

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

WRIT PETITION NO. 12715 OF 2019

Catholic Urban Co-operative Credit Society Ltd.	...Petitioner
vs.	
Mr.Bawatis Salu Madatis	...Respondent

Mr.A.P. Ranade for Petitioner.
Mr.Prashant P. Chawan i/b. Ravindra R. Chile for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 24 JANUARY 2020

P.C. :

Heard learned Counsel for the parties.

2 This writ petition challenges an award passed by the Labour Court at Ratnagiri on a reference made to it under the Industrial Disputes Act, 1947 ("Act"). The subject matter of reference concerned termination of services of the Respondent herein (original second party) by the Petitioner (original first party).

3 The second party was appointed as a driver on probation for a period of six months vide order dated 31 August 2012 by the first party. The appointment was extended by three periods of six months each and he accordingly continued to work with the first party till 25 May 2014. In a meeting of the Board of Directors of the first party held on 24 May 2014, it was decided to terminate the second party with effect from 25 May 2014. This was communicated by the first party to the second party by an order dated 7 June 2014. There is nothing to indicate that after the last extension

granted by the first party, the second party was communicated about any unsatisfactory performance or conduct on his part. He was directly issued an order of termination, which referred to frequent absenteeism on his part and terminating him on that basis. This termination was found fault with by the Labour Court in its impugned award. The Labour Court *inter alia* noted that the second party was in service of the first party ever since joining it on 1 September 2012 and until the order of termination; his probation was being extended from time to time. The Labour Court noted that in none of the extensions issued to the second party, was there any reference to unsatisfactory performance on his part. The Labour Court also noted that all extensions were made by communications issued *ex post facto* and with retrospective effect. The Labour Court, accordingly, held that the second party was a permanent employee of the first party. The Labour Court also observed that the order of 7 June 2014 terminated the second party with retrospective effect from 25 May 2014. The court held that the second party having worked continuously for more than 240 days in a year and having continuously worked for over one and half years before his termination, even if the termination were to be treated as a retrenchment, it would be in breach of Section 25-F of the Act and accordingly, illegal.

4 None of the conclusions of the Labour Court merit any interference in the writ jurisdiction of this court. The conclusions are supported by some evidence on record and made after considering all relevant and germane circumstances and materials. Contrary to the contention of the Petitioner in the present petition, it was the first party's own case, also supported by the appointment order issued on 31 August 2012 (page 35 of the petition), that the appointment of the second party

was on a probation and not for any particular period. That supports the second party's case that the appointment was to be confirmed subject to satisfactory performance or in the alternative, extended by a further period of probation. There were admittedly three extensions and none of the extension orders refers to any unsatisfactory performance. The conclusions of the Labour Court that the second party ought to be treated in that case as a permanent employee and his retrenchment would attract Section 25-F of the Act, thus, cannot be termed as either impossible or unreasonable.

5 Learned Counsel for the Petitioner refers to the case of **Hindustan Computers Ltd. vs. Miss Natty Rose Pessa**¹ decided by a learned Single Judge of our court. That was a case where the appointment was on probation of one year, but the employee's services were terminated before expiry of one year and in the premises, a complaint of unfair labour practice was filed by her under Item 1 of Schedule IV read with Section 28 of the MRTU and PULP Act, 1971. It is in the context of this termination, which was during the period of probation and on the basis that the services of the employee were not found satisfactory, that the court made its observations about the nature and characteristics of an appointment on probation. The court observed that it was well settled that the very object of probation was to enable the management to assess the suitability of the employee during the probationary period; if the management came to the conclusion that the employee was not suitable for the establishment, it might well be possible for it to extend the probationary period, but once the management came to the conclusion that a particular employee was not suitable, it would be unjust to saddle it with deadwood. These observations have no place in the present case. Unlike in the case before

1 2008 (4) Bom C.R. 839

the court in **Hindustan Computers Ltd.**, the facts of our case indicate that the services of the second party employee were extended (purportedly by extending the probation period) not just once but on three separate occasions. In none of the extensions is there any reference, as we have noted above, to unsatisfactory service on the part of the employee and this in the face of a standing order which provided for probationary period of a mere three months. As our Court held in **Wika Instruments India Pvt.Ltd. vs. Swati U. Nowgaonkar**², wherever Standing Orders provide for a period of probation (3 months in that case, as in the present case, under Clause 4-A of Maharashtra Standing Order Rules), the employer cannot override it by conditions of service; he could only resort to Section 5 of Industrial Employment (Standing Orders) Act, 1946. If that is so, surely the court has come to a reasonable and fair conclusion concerning the services of the second party employee. The court has rightly come to the conclusion that in the present case the services were continued beyond probation and the employee must be treated as having been appointed on a permanent post in the employment of the establishment. The court has also rightly come to the conclusion that even if the termination were to be treated as retrenchment, it was bad in law for non-compliance with the provisions of Section 25-F of the Act.

6 Accordingly, there is no merit in the writ petition. The writ petition is dismissed.

(S.C. GUPTE, J.)