

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7556 OF 2021

Mukesh Kashinath Patil

Petitioner

Versus

Director (Executive Committee),
Integrated Health Family Welfare
Society and Chief Executive Officer,
Zilla Parishad, Dhule & others

Respondents

Mr.Sandesh R. Patil, advocate for the petitioner
Mr.K.B.Jadhavar, AGP for Respondents No.2 and 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 16th July, 2021.

PC :

1 The present petition challenges judgment of the Industrial Court in Revision Applications No.04 of 2020 and 45 of 2020, dismissing both of them. Revision Application No.04 of 2020 challenges the order of the Labour Court on the Complaint of the petitioner, directing the respondents to pay 50% of the last drawn pay of the petitioner/complainant on monthly basis from the date of the order till final disposal of the Complaint.

2 Revision Application No.45 of 2020 is by the petitioner,

seeking to modify the above order of the Labour Court.

3 Heard Mr.Sandesh Patil, learned Counsel for the petitioner. Learned AGP appears for Respondents No.2 and 3.

4 It is the contention of Mr.Patil, learned Counsel for the petitioner, that there exists relationship of workman and employer between the petitioner and respondent no.1, which is the Integrated Family Welfare Society and the termination of the employment of the petitioner by respondent no.1, without holding any enquiry, was illegal. He places reliance upon the order of the Labour court which grants relief in his favour, on this ground, holding that since the action was punitive in nature, an departmental enquiry was necessary. Reliance is placed by learned Labour Court on Section 25(1) of the Industrial Employment (Standing Orders) Act, 1946, to hold that the workman guilty of misconduct, may be imposed the punishment as given in clause (a) and further on Section 25(3) of the said Act, which mandates that no dismissal, without any inquiry, is permissible. He submits that the revisional court was, therefore, incorrect in holding that the dismissal of the petitioner was not punitive and enquiry was not required. He, therefore, submits that

the judgments of the revisional court, need to be quashed and set aside.

5 At the outset, a pertinent query was made to the learned Counsel for the petitioner regarding nature of his appointment to which the learned Counsel for the petitioner candidly admitted that the appointment order was not placed on record to show the nature of his appointment. A perusal of the order of the Labour Court, dated 15.02.2020, indicates that there are several appointment orders, as mentioned in para 8 of the same, for various periods. However, the nature of the appointment is not discussed by the learned Labour Court, which, in my considered opinion, was germane for deciding whether the petitioner fell within the definition of workman. The only discussion is in para 21 of the order of the Labour Court, which merely speaks that the petitioner, was given appointment for specific period with technical breaks of one or two days. There is no discussion whatsoever as to whether the respondent no.1-Trust, fell within the ambit of the definition of the word employer nor whether the post, which was claimed, was a permanent sanctioned post. There is no discussion, regarding the terms and conditions of the appointment. The order of the Labour Court, therefore,

clearly has to be held infirm on this ground. The definition of workman as given in Section 2(s) does not include a person who is appointed on a contractual basis. That being the position, it was necessary for the learned Labour Court, to delve into the nature of the engagement of the petitioner and the terms and conditions governing them only upon which the learned Labour Court could have held that the Act of 1946 was applicable. In not doing so, the learned Labour Court has clearly erred in law.

6 It is further material to note that the Revisional Court, has categorically observed, that there was no record available in the Complaint proceedings to show that the post held by the petitioner, since his initial appointment till his discharge, was a permanent post, since he had been employed on the projects and schemes run under the National Rural Mission formulated by the Union Government, part of which was being implemented by the respondent no.1-Society, which was a public trust, registered under the Public Trusts Act.

7 Upon perusal of the employment orders as placed on record, the Revisional Court has come to the conclusion, that the appointment was contractual for a specified period and on

consolidated remuneration, which was accepted by the petitioner, who had never made any claim for his regularisation or for grant of permanency till the filing of the present proceedings, being well aware of the nature of the engagement. The impugned order indicates that the petitioner has not worked on any single post continuously but has been working on different posts in different capacities and, therefore, the engagement was purely on a contractual basis on honorarium. This being the position, it was not permissible for the learned Labour Court to have passed the order dated 15.02.2020 treating the petitioner as a workman.

8 Mr.Patil, learned Counsel for the petitioner, places reliance on Mahindra & Mahindra Ltd. Vs. Dwarkanath Babaji Dalvi & another, 2006 (4) Mh.L.J. 88, which holds that an order of termination, *prima facie*, attaches stigma and, therefore, an enquiry was necessary, in which parameters for grant of interim relief were laid down. It is necessary to note that the above judgment does not refer or relate to a contractual employment and, therefore, on this count alone, is clearly distinguishable. It is necessary to note that for invoking the jurisdiction of the Labour Court, unless the parameters, as laid down in the Industrial Disputes Act, 1947, are satisfied, the Labour Court would not be in

a position to pass any interim orders. For exercising the powers under Section 30, a clearcut finding, recording the existence of relationship necessary for applicability of the provisions of the Industrial Disputes Act, is necessary, which exercise the learned Labour Court has failed in. That being the position and what has been stated above, I do not see any infirmity in the impugned orders.

9 The petition is, therefore, without any merit and is accordingly dismissed.

10 The learned Labour Court shall endeavour to decide the proceedings before it, as early as possible.

(AVINASH G. GHAROTE)
JUDGE