

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

WRIT PETITION NO. 3971 OF 2021

The Divisional Joint Director of Agriculture, Nagpur and others
...Versus...
Istari S/o Sayaram Bhoyar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri K.L. Dharmadhikari, AGP for petitioners

CORAM : N.B.SURYAWANSHI, J.
DATE : 08/10/2021

This petition takes exception to the judgment of Labour Court, Bhandara in Complaint (ULP) No. 76/2014, thereby directing reinstatement of the respondent/complainant on his former post with continuity of service and full back wages from the date of termination which is confirmed by the Industrial Court, Bhandara in Revision (ULP) No. 15/2017.

2. The respondent/complainant filed complaint (ULP) No. 76/2014 under Section 28 read with Item – 1, Schedule – IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 inter alia contending that he was engaged as labour in Horticulture Department on 25/07/1984 and was

working continuously and completed 240 days in each year of his service. His service record is clean and excellent. He was entitled for benefit of 'Kalelkar Award' on completion of his five years continuous service. However his services were terminated on 24/11/2014, without following the mandatory provisions of Sections 25-F and 25-G of the Industrial Disputes Act. He therefore claimed that his termination is illegal and relief of reinstatement with continuity in service and full back wages.

3. The petitioners resisted the claim of the respondent by filing written statement. They denied employer-employee relationship and contended that the respondent was engaged for doing seasonal activities on daily wages. By circular dated 10/09/2001, the Government restrained the Department from engaging daily wagers and directed to give the work to contractor. Accordingly, the work was done through contractor. The respondent/complainant was therefore contractual labour. They therefore sought dismissal of complaint.

4. The Labour Court allowed the complaint. The petitioners unsuccessfully challenged the decision of the Labour Court in Revision (ULP) No. 15/2017. Both the orders passed by the Labour Court and Industrial Court are impugned in the present petition.

5. The learned Assistant Government Pleader vehemently submitted that the Labour Court has erred in granting permanency benefit to the respondent though he was engaged intermittently and he has not completed 240 days in one year and that he was being engaged on contract basis. It is further submitted that no employer-employee relationship existed between the parties and this aspect is totally ignored by the Labour Court and as well as by Industrial Court. The Government Resolution dated 10/09/2001, was misinterpreted by both the Courts. He therefore submits that the impugned judgments cannot stand and the same are liable to be quashed and set aside.

6. Perusal of the impugned judgment of the Labour Court shows that by adducing evidence, the respondent/complainant has proved that he was engaged as a Labour on 25/07/1984. To prove his appointment he brought on record Seniority List dated 31/03/1992 (Exh U-10), wherein his name appears at Sr. No. 6 and his date of appointment is shown as 25/07/1984. The petitioners have not denied the accuracy of the said Seniority List.

7. Though the petitioners contended before the Labour Court that complainant was being engaged on contract basis pursuant to Government Resolution dated 10/09/2001, it is observed by the Labour Court that the respondent/complainant was

engaged since 1984 and therefore the said resolution would not govern case of respondent/complainant. On the basis of evidence on record, the Labour Court has rightly come to the conclusion that while orally terminating services of the respondent/complainant, no procedure contemplated under Sections 25-F and 25-G of the Industrial Disputes Act was followed. The petitioners did not contend before the Labour Court that they have followed the mandatory provisions of Sections 25-F and 25-G of the Industrial Disputes Act. In that view of the matter, the Labour Court was right in allowing the complaint.

8. The Industrial Court has concurred with the findings recorded by the Labour Court and came to the conclusion that relationship of employer and employee was established by proving seniority list on record. The petitioners did not specifically deny the employment of the complainant/respondent prior to 10/09/2001. The Revisional Court, by placing reliance on the decision in *Ohlar Prasad and Others .Vs. The Employers in relation to Management of Sudamdih Coal Washery of M/s BCCL, Dhanbad Jharkhand, [Civil Appeal No. 1389 of 2015 arising out of SLP (C) No. 3309/2011]*, came to the conclusion that the complaint filed by the respondent/complainant challenging the termination was maintainable. The Revisional Court has further observed that the petitioners' witness during the course of cross-examination has admitted that they

have failed to produce documents suggesting that services of the complainant were terminated by the contractor, he further admitted that work is still available with them and the other co-employees are still working with them. In that view of the matter, the Industrial Court dismissed the revision.

9. Concurrent findings of facts are recorded by the Labour Court and the Industrial Court by properly appreciating the evidence on record and the ratio laid down in the judgments cited by the parties. No case is made out by the petitioners to interfere in the impugned orders in writ jurisdiction. No merit is found in the present petition. The petition is, therefore, dismissed.

JUDGE