

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

**WRIT PETITION NO.2242 OF 2019**

(CHIEF EXECUTVE OFFICER, Z.P. & OTH...VS.. MAHESH GAJANAN GURNULE & ANR.)

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

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Shri A.P.Thakare, Advocate for Petitioners.  
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**CORAM : Z.A.HAQ, J.**

**DATED : JULY 25, 2019.**

Heard.

2. The petitioners (employer) have challenged the order passed by the Labour Court by which the order terminating services of the respondent No.1/employee is quashed and the petitioners are directed to reinstate the respondent No.1/employee on the post of "Data Entry Operator" with continuity of service. The Labour Court has further directed the petitioners to pay 50% of back wages.

3. The contention of the petitioners is that the respondent No.1/employee was appointed for specified period and therefore, termination of service of the respondent No.1/employee would be covered by sub-section (oo)(bb) of Section 2 of the Industrial Disputes Act 1947. The petitioners further contend that as Section 2(oo)(bb) of the Industrial Disputes Act, 1947 is attracted, non-compliance of Section 25-F and Section 25-G of the Industrial Disputes Act will not make the termination order illegal.

The learned Advocate for the petitioners, to support the above submission, has relied on the following judgments:

- i) Judgment given by this Court in the case of *Executive Engineer Vs. Ramchandra*, reported in **2006 (4) Mh.L.J. 517**,
- ii) Judgment given by Hon'ble Supreme Court in the case of *Kishore C. Samal Vs. Divnl. MGR. Orissa State .. Corpn.*, reported in **2006 1 CLR 29**,
- iii) Judgment given by Hon'ble Supreme Court in the case of *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela*, reported in **2006(2) ALL MR (S.C.) 72**,
- iv) Judgment given by this Court in the case of *Urmila Vs. State of Mah.*, reported in **2009(1) Mh. L.J. 644**,
- v) Judgment given by Hon'ble Supreme Court in the case of *Kalpataru Vidya Samashthe..vs. S.B.Gupta*, reported in **(2005) 7 SCC 524**,
- vi) Judgment given by Hon'ble Supreme Court in the case of *Himanshu Kumar Vidyardhi & oth. vs.. State of Bihar & oth*, reported in **AIR 1997 SC 3657**,
- vii) Judgment given by Hon'ble Supreme Court in the case of *Bhavnagar Mui. Corpn. Vs. Salimbhai*, reported in **2013 (6) Mh.L.J. 919**,
- viii) Judgment given by Hon'ble Supreme Court in the case of *P.V.K. Vs. K.V.K. Union*, reported in **1993 (2) Mh.L.J. 1394**,
- ix) Judgment given by Hon'ble Supreme Court in the case of *R.T.M.N. University vs. Industrial Court*, reported in **2016(2) Mh.L.J. 454**.

4. The Labour Court has recorded that the respondent No.1/employee had been working with the petitioners since 1<sup>st</sup> December 2012 for a period of about four years. It is on record that though the respondent No.1/employee was given appointment order for 11 months, he was re-appointed after giving one day's break. The Labour Court has recorded that the witness No.1 examined by the employer (present petitioners) admitted during cross-examination that the respondent No.1-employee was given appointment order for 11 months after giving one day's break and the respondent No.1-employee had worked with the petitioners for about four years. In paragraph No.24 of the impugned order, the Labour Court has recorded that the witness examined by the employer (present petitioners) admitted that the respondent No.1-employee was on duty on 22<sup>nd</sup> December 2015 i.e. on the date when the termination order was issued and the work of 'Data Entry Operator' was available with the petitioners even subsequently and also on the date when the witness was cross-examined. During cross-examination the witness examined by the employer admitted that even after services of the respondent No.1-employee were terminated, the respondent No.1 had been working with the petitioners. In these facts, the Labour Court has recorded its conclusions in paragraph Nos. 32, 33 and 34 as follows:

*“32. It is well settled that the action of employer to engage a workman on casual basis or even on temporary basis for long period of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation in contract is an act of unfair labour practice. Therefore, such an act of employer is required to be nullified by rejecting the plea of the employer that the termination of service of the*

workman does not amounts to retrenchment but is covered under Section 2(oo)(bb) of the Act. Undoubtedly, the clause (bb) of Section 2(oo) of the Act is an exception to the principal section. It will have to be given a narrow interpretation as it has the effect taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to use as a tool of exploitation of a workman.

33. In the case in hand, it is pertinent to mention that the last tenure of the appointment of the applicant is alleged to be culminated on 03.09.2015. Undisputedly, the applicant was terminated by the impugned termination order dated 22.12.2015 (Exh.U-6). As discussed earlier, the witness for the non-applicant has admitted that on 22.12.2015 and even thereafter the applicant worked as Data Entry Operator with the non-applicants i.e. well beyond the period of 11 months specified in the alleged appointment letter. Therefore, it is not open to the non-applicants even to allege that the the services of applicant had been dispensed with according to the terms and conditions of his appointment. Hence, it is not possible to accept the contention of the non-applicants that the impugned termination order of the services of applicant does not amounts to retrenchment in view of the provisions of Section 2(oo)(bb) of the Act. Hence, it can be safely inferred that the applicant is the employee of the non-applicants as per Section 2(s) of Industrial Dispute Act.

34. It is not a matter of dispute that the applicant had worked for 240 days preceding the date of his retrenchment. It is not disputed that at the time of his retrenchment, he was neither issued the mandatory notice under Section 25-F of the Act nor paid compensation in lieu thereof and further he was not paid any retrenchment compensation in terms of the mandate of Section 25-F of the Act. It is therefore apparent that termination of the service of applicant was in clear violation of Section 25-F of the Act. It is also not disputed that the non-applicants have not even prepared a seniority list of the

*employees. The witness for non-applicants in clear terms has admitted these facts. As such there is violation of Section 25-F and 25-G of Industrial Dispute Act on the part of non-applicants. Hence, I hold that the non-applicants have violated the mandatory provisions of Section 25-F and 25-G of the Industrial Dispute Act. Consequently, the impugned termination order dated 22.12.2015 which is issued without complying the mandatory provisions of Section 25-F and 25-G of the Industrial Dispute Act is illegal. Hence, I answer issue no.1 and 2 in affirmative and issue no.3 in negative.”*

5. After hearing the learned Advocates for the respective parties and examining the material placed on record, I find that the conclusions of the Labour Court are based on proper appreciation of material on record. The petitioners have not been able to point out any perversity or illegality in appreciation of material on record by the Labour Court.

The proposition laid down in the judgments referred by the learned Advocate for the petitioners is well settled. However, the judgments are not of any assistance to the petitioners in the facts of the present case.

6. In view of the above, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

7. At this stage, the learned Advocate for the petitioners prays that the amount deposited by the petitioners before the Labour Court as per order passed by the Court on

22<sup>nd</sup> March 2019 should not be given to the respondent/employee for 12 weeks to enable the petitioners to take appropriate steps in the matter.

It is directed that if the petitioners fail to produce any interim order till 4<sup>th</sup> November 2019, the amount deposited by the petitioners along with interest on it, if any, be given to the respondent/employee after 4<sup>th</sup> November 2019.

The interim order granted by this Court on 22<sup>nd</sup> March 2019 regarding reinstatement of respondent/employee shall also continue till 4<sup>th</sup> November 2019.

**CIVIL APPLN.NO. 1920/2019.**

In view of dismissal of the writ petition, the application seeking directions to the petitioners to pay monthly salary of Rs.10,000/-, during pendency of the petition, has become infructuous, hence, it is disposed accordingly.

**JUDGE**

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