

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC.CIVIL APPLICATION(REVIEW) NO.471 OF 2018
IN WRIT PETITION NO.1530/2003(D)

Shri Kamlakar S.Zanzal(dead) through his LR's. Vs. Indira Gandhi Medical College &
General Hospital

WITH

MISC.CIVIL APPLICATION (REVIEW) NO. 472/2018
IN WRIT PETITION NO.1531/2003(D)

Gajanan Dashrath Kumbhare, Vs. Indira Gandhi Medical College & General Hosp.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.D.Thakur, Advocate for applicant in both M.C.A.
Mrs. Mrunal Naik and Mrs. Sangeeta Jachak, Assistant Govt.
Pleaders for non applicant-State.

CORAM : A.S.CHANDURKAR, J.

DATED : March 28, 2019

By these applications, the original complainants pray that the common judgment dated 05.07.2013 in the writ petitions be reviewed.

The original respondents in the writ petitions had filed complaints under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the said Act) complaining commission of unfair labour practices under Items 5, 6 and 9 of Schedule IV of the said Act. It was their case that despite having put in continuous service for more than 240 days, they were not given benefits to which they were entitled under the law. The Industrial Court accepted the said contentions and directed the employer to grant the status of permanency to them. This order was challenged by the Employer in the aforesaid writ petitions. When the writ

petitions were heard the original complainants were not represented. By the common judgment dated 05.07.2013, the writ petitions have been allowed and the order passed by the Industrial Court has been set aside.

Shri S.D.Thakur, learned counsel for the applicants submitted that he was unable to remain present when the writ petitions were heard. According to him, there was sufficient material on record to indicate completion of continuous service of both the complainants for more than 240 days. However only on the basis of the chart at Exhibit 21 it has been held that the complainants did not put in continuous service for more than 240 days. He referred to the deposition of the witnesses examined by the employer who had admitted that work was being taken from the complainants on a rotation basis with a view to deny them benefits of permanency. According to him, the aforesaid aspect stands concluded in favour of the complainants in view of the law laid down in ***H.D.Singh Vs. Reserve Bank of India and others, (1985) 4 Supreme Court Cases 201***. It is therefore submitted that non consideration of the evidence on record has vitiated the said judgment. Hence, it deserves to be reviewed.

The applications are opposed by learned Assistant Government Pleaders for the State. It is submitted that the complainants have blamed for the absence of their counsel. After considering the entire evidence on record, the order passed by the Industrial Court has been set aside by holding that the complainants had not put in 240 days continuous service.

After hearing learned counsel for the parties and after perusing the material that was considered by the Industrial Court, it is found that the complainants were not represented in this Court when the writ petitions were decided. In the judgment dated 05.07.2013 a reference has been made to the chart at Exhibit 21 to conclude that the service for 240 days by the complainants was not proved. Considering the law laid down in H.D.Singh (Supra) coupled with the evidence of Dr. R.G.Dhawale examined by the Employer wherein he has admitted in his cross-examination that work was assigned to the complainants on

rotation basis as per instructions received, I am of the view that the matters require rehearing. The complaints were allowed by the Industrial Court and that order has been set aside by the judgment dated 05.07.2013. In the light of the fact that the learned counsel for the complainants was not present when the writ petitions were heard and as *prima facie* there is material on record which required consideration by this Court, instead of accepting prayer for review, I am inclined to permit re-hearing of the writ petitions on merits.

In that view of the matter, the judgment dated 05.07.2013 in Writ Petition Nos. 1530/2003 and 1531/2003 is recalled. The writ petitions are restored to file for being heard afresh. The applications are allowed and disposed of.

WRIT PETITION NOS. 1530/2003 AND 1531/2003

To be listed for hearing in the week commencing from **8th April, 2019.**

JUDGE

Andurkar.