

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 345 OF 2022
WITH
CIVIL APPLICATION NO. 2519 OF 2022
IN
WRIT PETITION NO. 345 OF 2022

L. G. Balakrishnan & Bros Ltd
Through its IR Manager- HRD,
Plot No. A7, Additional Jalna Phase-III,
Industrial Area MIDC, Jalna,
Jalna District-431213.

PETITIONER

VERSUS

1. Amol Dilip Sable
Aged- 30 years, Occ- Nil,
R/o. At Post: Rajur, Tq. Bhokardan,
Dist. Jalna.
2. Dinesh Kaduba Sawant,
Aged- 29 years, Occ- Nil,
R/o. Sudranagar, Chandanzira,
Jalna, Dist. Jalna.
3. Vishnu Bhagwanrao Gavane,
Aged- 31 years, Occ- Service,
R/o. At Post, Dhoksal,
Tq. Bhokardan, Dist. Jalna.

RESPONDENTS

.....

Mr. Sachin Dankh, Advocate for the petitioner.
Mr. T. K. Prabhakaran h/f. Mr. A. S. Kulkarni, Advocate for
Respondents.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 25th FEBRUARY, 2022.

PRONOUNCED ON : 22nd MARCH, 2022.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.
2. This petition takes exception to the judgment and order passed by Industrial Tribunal, Jalna, in Complaint (ULP) No. 112/2017, thereby allowing the complaint.
3. The facts in brief, without unnecessary details are as follows:-

The Petitioner is a company registered under the Companies Act, 1956 and is engaged in the manufacturing process of automotive chains, sprockets and chain tensioners under popular brand name 'ROLON'. The Petitioner also manufactures Fine Blanked Products and Precision Machined Gears and Parts. Many workers are employed by the Petitioner to carry out its day to day production activity. The factory of the Petitioner was established in November-2014 and the production activities were commenced on 16.01.2015.

4. The Respondent workmen filed Complaint (ULP) No. 112/2017 contending that they are workmen and the Petitioner is an industry within the meaning of Section 2(s) and (j) of the Industrial Disputes Act, 1947 (for short 'Act of 1947') and service conditions of the employees are governed by Model Standing Orders (1950) framed under the Industrial Employment (Standing Orders) Act, 1946 (for short 'MSO'). The respondents contended that taking into consideration their education in the technical field and work experience, they were appointed as trainees on 26.12.2015, for a period of two years on fixed monthly wages of 8550/-. At the time of appointment they were assured that after completion of two years service they will be confirmed by issuing probationer letter. They performed regular work in relation to the production activities. They completed training period satisfactorily. However, though permanent posts were available, not a single employee was made permanent by the Petitioner. The workmen are discharging regular work in connection with production activities by following instructions of supervisor. Since joining they were not provided any trainer and they have independently worked as skilled labours for more than eight

hours. They have completed 240 days continue service in each calendar year, and more particularly in the preceding year of the date of filing complaint. They are working against permanent vacant posts without any break. It is further contended that the Petitioner appoints workers as trainees and after their completion of training period the Petitioner appoints new workers thereby not making any employee permanent. Though requests were made, permanency was not given to the workmen. The workmen were made to sign documents under coercion. The Petitioner, therefore has indulged in unfair labour practices under Item 6 and 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act 1971 (for short 'Act of 1971').

5. By filing written statement, the Petitioner raised preliminary objection as to the maintainability of the complaint by contending that the respondents are not workmen within the meaning of Section 2(s) of Act of 1947 and under Section 3(5) of Act of 1971. The respondents accepted the terms and conditions mentioned in their appointment letters, according to which they have to undergo two years training period. They were paid stipend during the said period. If, during

training period the performance appraisal of the respondents is not found satisfactory then the Petitioner has a right to terminate their services without issuing notice. On completion of training period, the Petitioner is not bound to absorb the respondents for regular employment. The Respondents have not right to claim permanency, as on the date of filing of the complaint. The Respondents appeared in the examination conducted by the Petitioner on 14.11.2014 and the result of the said examination is awaited within 2-3 days and the decision of taking on probation is likely to be taken within 4-5 days, as the training period of respondents is ending on 25.12.2017, hence, the complaint is not maintainable. Since, the respondents are engaged as trainees, in view of Hon'ble Supreme Courts decision, the Respondents have no *locus standi* to file the complaint.

The Petitioner started manufacturing process from 15th June, 2015. Thereafter, at Jalna plant 59 employees are confirmed after successful completion of training and probation period and 110 employees are taken on probation after successful completion of training period. At present 122 workers are in training category and their training period may be completed within a short period. The

Petitioner therefore has not indulged in unfair labour practice, as contended by the respondents.

6. Along with complaint, respondents also filed Application (Exhibit- U/2) under Section 30(2) of Act of 1971, seeking interim relief, which was rejected. The Respondents therefore, approached this Court by filing Writ Petition No. 386/2018. This Court by a reasoned order partly allowed the Application (Exhibit- U/2).

7. After the decision of this court in writ petition No. 386 of 2018 (herein after for short “the said writ petition”), the parties led their respective evidence before the Tribunal. Ultimately, the Tribunal partly allowed the complaint filed by the present respondents and declared that the petitioner has indulged in unfair labour practice as per items 6, 9 and 10 of Schedule IV of the Act of 1947 and directed the petitioner to make the respondents permanent by issuing orders of confirmation of their services. Pay scales applicable to the respective posts of the respondents with benefits of permanency and all other consequential benefits as permanent employees were directed to be given to the respondents from the date of presentation of the complaint i.e. 12th

December, 2017. The petitioner is aggrieved by this judgment and order of the Tribunal.

8. Heard learned advocate for the petitioner and learned advocate for the respondents.

9. Learned advocate for the petitioner assailed the impugned order submitting that the Tribunal has assumed jurisdiction of the labour court, by relying upon the order passed by this court in the said writ petition. The respondents were discharged, on completion of their appointment period and, therefore, their case was covered under Item 1 of the Schedule IV of the Act of 1947. They ought to have approached the labour court challenging their discharge. The impugned order, therefore, is without jurisdiction. Even though the respondents were discharged after filing of the complaint, still, the jurisdiction to decide legality of the termination would be with the labour court under section 7 of the Act of 1971. The Tribunal has failed to consider the fact of termination of the respondents during the pendency of the complaint *vis-a-vis* the relief sought in the complaint. He submitted that the complaint is filed on 12th December, 2017,

whereas the respondents ceased to be employees of the petitioner with effect from 25th December, 2017. Neither the respondents amended their complaint nor did they challenge the termination of their employment. On the contrary, they have admitted the factum of termination. In that view of the matter, the Tribunal ought not to have proceeded with the complaint. The Tribunal has erred in coming to the conclusion that the respondents are workmen under section 2 (s) of the Act of 1947, in view of the admissions given by the respondents in the cross examination. The respondents have failed to prove that they are workmen within the meaning of section 2 (s) of the Act of 1947. In terms of the appointment orders as trainees, after assessment of the performance of the respondents, the decision as to whether to appoint them on probation was to be taken. This aspect is totally ignored by the Tribunal. The Tribunal has failed to appreciate that the discontinuation of training of the respondents was as per the terms and conditions of the appointment letters and it cannot be termed as retrenchment and, therefore, there was no cause of action for the respondents to file the complaint before the Tribunal. The Tribunal further erred in relying on the observations of this Court in the said Writ Petition in respect of

the jurisdiction of the Tribunal. The said decision was given by this court at interim stage, while considering the interim stay application Exhibit-U/2. At that time, the evidence was not led and, therefore, the said observations are *prima facie*. The Tribunal ought to have taken into consideration this fact and ought to have decided the point of jurisdiction on the basis of the evidence led before it.

10. Learned advocate for the petitioner further questioned the genuineness of the certificates of respondents No. 2 and 3. According to him, the Tribunal has failed to consider the admissions given by the respondents and their witnesses in the cross-examination. He, therefore, urged that the matter may be remanded back to the Tribunal for giving finding on the issue of maintainability of the complaint and jurisdiction. He termed the findings recorded by the Tribunal as perverse and contrary to the settled legal position and record. Hence, he submitted that the impugned judgment is liable to be quashed and set aside.

11. On the point of *res judicata*, he relied on following judgments -

1. “*Arjun Singh V/s Mohndar Kumar and Others*” AIR 1964 SC 993

2. *“Periyar Nagar Christian Association V/s Periyar Nagar CSI Church and Others” 2007-2 L.W. 837*
3. *“Indian Seamless Metal Tubes Ltd., V/s Sunill Rambhau Iwale and Others” 2002 (4) Mh.L.J. 151*

12. To support his submission that trainee is not a workman and there is lack of pleadings, the learned advocate for the Petitioner has relied on-

1. *“Ramesh Wase V/s Commissioner Revenue Division Amravati” 1995 II L.L.N. 178*
2. *“Nilesh Shivaji Sapkar V/s State of Maharashtra” 2015 (4) Mh.L.J. 831*
3. *“R. Kartik Ramchandran V/s Presiding Officer, Labour Court and Another” 2006 (4) L.L.N. 918*
4. *“H.M.T. Watch Factory I and II V/s Aaryan Jaisingh” 2006 (1) L. N. 618*

13. On the point of termination of trainee, he relied on-

1. *“Sandeep Metalcraft Pvt. Ltd., V/s Suresh Zanzad and Another” 1994 II L.L.N. 523*

14. On the point of jurisdiction of the Tribunal and the Labour Court, he relied on-

1. *“Rajneesh Khajuria V/s Wockhdart Ltd & Anr” (2020) 3 SCC 86*
2. *“Blue Star Ltd V/s Blue Star Workers Union & Anr” 1997 SCC Online Bom 342*
3. *“Sudarshan Steel Mfg Co V/s Mumbai Labour Union & Anr” 2004 SCC Online Bom 1248*

15. The petitioners have filed Civil Application No. 2519 of 2022 seeking permission to produce the documents i.e. termination orders issued to the respondents.

16. Per Contra, learned advocate for the respondents, by relying on the definition of “*worker*”, submits that the workman within the meaning of section 2 (s) of the Act of 1947, means any person (including an apprentice) employed in any industry to do any work. He submits that the respondents are workmen and the Tribunal was justified in entertaining their complaint. According to him, the respondents were appointed as trainees for a period of two years and they were performing regular work in relation to production activities. Since their joining, they were independently working on CNC machines, without any trainer. Thus, they were working independently on a skilled job. They have completed 240 days satisfactorily in each

calendar year. As per proviso to clause 2 (f) of the Model Standing Order (MSO), no workman shall be classified as an apprentice if he has had training for an aggregate period of one year. Therefore, according to him, the respondents were the permanent workmen and hence they filed complaint for permanency benefits. He further submits that factors as on the date of filing of the complaint will have to be taken into consideration while deciding the complaint. He submits that in the written statement, filed before the Tribunal, neither there is mention about termination nor the termination order is placed on the record of the Tribunal. On the contrary, the petitioner has averred in the present writ petition that it reserves its liberty to file review in the said writ petition. By relying on the observations and the directions issued by this Court in the said writ petition, he submits that the Tribunal was justified in relying on the observations of this Court to come to the conclusion that it has jurisdiction to entertain the complaint filed by the respondents. According to him, the termination of the respondents is illegal and it cannot be taken into consideration while deciding the complaint filed for permanency. The workers are made to fight endlessly by issuing termination order. The termination

would not make the complaint infructuous. According to him the unfair labour practice under Item 6 and 9 of Schedule IV of the Act of 1947 cannot be undone with graver unfair labour practice under Item 1 Schedule IV. He submits that no sooner the workmen institute the case for permanency under Item 6 and 9, he would be terminated. The Tribunal has jurisdiction to decide the status of workmen as on the date of filing of the complaint falls under Section 5 read with Item 6 and 9 of Schedule IV of the Act of 1947, which cannot be exercised by the Labour Court under Section 7. By pointing out relevant evidence of the petitioner led before the Tribunal, he submits that the Tribunal was justified in allowing the complaint. He, therefore, submits that there is no substance in the writ petition and the same may be dismissed.

17. In support of his submissions, he placed reliance in following judgments.

1. *“Arkal Govind V/s Ciba Geigy” 1985 DGLS (SC) 178 : 1985 AIR (SC) 985*
2. *“S. G. Chemicals V/s S. G. Chemicals” 1986 DGLS (SC) 478 : 1986 (2) SCC 624*
3. *“Nashik Workers Union V/s Trimbak Rubber” 2001 (3) BCR 91*

4. *“Trambak Rubber V/s Nasik Workers Union” 2003 DGLS (SC) 520 : 2003 AIR (SC) 3329*
5. *“Dattaram Panchal V/s Nirlon Ltd.,” 2005 (3) BCR 795*
6. *“Pramod Tatte V/s Joint Director” 2008 BCI 138 : 2009 (3) ALL M.R. 361*
7. *“Municipal Council V/s Manu Sudesh Malik” 2008 (3) BCR 832*
8. *“Raymond UCO Denim V/s Praful Warade” 2010 (6) BCR 424*

18. Heard learned advocate for the petitioner and learned advocate for the respondents at length. I have gone through the documents placed on record along with the writ petition and the judgments relied on by both the parties.

19. It is not in dispute that the respondents were appointed as trainees with the petitioner vide appointment orders dated 26th December, 2015 for a period of two years, on monthly wages of Rs.8550/-. The complaint is filed by the respondents seeking permanency benefits on 12th December, 2017 i.e. fourteen days before their appointments as trainees were to come to an end. Along with the complaint, the respondents had filed application for interim relief (Exhibit-U/2). The Tribunal rejected the application Exhibit- U/2 and after rejection of the said application, the Petitioner disengaged the

respondents, on the ground that their training period is over. The respondents approached this Court challenging the order of rejection of application Exhibit-U/2. This Court, after considering the arguments of both the sides, held that the “..management has not even whispered in it’s written statement that these petitioners are not appointed as trainees under the Model Standing Orders and that they are appointed under the Apprenticeship Act”. This court made specific observations that the respondents were not apprentices under the Apprenticeship Act. It was also brought to the notice of this Court that out of 43 such trainees, 37 did not approach the Tribunal and they have been rewarded by being appointed as probationers in the factory and only because these 3 petitioners (present respondents) approached the Tribunal, they were disengaged on the ground that their training period is over. This Court, therefore, held that the management has put forth a story under the Apprenticeship Act for ousting the jurisdiction of the Tribunal. It is further observed by this Court that,

“10. It is settled law that interim relief cannot be of the nature of a final relief. As such, the disengagement of these petitioners will have to be subjected to the result of the pending complaint as there cannot be an order of reinstatement, which would amount to granting of final relief. Nevertheless, the jurisdiction

of the Industrial Court would not be ousted merely because the petitioners have been disengaged, since they were in employment with the respondents on the date of their filing of the complaint before the Industrial Court. However, their rigours on account of the unfair act of the employer can be softened by directing the respondent to pay 50% of their monthly wages till the decision in the complaint or, engage these petitioners on the same terms on which they were earlier working and pay them the same salary, subject to the result in the pending complaint.”

20. This Court, partly allowed the petition in following terms -

“(A) The respondent / management shall pay 50% of the monthly wages that were being paid to the petitioners from the date of their disengagement by depositing the said amount before the Industrial Court on/or before the 7th day of each month.

(B) These petitioners would be at liberty to withdraw the said amounts without conditions.

(C) As an alternative to the above, the respondent is at liberty to reengage the petitioners on the same terms and same monthly wages, without prejudice to the rights of the litigating sides and extract work from them.

(D) Since it is obvious in view of the observations of this Court that these petitioners were never engaged as apprentices, the

Industrial Court would proceed to decide Complaint (ULP) No.112 of 2017 as expeditiously as possible and in any case on/ or before 30.6.2019.

(E) In the event, the respondents opt for option (C), the 50% back wages for the period of disengagement would be deposited in the Industrial Court and regular 50% payment would continue on month to month basis.

(F) The Industrial Court may permit the petitioners / workers to withdraw 50% of the said back wages amount and invest the remaining amount in a fixed deposit with a nationalized bank up to 30.6.2019.”

21. This Court categorically held in para 10 of the above quoted order that disengagement of the respondents have to be subjected to the result of pending complaint and jurisdiction of the Tribunal would not be ousted merely because the Petitioners have been disengaged, since they were in the employment with the respondents on the date of their filing of complaint. In terms of clause D, this Court observed that the respondents were never engaged as apprentices and the Tribunal was directed to proceed to decide the complaint filed by them within stipulated time.

22. Thereafter, the parties led their respective evidence before the Tribunal. The respondents admitted that they were appointed for a period of two years as trainee and were being paid stipend. They also admitted the terms and conditions of the appointment orders particularly the contention that if their performance is found to be not satisfactory then the Management has right to terminate their training without any notice and the Management would not bound to absorb them as a regular employees, nor they have any preferential right to claim regular employment. They also admitted that as the terms and conditions mentioned in the appointment letter were acceptable, therefore, they accepted the appointment. It has further come in the evidence of respondents that their training period was to complete on 25.12.2017 and 13 days before the said date, they filed the complaint. It is also admitted that prior to filing of complaint Company had taken their examination on 14.11.2017. The respondents admitted that the Petitioner was newly established company when they joined it. It is also admitted that most of the trainees along with respondents as well as those who have joined subsequently were regularized by the Petitioner after successfully completing their training. It is admitted that the

respondents were working as per the instructions of supervisor Mr. Mohan Mahale, Mr. Ramesh Landge and Mr. Avinash Suryawanshi.

23. The Petitioner led evidence of Manager Mr. Kailas Rathod as Witness No. 1, Mr. Kamal Lonare- Deputy Manager Production as Witness No. 2 and Devidas Rathod, Principal Government ITI as Witness No. 3. In the in-chief witness No. 1 of the Petitioner supported their case. In the cross examination he admitted that the license of the Petitioner company is for 1,000 manpower. He admitted that there was full capacity of workers as per the license in the year 2014. There is no written module for the training of workers in the factory. One who is technically competent is appointed as trainer. The respondents were given designation of production trainees. The Model Standing Orders is applicable to the petitioner factory, and the respondents were appointed as per the Model Standing Orders. It is also admitted that as per the Model Standing Orders maximum period of training is 12 months. The respondents were given work of production activity. He admitted that the respondents were CNC operators and record of the performance of the respondents is kept with the Petitioner. The respondents were called in three shifts. He did

not remember who gave training to the respondents in shifts. He admitted that all the final product is the integral part of the effort of employee, irrespective of the employees being trainees, probationers or permanent. He admitted that his knowledge about the facts of the respondents is duly based on official record and he had no personal knowledge. He admitted that there is no record which can show notice as regard to duties and misconduct issued to the respondents. He stated that there are documents of adverse remarks against the respondents in the service record, however, when the record was handed over to him he failed to show any adverse remarks or documents containing adverse remarks on record. He also admitted that the respondents were taken in the job after taking their interviews. The respondents were fit and that is why they were continued in service.

24. Witness No. 2 who is Deputy Manager Production of the Petitioner Company, stated in his in-chief that the period of training was decided by the Petitioner guided by period of training given as per Schedule I to the Apprentices Act, 1961, which is apt and proper.

25. In the cross-examination, he admits that all the three respondents were engaged in operating machine named CNC and the operation were radius turning, faking, chamfering, drilling, tapping. The workers are expected to operate only one machine at a time. Persons engaged in the above mentioned activities are called CNC operators. These persons are either called as technical assistants or technical associates. There is no ITI diploma named as diploma in radius turning, faking and spline champfering. At the end of the year 2017 and beginning of 2018, workers in his department were taken as probationers. He has admitted that all the manufacturing was carried out by those designated as trainees, except fine blanking and SQF and secondary operation was also carried out by training engineers. There are works exclusively carried out by engineers, such as, SQF, heat treatment and all secondary operations are done by the trainees. He was not aware as to whether as per law only one year is provided for trainees and three months for probationers.

26. Witness No. 3 of the petitioner was Principal of Government ITI, Badnapur. He has stated in his evidence that respondent Vishnu Bhagwan Gavane was never enrolled in Government ITI, Badnapur

and he has never studied in his institute. In his cross-examination, he has, however, admitted that the certificates (Exhibit-U/44 and U/45) issued in the names of respondents Dinesh Kaduba Sawant and Vishnu Bhagwan Gavane being the genuine certificates.

After assessing the evidence on record and after hearing the parties, the Tribunal has allowed the complaint, as mentioned above, which order is impugned in the present writ petition.

27. The main argument of the petitioner is that the respondents are neither workmen under section 2 (s) of the Act of 1947 nor employees under section 3 (5) of the Act of 1971. According to the petitioner, since the respondents were disengaged and subsequently termination orders were issued, the Tribunal lack jurisdiction to entertain the complaint filed by them.

28. By relying on the decision in *Arjun Singh (supra)*, the learned advocate for the Petitioner has termed the impugned judgment as without jurisdiction. His further submission is that the Tribunal has erred in relying on the decision of this Court in the said writ petition so as to decide the jurisdiction to entertain the complaint. He also submits

that the order in the said writ petition is passed at a preliminary stage while considering the interim application. In *Arjun Singh (supra)*, the Apex Court held that the orders of stay, injunction or receiver are designed to preserve the *status quo*, pending litigation and to ensure that the parties might not be prejudiced by the normal delay and they do not decide the merits of the controversy in issue and do not put an end to it even in part. Since these orders are capable of being altered or varied by subsequent applications for the same relief, they do not impinge upon legal rights of the parties to the litigation. The principle of *res judicata* does not apply to the findings on which these orders are based.

29. It is not possible to accept the arguments of the learned advocate for the Petitioner as this Court in the said writ petition has specifically held that the Tribunal has jurisdiction to entertain the application filed by the respondents. The evidence on record has clearly established that the respondents are workmen as per the definition given under Section 2(s) of the Act of 1947 and employees as contemplated under Section 3(5) of the Act of 1971.

30. The Tribunal framed issue No. 2 i.e. “*whether the respondent (present petitioner) proves that, present complaint is not maintainable*”.

In the said issue the Tribunal recorded the finding that Schedule I of the MSO 3 (g) defines that an apprentice is a learner, who may or may not be paid an allowance during the period of training, provided that no workman shall be classified as an Apprentice if he has served for an aggregate period of one year. Considering the admission given by witness No. 2 of the Petitioner, the Tribunal has recorded the finding that the respondents are working in production, all the manufacturing was carried out by those designated as trainees except fine blanking and SQF and secondary operation was also carried by training engineers. The trainee is designation and not a classification. Therefore, the Tribunal was right in coming to the conclusion that even if the respondents started as trainees, they stood confirm after one year under Section 3 (2) (a) of the MSO, and thereafter they were permanent employees.

31. In the present case, the Tribunal was fully justified in relying on the observations of this Court in the said writ petition while entertaining the complaint. The Petitioner has failed to substantiate its

contention that the Tribunal lack jurisdiction to entertain the complaint filed by the respondents.

32. It is settled legal position that the status of workmen is not determined by the designation or appointment order, but by the nature of work. Admittedly, work of the respondents was supervised by supervisors Mohan Malahe, Rameshwar Landge and Avinash Suryawanshi. The Provident Fund contributions were deducted from their monthly wages and, therefore, the respondents are employees within the meaning of Section 2 (f) of the MSO.

33. From the evidence on record it can be safely concluded that the respondents are skilled workers and they were operating CNC Machine and they were engaged in manufacturing process as defined under Section 2 (k) of the Factories Act. Therefore, they are employees under Section 3(5) of the Act of 1971 read with Section 2(s) of the Act of 1947.

34. It is also clear from the record that the services of the trainees appointed along with the respondents are regularized by the Petitioner

and the Petitioner appears to have been punished for approaching the Tribunal seeking permanency. It is further the matter of record that immediately upon rejecting their application for interim relief on 02.01.2018, relieving orders were issued to the respondents on 03.01.2018.

35. In the light of the above facts and since the respondents established that they were workmen and employees, the Tribunal was right in coming to the conclusion that the complaint is maintainable. The Tribunal was further justified in recording a finding that it has sufficiently come on record that the respondents are misnomer as “trainees” although they were regular workmen. As per MSO 2 (f), the respondents are permanent workmen in the second year of their service, as their training cannot continue beyond one year. If they are held to be workmen, no sooner they complete 240 days, they are deemed to be permanent under 4-C of the MSO. The respondents were, therefore, rightly held as permanent workmen by the Tribunal.

36. The learned advocate for the petitioner, by relying on “*Ramesh Wase*” (*supra*), argued that the respondents cannot be dubbed as

workmen. In that case, co-ordinate bench of this Court, considering the fact that the complaint was completely silent about nature of duties of the petitioner therein and that the petitioner therein was working as Sectional Engineer in Panchayat Samiti, held that he cannot be termed to be a workman.

37. In “*Nilesh Shivaji Sapkar*” (*supra*), the Division Bench of this Court at Bombay was considering a case that at the end of the training period, the petitioner was not considered to have satisfactorily completed the second part (five months) and was not given employment and was told to stop reporting in the factory. In these facts, the demand of the petitioner for reinstatement with continuity and back wages was rejected. Respondent No. 2 therein, in these facts refused to refer the dispute raised by the petitioner therein, that order was challenged and the Division Bench dismissed the petition.

In the case in hand, the parties are governed by the MSO and admittedly, MSO provides for one year’s training period, which is successfully completed by the respondents. Therefore, continuing trainees beyond the prescribed period of one year, is impermissible.

The said ruling is not applicable to the facts of the present case.

38. The respondents had approached the Tribunal seeking permanency and the Tribunal has rightly considered the complaint and status of the respondents as on the date of filing of the complaint, as this Court in the said writ petition has held that the Tribunal will have to consider the case of the respondents as on the date of filing the complaint and disengaging the respondents are rejection of application Exhibit- U/2, would not take away the jurisdiction of the Tribunal.

39. In the facts of the present case, it is not possible to accept the submission of the learned advocate for the petitioner that the Tribunal has assumed jurisdiction of labour court by erroneously relying upon the order passed by this Court in the said writ petition and the Tribunal has no jurisdiction to entertain the complaint of the respondents, as they were not workmen since they were discharged and hence they ought to have approached the labour court under Item 1 of Schedule IV of the Act of 1971.

40. The citations relied on by learned advocate for the petitioner on the point of jurisdiction also would not help the case of the petitioner, as, in the order passed by this court in the said writ petition, the issue of jurisdiction is concluded.

41. In “*Dattaram Panchal* ” (*supra*), the Co-ordinate Bench of this Court has held that the complaint was filed by trainee workman. Section 2 (s) of the Act of 1947 defines “workman” means, any person (including an apprentice).

42. In “*Municipal Council V/s Manu Sudesh Malik*” (*supra*), Co-ordinate bench of this Court held that cause of action for filing complaint under the Act of 1971 does not come to an end merely because the petitioner / employer played trickery and terminated services of respondent No. 1 after filing of complaint for permanency. The Tribunal is required to declare unfair labour practice on the date of filing of complaint. Despite termination of services, admittedly after filing of complaint, complaint still has to be decided on merits. It would be a mockery of justice if in such a background complaints are dismissed as employer would terminate services of employee after a

complaint for permanency is filed and then raise a preliminary objection to maintainability of complaint for permanency before the Tribunal.

This ratio is squarely applicable to the facts of the present case and supports the case of the respondents.

43. It is a matter of record that services of thirty seven trainees, who were appointed along with the petitioners, have been confirmed and the petitioners are made to pay the price for approaching the Tribunal seeking permanency benefits.

44. Learned advocate for the respondents was justified in arguing that if the employer indulges in unfair labour practice, he cannot wriggle out of it by resorting to Item 1 Schedule IV of the Act of 1971 to disengage the respondents. The Labour Court cannot decide the issue of permanency. Therefore, the respondents were right in approaching the Tribunal seeking the relief of permanency / regularization. One unfair labour practice cannot be resorted to justify another unfair labour practice.

45. Reading the averments in the complaint, this court is of the opinion that the complaint falls under Items 6 and 9 of Schedule IV of the Act of 1971 and it cannot be termed to be a complaint under Item 1 of Schedule IV of the Act of 1971, irrespective of the fact that during pendency of the complaint, the petitioner has discharged the respondents and subsequently issued termination orders to them.

46. Considering the evidence on record and the findings recorded by the Tribunal, this Court is of the considered view that the impugned order is just, legal and proper and the same needs no interference in the extraordinary writ jurisdiction of this Court.

47. In the result, writ petition is dismissed. Rule is discharged. No order as to costs.

48. Pending civil application stands disposed of.

49. At this stage, the learned advocate for the petitioner prays for stay to this order. For the reasons stated in the writ petition, the prayer is rejected.

[NITIN B. SURYAWANSHI]
JUDGE