

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14204 OF 2021

Vaidyakiya Karmachari Sanghatana,
Ahmednagr Zilha,
At Post – Kolhar Bhagwantipur
Tq. Rahata, Dist. Ahmednagar
Through its General Secretary
Vilas S/o Bhikulal Mundada

.... Petitioner

Versus

Pravara Medical Trust
At & Post – Loni Bk. Tq. Rahata,
Dist. Ahmednagar
Through its Turstee & Secretary

.... Respondent

.....

Mr. L.V. Sangit, Advocate for the Petitioner
Mr. A.V. Hon, Advocate for the Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd JULY, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner/Union challenges the judgment and award passed by the Industrial Tribunal, Ahmednagar in Reference (IT) No.7 of 2010. At the instance of the petitioner, reference was initiated by the Deputy Commissioner of Labour, Nashik.

2. Statement of claim was filed by the Union, claiming that the employees mentioned in Annexure "A" were working with the employer in Hospital and Colleges. The employer without complying the provisions, illegally terminated the workers of the Union from their service. The workers of the had also filed ULP complaints before the Industrial Court for permanency, however, due to termination of workers, the said complaints were dismissed. Hence, the industrial dispute is raised. Therefore, it is claimed that termination of services of the workers of Union be declared illegal, and they be reinstated with continuity of service and back wages.

3. The employer opposed the statement by filing written statement at Exhibit C-12, and denied all the allegations about unfair labour practice. They questioned maintainability of the reference on the ground of limitation, delay and latches. An objection was also raised in view of bar under Section 59 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, as the workers were terminated from service long back. They contended that some employees resigned from service, and therefore, there is no employer-employee relationship between the workers of the Union and the employer. Due to long delay, record is not available with

the employer about the workers working prior to year 2000. He, therefore, prayed for dismissal of reference. After recording the evidence, and after hearing the parties, the Tribunal answered the reference in negative. Hence the present petition.

4. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, and the impugned order.

5. Learned advocate for the petitioner strenuously urged that the reference could not have been dismissed only on the ground of delay. He submits that employer failed to produce relevant record of the workers, hence, on that ground alone, the reference ought to have answered in favour of the Union. He further submits that there is sufficient evidence on record to hold that termination of the workers of the Union was illegal and unsustainable. According to him, the Tribunal has recorded perverse findings contrary to the evidence placed before it, and therefore, the impugned judgment and award is liable to be quashed and set aside, and the reference needs to be answered in affirmative.

6. Per contra, learned advocate for the employer supported the impugned judgment and award. By pointing out observations of the Tribunal, he states that the Tribunal has properly appreciated the material on record and has rightly answered the reference in negative. He submits that no case is made out by the petitioner to warrant interference in extraordinary writ jurisdiction. Hence, the petition may be dismissed.

7. Perusal of the record indicates that most of the workers of the Union were casual workers. During the course of recording of their evidence, they admitted this fact. They also admitted that the employer used to provide them work whenever the work was available. They used to remain present before the gate of institution for getting work and work was provided as per availability. The workers also admitted that they filed ULP complaints before the Labour Court for reinstatement, but those cases were dismissed. They further admitted that after their dismissal, for years together they have neither made any correspondence with the employer nor personally met for reinstatement or for providing work. Some of the workers resigned from service, and their resignations were accepted.

8. In the evidence led by the Union, the workers have admitted that they filed Complaint ULP No.386 of 1999, which was withdrawn by the worker at Sr. No.8 of Annexure 'A' on 29/09/2004. Worker at Sr. No.33 admitted that he had filed Complaint ULP No.39 of 2000 before the Labour Court for reinstatement, however, his complaint was dismissed. He also admitted that he was casual worker, and management used to provide him work if work was available.

9. Worker at Sr. No.40, in his cross-examination, admitted that he had filed Reference (IT) No.37 of 2009 for the some relief for which the present reference is filed, and the said reference is already decided. He also admitted that he had filed Complaint ULP NO.286 of 1999 for permanency and case No.12 of 2000 before Pune University Tribunal. He further admitted that he has given information regarding previous proceeding to his counsel as well as Union representative.

10. Record further indicates that the workers were casual workers, and they have not worked more than 240 days in a year. The workers have raised dispute regarding termination which had taken place during the period from 1989 to 2004. The dispute in that regard is raised in 2010 i.e. after more

than 7 to 20 years from the date of dismissal or discontinuation. On this ground also, the Union has no case. The Tribunal has properly appreciated evidence brought on record and has passed a reasoned order. No fault is found with the findings of fact recorded by the Tribunal. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction.

11. The writ petition being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane