

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10372 OF 2018

Shri Bhogawati Sahakari Sakhar
Karkhana, Shahunagar (Parite),
Tal. Karveer, District. Kolhapur
Through its Managing Director ... Petitioner

Versus

Shri Ananda Ishwara Kumbhar
And Others ... Respondents.

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Mr. A.V.Anturkar, Senior Advocate a/w Mr. K.S.Bapat i/b Mr. Prashant Bhavake for the Petitioner.

Mr. A.V.Bukhari, Senior Advocate a/w Mr. Burhan Bukhari & Mr. Fauzia Bukhari for Respondent Nos. 1 to 4, 6 to 8, 10, 11, 13, 15 to 17, 19 to 22, 24 to 26, 29, 31 to 36, 39, 40, 42 to 47, 49, 50, 53 to 57, 60 to 63, 65, 66, 69, 70 to 72, 78, 79, 83, 84, 87 to 89, 91, 93, 95, 97, 98, 100 to 105, 107 to 110, 113 to 118, 120, 122, 123, 125, 126, 129, 130, 134, 135, 139, 142, 143, 146 to 153, 157, 158, 160 to 162, 164 to 167, 170, 171, 173 to 180, 182 to 188 190, 191, 193, 196 to 201, 203, 206, 208 to 210, 212 to 220, 223 to 225, 227 to 230, 232, 234, 235, 239, 240, 241, 243 to 246, 248 to 252, 254, 256, 257, 258, 260 to 270, 272 to 274, 278 to 280, 282,283, 285, 287, 291, 293, 297 to 303, 306, 308 to 320, 322 to 325,329, 331 to 335, 337, 342, 344 to 349, 352, 354 to 358, 360 to 362,364 to 368, 370, 373, 374, 376 to 379, 381 to 383, 385 to 392, 394, 396, 397, 401 to 405, 407 to 409, 412 to 419, 422, 424, 426 to 430, 433, 437 to 439, 441 to 444, 4466, 447, 449, 450, 452, 455, 456, 460, 462, 465 to 469, 471 to 474, 476 to 480, 483 to 486, 488, 490 to 495, 499, 500, 504 to 506, 512 to 515, 518, 519, 521 to 524, 526, 528, 529, 531, 533, 535 to 544, 546 to 549, 552, 555 to 560, 562, 563, 567, 569 to

571, 574, 577, 579.

Mr. M.S. Topkar for Respondent Nos.9, 12, 18, 23, 27, 28, 64, 67, 68, 74 to 77, 81, 82, 92, 94, 95, 96, 99, 111, 112, 119, 121, 124, 127, 132, 138, 140, 141, 144, 154, 155, 156, 163, 168, 189, 192, 194, 195, 202, 211, 222, 226, 233, 242, 247, 255, 259, 277, 281, 284, 286, 288, 296, 305, 307, 321, 326 to 328, 330, 340, 363, 369, 371, 372, 375, 380, 384, 388, 393, 395, 399, 400, 406, 410, 420, 423, 425, 431, 434, 448, 451, 457, 458, 459, 463, 475, 482, 487, 489, 496, 501, 502, 503, 507 to 509, 516, 527, 550, 551, 553, 554, 561, 564, 566, 568, 573, 576.

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CORAM : S.C. GUPTE, J.

DATE : 9 JANUARY 2020

(Oral Judgement) :

. This writ petition challenges an order passed by the Industrial Court at Kolhapur on a complaint of unfair labour practice filed by the Respondents herein (original complainants).

2 The complainants claimed to be in service of the Petitioner herein (original respondent No.1.), who is a Sugar Factory. The complainants, who were initially appointed as daily wage workers, claimed to be working continuously in the sugar factory of Respondent No.1. According to the complainants, the crushing capacity of the sugar factory was 4000 M.T. of sugarcane per day (the actual capacity being more than 5000 M.T. per day). The staff schedule or staff pattern adopted by the sugar factory in 1993, commensurate this

capacity, envisaged regular and seasonal permanent staff of 1521 workmen. It was submitted that due to superannuation, death, resignation or other reasons, many posts were lying vacant in the Respondent-sugar factory for the last many years; the work of these vacant posts was being performed by the complainants. It was submitted that the complainants were working practically as regular permanent employees or seasonal permanent employees of the sugar factory since 2011-12. A letter of demand was issued, in the premises, by the representative union of the complainants demanding status of permanency to various employees working on daily wages continuously for the sugar factory. In pursuance of this demand and negotiations between the union and the management as well as intervention of Labour and Welfare Department of the State, a draft agreement came to be prepared in this behalf and was placed, along with an office note of recommendations, by the welfare officer for approval of the managing director of the sugar factory, who placed the same for sanction before the Executive Committee. The demands were accepted and the draft agreement was sanctioned vide resolution dated 27 November 2015 duly passed by the executive committee of the sugar factory. The decision of the executive committee was thereafter approved by the Board of Directors of the sugar factory, who, by their resolution dated 30 January 2015, sanctioned the resolution passed by the executive committee in that behalf. In pursuance of this sanction, an amicable settlement was arrived at on 16 February 2015 between the union and the management of the sugar factory, under which status of permanency was granted to the

employees, whose names were listed in Annexures-A, B, and C to the agreement. These included the names of the complainants. It appears that thereafter office orders dated 5 November 2015, under the signature of Managing Director of the sugary factory, were issued to the complainants, according each one the status of 'regular permanent' or 'seasonal permanent' employees, as specified in the orders, along with applicable wages and consequential benefits. It appears that sometime later complaints were received by the sugar factory at the instance of rival outfits in relation to the permanent status of the complainants. On account of these, the complainants *bona fide* apprehended that Respondent No.1 (who by then was being managed by another board of directors), under the directions of Commissioner of Sugar and Registrar of Co-operative Societies, State of Maharashtra, might terminate the services of the complainants or deprive them of the status and privileges of permanency by committing a breach of the agreement of 16 February 2015.

3 The complainants, in the premises, approached the Industrial Court alleging unfair labour practices under Section 28 read with Items 5, 9 and 10 of Schedule IV of the Maharashtra Regulation of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ("Act"). The complaint was resisted by the sugar factory. It was submitted by the sugar factory that its earlier management had wrongly conferred the status of permanency on the complainants, who did not qualify for, or deserve, the same. It was submitted that original appointments of the complainants as also according of

permanent status, was an illegal act, made hand-in-glove with the workers and the union. It was submitted that the appointments were against the norms comprised in the staffing pattern determined in the year 2004. It was submitted that legitimate considerations such as educational qualifications, age and other factors were not taken into account whilst making these appointments. It was submitted that the appointments were made without regard to the financial position or needs of the sugar factory.

4 The Industrial Court, whilst considering the complaint, went into its maintainability as well as proof of the purported unfair labour practices under Items 5, 9 and 10 of Schedule IV of the Act as well as the aspect of relief based on such consideration. The Industrial Court held the complaint to be maintainable; it rejected the sugar factory's objection that the relief, in effect, sought directions not to terminate the services of the complainants and that such relief could be granted only by the Labour Court under Item 1 of Schedule IV. The court was of the view that the complaint basically involved apprehended withdrawal of office orders and breach of statutory provisions and service conditions and the protection sought against termination of their services by complainants, was in the nature of an incidental relief. The Industrial Court also rejected the sugar factory's objection about the challenge to apprehended withdrawal of office orders being premature and thus, not maintainable. On the crucial issue of staffing pattern, the Industrial Court came to a conclusion that as per the applicable staffing pattern, i.e. the staffing pattern of

the year 1993, the appointments were in order and not in excess. The Industrial Court accepted the complainants' grievance under Item 9 of Schedule IV of the Act, whilst not countenancing the grievances under Items 5 or 10 of Schedule IV. The Industrial Court observed that, in a broad sense, the sugar factory had not denied initial appointments of the complainants on daily wages; and without any material, it was futile to raise any objection to such appointments either as back door entries or otherwise. The Court noted that there was a duly passed resolution of the executive committee of the sugar factory in consideration of the demand of the union for according the status of permanency to the complainants, followed by the resolution of the board of directors of the *Karkhana*. The court did not countenance any challenge to the resolution passed by the earlier board of directors of the sugar factory. The court was of the view that a resolution of a co-operative society could be subjected to challenge only within the ambit of the Maharashtra Co-operative Societies Act and not before an industrial adjudicator. The court was of the view that considering the agreement entered into between the union and the sugar factory, which was placed on record before the court, and which was duly signed by the Managing Director of the sugar factory and the office bearers of the union, granting permanent status to the daily wagers, there were consequences under the Industrial Disputes Act and that the agreement could not be resiled from without following due procedure under Section 42 of the Maharashtra Industrial Relations Act, 1946 ("MIR Act"). The court held the agreement to be binding on the parties and any action of the

sugary factory in breach of the agreement (as well as in breach of law), would amount to an unfair labour practice under Item 9 of Schedule IV of the Act.

5 The Industrial Court, accordingly, partly allowed the complaint and directed the sugar factory to cease and desist from engaging in the unfair labour practice and not to withdraw the office orders dated 5 November 2015 or terminate the services of the complainants without following due procedure of law. The sugar factory was directed to accord all benefits to the complainants as per office orders dated 5 November 2015 and also pay the difference in wages accordingly, by restoring the office orders, which were sought to be kept in abeyance by the sugar factory.

6 The impugned order of the Industrial Court is challenged by the Petitioner-sugar factory on several grounds. Mr. Anturkar, learned Senior Advocate appearing for the Petitioner, however, presses only four submissions. Learned Counsel does not dispute the maintainability of the original complaint before the Industrial Court. Learned Counsel, firstly, submits that the initial appointments of the complainants (the Respondents herein) were themselves suspect; they were made without following due procedure; and were by way of a back door entry. It is submitted that in accordance with the standing orders, no permanent appointment could be made except after initial appointment on probation. Learned Counsel, secondly, submits that these appointments, including grant of permanent status to the

appointees, amounted to breach of the staffing pattern of the sugar factory duly sanctioned under Section 79AA of the Maharashtra Co-operative Societies Act (“MCS Act”). It is submitted that with the complainants being made permanent, i.e. either as permanent employees or permanent seasonal employees, the number of staff would far exceed the sanctioned number. It is submitted that it would be unmanageable for the sugar factory and would have disastrous consequences for its financial health, if these appointments, far in excess of the staffing pattern, were to be countenanced. Thirdly, it is submitted that the original change by means of the resolution of the executive committee, followed by the resolution of the board of directors and the agreements and office orders purportedly issued in pursuance thereof, was itself a change, which necessitated a notice under Section 42(1) of the MIR Act, and want of such notice has rendered it illegal. Fourthly, learned Counsel submits that the agreement between the Petitioner-sugar factory and union, based on the resolution of the board of directors of the factory, was not to be implemented without due resolution to be passed and an order made in that behalf by the board of directors of the sugar factory.

7 Coming to the initial appointments of the complainants, as rightly observed by the Industrial Court, there was hardly any material before the court to show that these were illegal. Mr. Anturkar submits that the appointments were not made by the Managing Director. The appointment letters, which are in the form of 'chits', were signed by P.A. to the Chairman. The method, in which

appointments are made, is an internal matter of the sugar factory; its employees are not concerned with the particular method adopted. What is important is that it cannot be disputed that, as a matter of fact, the complainants were employed with the sugar factory and they were working from 2011-12 onwards. The assessment of the Industrial Court in this behalf cannot be termed as unreasonable or perverse. The relevant standing orders, referred to in this behalf by Mr. Anturkar, namely, Standing Orders 2A and B, applicable to the sugar factory, deal with permanent employees, who need to complete a probationary period of three months, whereas seasonal employees are those, who are appointed by the managing director, mainly for seasonal work and in writing. As we have noted above, merely because the managing director has not himself signed appointment letters issued to the complainants, it cannot be said that they were not seasonal employees. In any event, as we have noted above, there were written appointment letters in the form of chits, which were signed by P.A. to the Chairman of the sugar factory and in the facts of the case, it is impossible to say that these appointments did not have the sanction of the Managing Director of the factory. As far as the alleged probationary period of three months for according permanent status to the employees is concerned, the explanation to Standing Order 2A itself makes it clear that if seasonal workers had continuously worked with the factory for three consecutive seasons, they could be treated as permanent employees or permanent seasonal employees of the sugar factory.

8 So far as the argument under Section 79AA of the MCS Act is concerned, it is pertinent to note that the Registrar, under sub-section (1), has power to direct the sugar factory, i.e. the society, to make regulations in that behalf and forward the same to him for his approval. Under sub-section (2), on receipt of regulations made by the society, the Registrar may approve the same with or without modifications and upon such approval, the society is required to carry on its business in accordance with such regulations. Under sub-section (3), if the society fails to forward such resolution to the Registrar, when directed by him to do so under sub-section (1), within a period of three months from the date of such direction, the Registrar may himself make, or cause to be made, such regulations and require the society to carry on its business in accordance with such regulations and it is only thereupon that the society is bound to comply with such regulations. In the present case, the original staffing pattern was already made in the year 1993. What happened in year 2004 was that the Registrar had issued a letter to the sugar factory for implementation of a new staffing pattern, which was proposed by a committee appointed in that behalf. This direction of the Registrar cannot be treated as regulations framed by the Registrar himself under sub-section (3) of Section 79AA. The direction of the Registrar was rather a direction under sub-section (1) of Section 79AA requiring the society to make regulations in this behalf. After the society makes such regulations and they are forwarded to the Registrar and after they are thereafter approved by the Registrar, they become binding regulations for the society to follow or conduct its business

accordingly. This never happened in the present case. The society never made its regulations based on the Registrar's direction or sent them for approval to the Registrar and the latter never acted under sub-section (3) and made the regulations himself. It is not possible to accept Mr.Anturkar's submission that if the society does not make such regulations, despite directions of the Registrar under sub-section (1), the original directions of the Registrar themselves become regulations under sub-section (3) of Section 79AA. If the society fails or neglects to make regulations despite directions issued to it under sub-section (1) by the Registrar, the Registrar has himself to make or caused to be made such regulations and require the society to carry on its business in accordance with such regulations. This calls for a separate order on the part of the Registrar and only when such order is passed by the Registrar, under sub-section (3) of Section 79AA, that the regulations become binding on the society. There was, in the premises, no applicable staffing pattern as of 2004 ; what was applicable was the pattern sanctioned in 1993. The Industrial Court accordingly assessed the matter and its assessment does not exhibit any infirmity or call for any interference. Incidentally, it is nobody's case that the appointments of the complainants were not in accordance with the staffing pattern of 1993.

9 Coming now to the aspect of applicability of Section 42(1) of the MIR Act, as the Industrial Court rightly noted, the reduction of workmen or keeping office orders of 5 November 2015 in abeyance or resiling from the same, clearly amounted to a change in respect of the

industrial matters specified in Schedule II. Item 1 of Schedule II, includes reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process. Item 2 includes permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process. Item 3 includes dismissal of any employee, except as provided for in the standing orders applicable under the MIR Act. After passing of a resolution and agreeing to accord permanent status to the complainants and after entering into an agreement in that behalf with the union and after issuing office orders in case of individual employees, it was not permissible to the sugar factory to either reduce the number of persons employed or to dismiss any employee except in accordance with the standing orders. If any such change was to be effected, a notice of such change, would have to be given under sub-section (1) of Section 42 of the MIR Act and this not being done, the proposed dismissal or withdrawal of office orders, was clearly illegal.

10. Mr. Anturkar submits that even an increase of permanent or semi-permanent nature in the number of persons employed or to be employed in an occupation or process, is a change coming within Section 42. Learned counsel submits that when the original resolution was passed or agreement made or office orders issued, there was no notice under sub-section (1) of Section 42 of the change proposed and that the original orders issued by the sugar factory according permanent status to the complainants were themselves illegal. The

Industrial Court has duly considered this issue. It has noted in its impugned order (paragraph -63) that an agreement was entered into between the union and the sugar factory for according permanent status to the complainants on the basis of resolutions duly passed by the board of directors of the Petitioner; the agreement was duly signed by the Managing Director of the sugar factory and the office bearers of the union. The court held that this being an agreement entered into under Section 2(5) of the Industrial Disputes Act, it was not by itself covered under the industrial matters specified in Schedule II of the MIR Act and, therefore, the mandatory provisions of Section 42 were not applicable to such agreement and that there was accordingly no illegality. Besides, any illegal change has to be declared illegal by the Labour Court under section 78(1) of the MIR Act. There was no application by any party for declaring such change to be illegal and it was not impermissible, in the premises, to the industrial court to proceed on the basis that the initial change itself was illegal on a complaint made by the employees in respect of permanent status to be accorded to them on the basis of such change.

11 Coming now to the last submission of Mr. Anturkar, it is clear that the agreement between the sugar factory and the union did acknowledge that considering the financial circumstances of the sugar factory, it was problematic for the factory to implement the agreement according permanent status to the complainants immediately; it provided for implementation by the management by written orders as soon as possible and, at any rate, before 24 November 2015. This

does not comprehend a resolution on the part of the board of directors of the sugar factory for implementing the agreement. What the agreement envisages is a written order of the management for implementing the agreement. This written order admittedly was passed on 5 November 2015, that is to say, before the last date of implementation, i.e. 30 November 2015. Mr. Anturkar tried to show some other provisions of the agreement in support of his contention that the word 'management' used in clause-7 of the agreement comprehends the board of directors of the sugar factory and not its executive authority. An agreement made between two individuals or entities cannot be construed like a statute. The meaning to be accorded to individual terms and conditions of the agreement has to be from a common sense and business point of view. When the agreement requires a written order of the management of the factory for its implementation, the written order passed by the Managing Director could very well be subsumed within it. In any event, assessment of this issue by the industrial court cannot be termed as unreasonable or perverse on the basis of submissions advanced by Mr. Anbturkar. It is clearly a possible view; it is supported by some evidence; it takes into account all relevant and germane circumstances and materials; and it does not take into account any irrelevant or non-germane material or circumstance. It accordingly passes muster from the standpoint of this court's scrutiny under Articles 226 or 227 of the Constitution of India.

12 There is, thus, no merit in the writ petition. The petition is

dismissed.

13 At the request of learned Counsel for the Petitioner, it is ordered that no coercive steps shall be taken against the Petitioner-sugar factory for a period of eight weeks from today, subject to condition that the Petitioner pays at least minimum wages payable under law to the complainants in whose favour the impugned order is passed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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