

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

Writ Petition No.299/2022

Maharashtra State Road Transport Corporation, Chandrapur V Balaji Konkawar

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

Court's or Judge's Orders

Mr. P.S. Gawai, Advocate for petitioner.

Mr. Y.R. Kinkhede, Advocate with Mr. A.B. Tikle, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 01-08-2022

Heard Mr. Gawai, learned Counsel for the petitioner
and Mr. Kinkhede, learned Counsel for the respondent.

2. The judgment dated 14-01-2020, passed by the learned Labour Court, Chandrapur, whereby the application under Section 33-C(2) of the Industrial Disputes Act (for short, 'the ID Act'), has been allowed and the present petitioner has been directed to pay Rs. 8,09,218/- towards the arrears of wages for the period from October 1993 till 20-01-2011 with simple interest @ of 12% per annum from the date of filing of application till its actual realization, within one month from the receipt of the order is under challenge.

3. The factual position is spelt out in the order dated 12-01-2007, passed by the learned Industrial Court, Chandrapur,

while deciding Complaint (ULP) No.86/2004, in which finding that there was a Settlement of the year 1985 based upon Clause 19 (i) which, is quoted in para 8 therein, it was found that the respondent was entitled for regularization of his services on the conditions as contained therein. The order of the learned Industrial Court dated 12-01-2007 is quoted as under :

"1] The complaint is partly allowed.

2] It is declared that the respondent has engaged in unfair labour practice under Item nos. 6 and 9 of Schedule IV of the Act by continuing complainant to do work on daily wages after completion of 180 days.

3] The respondent is desisted from indulging in unfair labour practice.

4] The respondent is directed to regularize the services of complainant on the post of Cleaner w.e.f. the date of completion of 180 days service subject to his selection by the Competent Committee and on clear vacancy of the post as provided under Clause 19(i) of the Settlement of 1985 and decision of Writ Petition No.4738/2002."

4. It is not in dispute that, subsequent thereto, in the year 2010, the competent selection committee selected the respondent in a clear vacancy. As a result of which, the respondent came to be appointed by order dated 20-01-2011 (pg 34). Thereafter, application came to filed under Section 33-C(2) of the ID Act, in

which it was contended that the respondent is entitled for regularization of his services w.e.f. October 1993 and therefore he was entitled for the wages from October 1993 till 20-01-2011, which came to be allowed as indicated above.

5. Mr. Gawai, learned Counsel for the petitioner contends that under Section 33-C(2) of the ID Act, there cannot be any adjudication whatsoever and the proceedings, are merely for recovery of money dues from the employer. He further contends that looking to the terms of Clause 19 of the Settlement of 1985 and operative part 4 of the order dated 12-01-2007, all requirements were to coexist. It is contended that though the respondent had completed 180 days of service in October 1993, his selection by the committee was only done on 20-01-2011 in a clear vacancy, in which situation, all the three conditions came to be satisfied only on 20-01-2011 and therefore it was not permissible for the Labour Court to have allowed the application filed under Section 33-C(2) of the ID Act.

6. Mr. Kinkhede, learned Counsel for the respondent submits that since the respondent was found to have completed 180 days of service in October 1993, the employment of the respondent would relate back to October 1993 and therefore he was entitled to arrears of wages from that time and since this was spelt out from the order dated 12-01-2007 of the Industrial Court, the question of any adjudication did not arise and therefore the impugned order dated 14-01-2020 is liable to be sustained.

7. A perusal of para 4 of the order dated 12-01-2007 more particularly Clause 19(i) of the Settlement of 1985 as quoted in para 8 therefore would indicate that, for the purpose of regularization, all the three conditions, as enumerated in Clause 19 (i) of the Settlement of 1985 have to coexist. In the instant case, such a situation occurred only on 20-01-2011, as a result of which, the respondent came to be entitled for regularization on 20-01-2011 and not earlier thereto. That being the position, the finding rendered by the learned Labour Court, is clearly erroneous as it does not consider the above position.

8. Therefore, the impugned judgment passed in IDA Case No.10/2016 dated 14-01-2020 is hereby quashed and set aside.

9. The application under Section 33-C(2) of the ID Act filed by the respondent is dismissed.

10. The petitioner is permitted to withdraw the amount deposited in this Court.

11. No costs.

(Avinash G. Gharote, J.)