

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.576/2019

The Joint Director, Health Services Department (Malaria & Fileria), Pune and
 others

..Vs..

Shri Gopal Namdeorao Malasne and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.P. Deshpande, Addl. G.P. for the petitioners.
 Shri S.G. Jagtap, Advocate for the respondents.

CORAM : Z.A. HAQ, J.

DATE : 28.1.2019.

Heard.

The petitioners / employer have challenged the order passed by the Industrial Court by which the complaint filed by the respondents / employees under Section 28 read with Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is allowed. The Industrial Court has held that the employer was engaged in unfair labour practice. The employer is directed to regularize or absorb the services of the complainants on their former posts in regular time scale establishment from the date of their appointments, and also to make available to the employees the monetary benefits from the date of the filing of the complaint. After assessing the evidence on record, the Industrial Court has summed up its conclusions in paragraph No.14

of the impugned order as follows:

“14. As I said above, the respondents failed to cross examine the complainants witness, therefore, the statement of the complainants on affidavit cannot be disbelieved as the same is based on the documentary evidence. The allegations of the complainants are not falsified by the respondents by examining any witness. The written statement of the respondents shows that the respondents not disputing the fact that these complainants are working since last 16 years and also not disputed that juniors to the complainants are regularized. But, according to respondents these persons were appointed after following the procedure. To substantiate their contentions as stated in their written statement, there is no evidence on record, therefore, their statement cannot be accepted in absence of any material on record. Moreover, the complainants examined one of the complainant by way of affidavit and stated the facts, but respondents failed to cross examine the complainants witness, therefore, the contentions of the complainants on affidavit is supported by the documentary evidence. In view of the said fact, there is no alternative than to accept the contentions of the complainants.”

Faced with the difficulty of formulating any challenge to the conclusions of the Industrial Court, at the time of hearing the learned Adll. G.P. prayed that the matter be remanded to enable the employer to put-forth its case. Though it is submitted that the officials responsible for defending the matter before the Industrial Court have not taken proper steps to bring on record the relevant material, it is not pointed out that any enquiry is conducted against those officials. In these facts, I am not

inclined to consider the prayer made on behalf of the petitioners / employer for remanding the matter to the Industrial Court. The respondent / employees are litigating for their legitimate claims for last more than 5 years. The petitioners have not been able to point out that the conclusions of the Industrial Court suffer from any infirmity or perversity which necessitates interference by this Court in the extraordinary jurisdiction. The petition is **dismissed** with costs quantified at Rs.5,000/- per respondent / employee. The amount of costs shall be paid to the employees and receipt showing payment shall be produced before the Industrial Court alongwith affidavit till 15th April, 2019.

JUDGE

Tambaskar.