

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

WRIT PETITION NO. 6409/2018

MAROTI RAMDASJI WASNIK

..VS..

MEMBER INDUSTRIAL COURT, NAGPUR AND OTHERS

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

Court's or Judge's Order

Mrs. Priyanka R. Arbat Awathale , Advocate for the petitioner
Mr. Amit Madiwale, AGP for the respondent nos. 1 to 4

CORAM : AMIT B. BORKAR, J.

DATED : 21/09/2022

The petitioner-employee is challenging the order dated 20.04.2018 passed by the Industrial Court dismissing the complaint of the petitioner on the ground that this Court, in an earlier round of litigation, had dismissed the complaint of the petitioner seeking regularization based on Item No. 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the "Act of 1971"). According to the petitioner, he was appointed as a daily-wager Class-IV employee from April 1998 until 18.06.2015. According to him, since he was not made permanent, he filed a complaint under Item Nos. 6 and 9 of Scheduled IV of the Act of 1971. The Labour Court allowed the complaint. The Industrial Court set aside the judgment of the Labour Court, holding that the petitioner's service from 2000 to 2015 was based on interim order passed by the Labour Court and, therefore, cannot be counted as service for regularization. The

Industrial Court further held that this Court, in an earlier round of litigation filed by the respondents herein, had dismissed the petitioner's complaint seeking regularization. It is held that the petitioner's appointment was not on sanctioned post nor made after the recruitment procedure. The Industrial Court, considering the service of the petitioner from 1998 to 2000, dismissed the complaint. On perusal of the impugned order, it appears that the reasoning of the Industrial Court in paragraph nos. 10 and 11 do not suffer from any perversity. The Industrial Court, in paragraph nos. 10 and 11, has held as under:-

“10] Undisputedly the complainant was appointed on daily wages in the year 1998 and worked till June 2000 with the respondents and thereafter the appointment of the complainant was as per interim order of the court. There is absolutely nothing on record before the Trial court nor Trial court considered the continuous service of the complainant with the respondents during 1998 to June 2000 and in absence of that it is very difficult to accept that the complainant was in continuous service with the respondents.

11] Not only this but, undisputedly the appointment of the applicant was on daily wages and not against the sanction post and the Hon'ble Lordship also observed in W.P. No. 4914/2007 that, employment in Class IV post in Polytechnic institute run by the State Government is governed by the Recruitment Rules. The post are required to be sanctioned, and thereafter those are required to be filled in by following the procedure for recruitment. It is not in dispute in the present case that the complainants were working as a daily wager and continued in service for years together, however,

that by itself is not enough to grant regularisation in service."

2. Therefore, in my opinion, the dismissal of the complaint does not suffer from an error of jurisdiction. However, it is made clear that the petitioner shall be at liberty to file a separate complaint for regularization, invoking Item No. 5 of Schedule IV of the Act of 1971 if it is permissible in accordance with the law.

3. The writ petition is, therefore, dismissed. No costs.

JUDGE

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