

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2872 OF 2021

Smt.Sharda Rangnath Khedkar ...Petitioner

vs.

State of Maharashtra through Principal
Secretary & Ors.

...Respondents

Mr.Vikram V.Pai, with Mr.Aklpesh Patil, for the Petitioner.

Ms.Vaishali S.Nimbalkar, AGP for the State-Respondent no.1.

Mr.Rohit P. Sakhadeo, for Respondent Nos.2, 4 and 5.

CORAM :- G. S. KULKARNI, J.

DATE :- OCTOBER 6, 2021

PC :-

1. Heard Mr.Pai, learned Counsel for the petitioner, Ms.Nombalkar, learned AGP for the State and Mr.Sakhadeo, learned Counsel for Respondent nos.2, 4 and 5.

2. The petitioner's challenge in this petition is to an order dated 6 March 2021 passed by the learned Member, Industrial Court No.1, Kolhapur, whereby an interim application filed below 'Exhibit C-2' by the petitioner praying for an interim injunction that her services be not terminated till the decision of the main petition, stands rejected.

3. The petitioner had approached the Industrial Court and had prayed that she is in employment of the respondent on daily wages since the year 2016 and that she been continuously paid wages in such employment. She also complained that there are about 73 vacant posts and out of that 18 posts are of Office Assistant, which is the post on which the petitioner was working. The petitioner contended that as she is working continuously for more than a continuous period of 240 days year after year, she ought to have been granted permanency. She, however, apprehended termination of service on the ground that her appointment is not as per law. She accordingly approached the Industrial Court alleging unfair labour practice as contemplated under Items 5, 6, 9 and 10 of Schedule IV of MRTU & PULP Act, 1971 in which she filed an application for interim reliefs.

4. By the impugned order, learned Member of the Industrial Court has considered the case of the respondent not from the perspective of the petitioner making out a case for grant of an interim injunction, but the learned Member of the Industrial Court went to examine the nature of her appointment and as to whether such appointment can be considered to be a backdoor appointment. On such consideration, by the impugned order, the petitioner was held not entitled for any interim relief.

5. Mr.Sakhdeo, learned Counsel for respondent nos.2, 4 and 5 has supported the impugned order. He submits that in the facts of the case, the petitioner is not entitled to any interim relief on this petition.

6. Mr.Pai, however, has drawn my attention to an order dated 23 January 2019 passed by the President, Industrial Court, Maharashtra at Mumbai (Complaint (ULP) No.298 of 2018), in which a complainant who was similarly situated as the petitioner, has been granted interim reliefs. Mr.Pai submits that the basic issue which ought to have been considered by the Industrial Court was as to whether the petitioner was in continuous employment which according to Mr. Pai has missed the attention of the Court.

7. I have heard learned Counsel for the parties. I have perused the record. By an order dated 16 July 2021 passed by this Court (M.S.Karnik, J.), this Court had granted ad-interim protection to the petitioner directing that till the adjourned date of hearing, the petitioner ought not to be discontinued from services and she be allowed to continue on the post she was working, as also that the respondents should continue to pay wages to the petitioner. Such order is operating till date.

8. Considering the above circumstances, that the petitioner is

continuously working from July,2016, till date, I am of the opinion that the petitioner ought to be continued in the employment of the respondents during the pendency of the main complaint filed by her pending before the Industrial Court, Kolhapur.

9. It may be observed that the reasons as set out by the learned Member of the Industrial Court in rejecting the petitioner's interim application are not satisfactory. If at all the issue in regard to how petitioner was employed and/or anything to do with the nature of respondent's appointment, these are issues which are pending adjudication in the complaint itself and could not be weighed for the purpose of refusing interim relief and more particularly, when the petitioner was in the service of respondent nos.2-Corporation, for a continuous period since July, 2016. Thus, the interim prayers as made by the petitioner before the tribunal were required to be granted. In similar situation, such approach has also been taken by the Member of the Industrial Court at Thane as noted above.

10. Respondents are hence directed not to terminate the petitioner's services during the pendency of the main complaint. Learned Member of the Industrial Court shall decide the complaint as expeditiously as possible. Parties are at liberty to move an application to such effect

which be considered by the Member of the Industrial Court on its own merit.

11. Needless to observe that any observations made in this order ought not to be any reflection on the merits of the case of the parties in the pending proceedings, which ought to be adjudicated by the Industrial Court on its own merits.

12. Writ Petition is disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)