

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

WRIT PETITION NO.5040 OF 2019

(Ramesh s/o Champatrao Yeole and others Vs. Chief Conservator of Forests,
Yavatmal and others)

WRIT PETITION NO.5976 OF 2019

(Shailesh s/o Murlidhar Tiwari and others Vs. Chief Conservator of Forests, Yavatmal
Circle 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 D.P. Chambhare, Advocate for Petitioners.
Mrs. M.A. Barabde, AGP for Respondent Nos.1 to 4.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 4th JANUARY, 2020.

1] In both these matters, the petitioners/workers who are the original complainants before the Labour Court, are aggrieved by the judgment and order dated 24.04.2019 delivered in Revision (ULP) No.14/2014 and Revision (ULP) No.12/2014, vide which, the judgment of the Labour Court has been quashed and set aside and the matter has been remitted to the Labour Court for enabling the respondent Forest Department to file the documents pertaining to the actual work performed by these petitioners.

2] I have considered the strenuous submissions of the learned Advocate for the petitioners and the learned AGP appearing on behalf of the respondent department. I have perused the earlier judgment delivered by this Court dated 19.10.2018 in Writ Petition No.2671/2017 vide which this Court had directed the Industrial Court to

consider the entire record placed before it by the Forest Department and decide the revision petition filed by the department, on its merits. This Court has extensively dealt with the contentions and averments of both the sides and has concluded that the Labour Court would have to consider as to whether these petitioners/workers were actually working under the Employment Guarantee Scheme ('EGS').

3] The petitioners vehemently contend that though an adequate opportunity was granted to the department to place before the court relevant record to indicate that these petitioners were working under EGS, no efforts were taken by the department and the petitioners are compelled to suffer the rigors of litigation only on account of the laxity on the part of the department. It is further contended that a specific issue was framed, keeping in view the pleading of the department as regards the petitioners working under the EGS. The petitioners had given a notice for production of documents and despite the same, the department preferred not to file the relevant record before the Labour Court. The department now cannot be permitted to bring before the court such record which earlier they had refrained from filing before the court.

4] The learned AGP submits that though it was specifically pleaded before the Labour Court that these workers are working on EGS, some record was not produced and for which the department can have no explanation. However, the department realized that the relevant record had to be placed before the court and

hence, while filing the revision petition under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“MRTU and PULP Act”) before the Industrial Court, the record was produced.

5] The Industrial Court had actually remanded the matter to the Labour Court vide its earlier judgment dated 22.04.2016. However, these petitioners preferred to challenge the said judgment in Writ Petition No.2671/2017 and by the judgment of this Court dated 19.10.2018, the Industrial Court was directed to consider the record and then pass an appropriate order rather than mechanically remanding the matter to the Labour Court.

6] I do find from record that the Forest Department has been negligent and careless while participating in the proceedings before the Labour Court, filed by the petitioners under Section 28(1) read with Item I of Schedule IV of the MRTU and PULP Act, 1971. The department did have an opportunity of producing the relevant record not only to support its contentions, but to assist the Labour Court so as to enable a judicious adjudication of the cases.

7] Nevertheless, it cannot be ignored that this Court has crystallized the law, in the following judgments, that an employee who is allotted work under the Employment Guarantee Scheme, is actually enjoying the benefits of a benevolent scheme and cannot insist on continued and regular work as a matter of right:-

[i] State of Maharashtra v. Bhausaheb Nathu Falke, etc.

2002(1) Mah LR 74 (SC).

- [ii] Subhash Narayan Ahirrao v. The Deputy Engineer P.W.D. Sub-Division, Dhule and another. 1992 (1) Mah LR 831.
- [iii] Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra and others. AIR 1994 SC 1638.
- [iv] State of Hmachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh, Shimla v. Ashwani Kumar and others. AIR 1997 SC 352.
- [v] State of H.P. v. Suresh Kumar Verma and another. (1996) 7 SCC 562.

8] It is obvious from the above judgments/orders of this Court that as the EGS was floated by the State Government to generate employment to some extent so as to engage the unemployed youth, non-continuation of such allotment of work or continuing an employee working under the EGS would not therefore, amount to an unfair labour practice and a ULP complaint or an industrial dispute seeking regularization in such circumstances, was held to be untenable by this Court.

9] Notwithstanding the above, it is always open to the workers to prove before the Labour Court or the Industrial Court, as the case may be, that they were not working under the EGS and they were working under a particular scheme of the Forest Department. In these circumstances, the impugned judgment of the Industrial Court setting aside the judgment of the Labour Court and remanding the proceedings to the Labour Court so as to enable the department to prove the documents, cannot be faulted. At the same time, it cannot be overlooked that these workers would suffer the rigors of litigation only on account

of the laxity of the department. Had the forest department wholeheartedly participated in the proceedings before the Labour Court, these petitioners would not have been required to approach this Court for the second time and suffer a second remand. The rigors can be softened by imposing costs on the Forest Department.

10] In view of above, these two petitions are disposed off. Complaint (ULP) No.16/2010 and Complaint (ULP) No.13/2010 shall be listed before the Labour Court on 03.02.2020. All the litigating parties shall appear before the Labour Court on the said date. Formal notices need not be issued by the Court.

11] The respondent department is at liberty to produce whatever record it desires before the Labour Court, on 03.02.2020. The documents placed before the Labour Court shall be considered by the court strictly in accordance with the Indian Evidence Act. Both the parties are at liberty to lead additional evidence before the Labour Court.

12] The ULP complaints shall be decided by the Labour Court as expeditiously as possible and preferably on or before 31.08.2020.

13] The Forest Department shall deposit an amount of Rs.10,000/- per petitioner before the Labour Court on or before 15.02.2020 and each of these petitioners would be at liberty to withdraw the said amount as costs, without condition.

(Ravindra V. Ghuge, J.)