

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

Writ Petition No. 6609 of 2018

Hidayatkhan Namdarkhan Pathan,
Aged about 60 years, Occ. - Retired,
R/o Divisional F.D.C.M. Stores
Division, Ballarpur, Dist. Chandrapur.

... **Petitioner**

... **Versus** ...

(1) F.D.C.M. through Divisional Manager
West Chanda Forest Project Division,
Chandrapur, District Chandrapur.

(2) Range Forest Officer,
Khadsangi, Tah. - Chimur,
District – Chandrapur

(3) Hon'ble Judge Labour Court,
Chandrapur,
Tahsil and District – Chandrapur.

(4) Hon'ble Member Industrial Court,
Chandrapur,
Tahsil and District – Chandrapur.

... **Respondents**

Mr. C. B. Dharmadhikari, Advocate for the petitioner
Mr. M. M. Sudame, Advocate for the respondent 1

CORAM : ROHIT B. DEO, J.

DATED : 25-3-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner was working with the Forest Development Corporation of Maharashtra Limited (F.D.C.M.) as Bulldozer Operator. He was compulsorily retired vide order dated 5-5-2010.

3. According to the F.D.C.M., the order is not punitive and is a part of the weeding out the deadwood process, which is permissible under the Service Rules. The F.D.C.M. claims that a duly constituted committee reviewed the cases of several employees and the grades assigned to them, and according to the consistently followed administrative policy, employees who secured grades of -B and lower, were compulsorily retired.

4. During the course of the hearing, several issues have come to the fore in view of the rival submissions. Illustratively, the learned counsel for the employee, Mr. Charuhas Dharmadhikari contends that the establishment is covered and governed by the Model Standing Orders and it is trite law that the alleged service rules, which in any event do not have statutory flavour, cannot be inconsistent with the Model Standing Orders. The extension of the submission is, that compulsorily retirement after review, is not permissible under the Model Standing Orders and such exercise would, as a fact, curtail the tenure of the employee and shall be inconsistent with the age of superannuation mentioned in the Model Standing Orders.

5. Mr. Sudame would point out that while several submissions are made on the basis of Model Standing Orders, there is no foundation led in the complaint preferred under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Mr. Sudame would emphasize that neither the Labour Court nor the Industrial Court was called upon to examine the submission on the basis of the Model Standing Orders which is raised for the first time in the High Court.

6. Apart from the submissions made on the basis of the Model Standing Orders, it is argued on behalf of the employee that the termination, assuming that there be a power to compulsorily retire, would be retrenchment since, even according to the employer, the compulsory retirement is not punitive. It is argued that if the termination is retrenchment, the same is void for non compliance with the mandatory provisions, *inter alia* Section 25F of the Industrial Disputes Act, 1947. Mr. Sudame would again point out that even this submission was not canvassed before the Courts below.

7. Mr. Sudame is right in contending that certain submissions are made for the first time in the High Court and that the Courts below were not called upon to consider the submissions. However, considering that the petitioner is a workman and while the order may

not be punitive, serious economic consequences may ensue since the tenure of service is curtailed, I deem it appropriate to remit the matter to the Labour Court for fresh decision.

8. Needless to state, the parties shall be entitled to appropriately amend or modify the pleadings and to place on record all relevant material and to adduce additional evidence on the basis of the amended pleadings and the additional material.

9. The Labour Court shall not be influenced by any observations made by this Court in the present order.

10. The orders impugned are set aside with the direction made supra.

11. The parties shall appear before the Labour Court on 5-4-2022 and shall produce on record copy of this order.

12. The Labour Court is requested to decide the post-remand proceeding as expeditiously as possible.

13. The petition is partly allowed in the aforestated terms.