of posts other than those mentioned in staff schedule was permissible on temporary basis as may be approved by the Committee from time to time.

12. Apropos the contention that the petitioners case must be considered in the light of judgment of the Supreme Court in *Umadevi* (supra), it was found that the Samitee activity was not a government service and hence the ratio in *Umadevi* (supra) did not apply. This contention have been considered in detail by the Court observing that the judgment in *Umadevi* (supra) by itself does not override the powers to the Industrial and Labour Courts to pass appropriate orders under Section 30 once unfair labour practices have been established. Reliance was also placed on the Model Standing Orders, in particular clause 4(c) thereof, which provides for absorption of badli or

temporary workman. It is pertinent to mention that the learned AGP also fairly conceded that the petitioner no.1 is not managed by the State government. The Court found that the respondents were covered by the Industrial Employment (Standing Orders) Act and that only permanent employees could be governed by Bombay Civil Services Rules. It is on this basis that the impugned order finds that the respondents are entitled to status of permanent employees. The finding is to the effect that the employees were not governed by the government resolutions which are in respect of civil services. The appointments were made under civil services rules and the respondents were not civil servants.

13. Furthermore, the contention raised by Mr. Sawant as to the applicability of the Maharashtra Private Securities Guards (Regulation of Employment & Welfare) Act, 1981 and scheme thereunder, the Court correctly held that said Act applies to persons working as security guards in any factory or establishment and who are not direct employees of the factory or establishment. In the present case, the respondents were employed directly by the petitioners Samitee and hence, the Security Guards Act was not relevant. The impugned order to my mind cannot be faulted for the reasons canvassed by Mr. Sawant on behalf of the petitioners. Furthermore, in an affidavit in reply of Vasant Antu Sathe he has set out the process by which the respondents

were identified, interviewed and selected on consolidated salaries and that the work was permanent and perennial which they did carry out without a break. Yet they were denied benefits of the pay scale, annual increment, dearness allowance, medical leave, provident fund and low salary, none of these averments have been denied as contended by Mr. Topkar these are therefore deemed to be admitted. The reliance on affidavits of respondents who had arrived at settlements with the petitioners are of no avail. The settlements are consensual arrangements between those respondents and the petitioners, pursuant to which resolutions have been passed, thus cannot be binding on the other respondents who seek enforcement of their rights in accordance with law.

14. For all the aforesaid reasons it is not possible to hold against the respondents. I find no reason to interfere with the impugned order in the extraordinary writ jurisdiction of this Court. I therefore pass the following order;

(i) Writ petition is dismissed.

(ii) No orders as to costs.

(A.K.MENON,J.)