

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2577 OF 2017

Dnyaneshwar Sahakari Sakhar
Karkhana Ltd., Dnyaneshwar Nagar,
Through its Managing Director
Anil S/o Pandit Shewale
Age: 52 years, Occu.: Service,
R/o. Dnyaneshwar Nagar,
Bhende (Bk), Tq. Newasa,
District Ahmednagar

.... Petitioner

Versus

Bapusaheb S/o Macchindra Kute
Age: 40 years, Occu.: Agril.,
R/o. Gunfa, Post Bhatkudgaon,
Tq. Shevgaon, Dist. Ahmednagar

.... Respondent

.....

Mr. H.D. Deshmukh, Advocate for the Petitioner
Mr. Parag V. Barde, Advocate for the Respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 13th JUNE, 2023

PRONOUNCED ON : 24th August, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition, filed under Article 227 of the Constitution of India, the petitioner takes exception to the judgment and order passed by the learned Member, Industrial Court in Complaint ULP No.30 of 2012.

3. The litigating parties shall hereinafter be referred to as, petitioner as 'sugar factory' and respondent as 'complainant'.

4. On 12/03/2012, the complainant filed Complaint (ULP) No.30 of 2012 under Item Nos. 5, 9 and 10 of schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (for short, "M.R.T.U. and P.U.L.P. Act"), claiming the relief of permanency. It is the case of the complainant that he was initially employed as *Majdoor* with the sugar factory sometime in March 2000, on temporary basis. In August 2003, he was given designation of trainee. During the pendency of the complaint, complainant's services were terminated. He challenged the said order by filing complaint before the Labour Court, which was stated to be pending. In this complaint, he claimed relief of permanency with effect from the date on which he completed 240 days of work. He also prayed for other reliefs i.e. quashing of punishment orders dated 11/02/2009 and 30/06/2010, and a direction to provide work and wages from 28/06/2010.

5. It is further contended that provisions of the Maharashtra Industrial Relations Act (Bombay Industrial Relations Act) and Model Standing Orders (for short, 'M.S.O.)

are applicable to the sugar factory. As per the standing orders, probationary appointment can be made for maximum period of three months. The sugar factory is required to pay the employees wages according to the Wage Board recommendations. To avoid such payment, the sugar factory made appointments as trainees and temporaries etc. The complainant was taken in the employment as his father's agricultural land was acquired by the sugar factory. At that time, it was agreed to pay compensation according to the market rate, and to give service to one of the family members of complainant's father. He was initially paid Rs.2,500/- per month. As the complainant requested for making him permanent, he was given designation as trainee in August, 2003. He was required to work in different departments. He was continued as trainee till 01/10/2008, but no training was given. On his persuasion to make him permanent, the sugar factory started paying him Rs.3,400/- per month as a pay scale with effect from 01/10/2008. When the complainant demanded benefits of the past period, the sugar factory stopped providing him work with effect from 16/12/2008. Thereafter, by order dated 11/02/2009, punishment was imposed on him, and was not paid any wages from the period 26/12/2008 to 09/02/2009. Since, the complainant was

requesting for permanency, charge-sheet was issued to him, and by punishment, the period from 29/10/2009 till 27/06/2010 was made without pay. The complainant, therefore, challenged both the punishment orders.

6. The sugar factory opposed the complaint by filing say that, the complaint is untenable and time barred. Since there is a representative union of the employees, the complaint filed by the complainant in individual capacity is not maintainable. The sugar factory is a seasonal industry and the provisions of the Bombay Industrial Relations Act are applicable to it. The complainant was temporarily appointed as trainee *Majdoor* 28/03/2000 and from 01/11/2005, he was given an opportunity to work as *Majdoor*. He was made permanent as *Majdoor* with effect from 01/10/2008 and was given all the benefits. It is further contended that, complainant used to remain absent frequently, and used to leave factory before the end of duty hours. He was warned orally and in writing, but that was of no avail. He was given show cause notice and charge-sheet, and enquiry was conducted. The Board of Directors took a lenient view, and imposed a punishment of treating the absence period as without pay. From 28/06/2010, the complainant remained absent. By letter dated 16/07/2010,

he was called to report for duty, but he did not report. The sugar factory reserved the right to take disciplinary action for the absence of the complainant from 28/06/2010.

7. The Industrial Court, after recording evidence and hearing the parties, partly allowed the complaint, thereby directing the sugar factory to pay the complainant, difference of wages actually paid and payable in accordance with pay scale of permanent *Majdoor* for the entire period from 01/10/2001 till he lastly worked with the sugar factory some time in 2009 and 2010.

8. The Industrial Court also directed that, apart from the difference of wages, other monetary benefits, if any, shall be payable to the complainant by granting him deemed permanency for the previous period. The sugar factory is aggrieved by this order.

9. Heard the learned advocate for the sugar factory and the learned advocate for the complainant. Perused the writ petition memo, annexures thereto, impugned order, record and proceedings, and the citations relied upon by the learned advocates for the sugar factory and complainant.

10. Learned advocate for the sugar factory assailed the impugned judgment on various grounds. He submits that prayer of permanency cannot be said to be a continuing cause of action. Further submission is, the complaint is not within limitation under Section 21 of the M.R.T.U. and P.U.L.P. Act, and is liable to be dismissed on the ground of delay and laches. Considering the repeated absence of the complainant, the Industrial Court ought to have rejected the permanency benefit. He submits that model standing orders are not applicable to the seasonal workers. He further submits that, the Industrial Court has recorded perverse findings contrary to the record, and therefore, impugned judgment is liable to be quashed and set aside. In support of his submissions, he relied on the following judgments:

- (i) ***Jaihind Sahakari Pani Purvatha Mandali Limited Vs. Rajendra Bandu Khot and others, 2020 (2) BCR 98,***
- (ii) ***Mahindra and Mahindra Limited Vs. Sunil Namdeorao Zade and others, 2020 DGLS (Bom.) 739,***
- (iii) ***Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. And another Vs. Arjun Aburao Gaikwad deceased by his sole heir and legal representative Smt. Kalavai A. Gaikwad and others, 2002 (6) BCR 350,***

- (iv) ***Maharashtra State Co-operative Cotton Growers Marketing Federation Limited : State of Maharashtra Vs. Employees Union : Maharashtra State Co-operative Cotton Growers Marketing Federation Employees Union, 1994 AIR (SC) 1046.***

11. Per contra, learned advocate for the complainant supported the impugned judgment. He submitted that complainant has completed more than 240 days in each year, which is clear from the documentary evidence produced before the industrial Court. Further submission is, Model Standing Orders are applicable to the sugar industry. He submitted that after filing of the present complaint, the complainant was terminated. As on today, respondent is in service. He submitted that there is no merit in the writ petition, and the same is liable to be dismissed.

12. He has tried to distinguish the judgments relied upon by the learned advocate for the sugar factory. He further relied upon the model standing orders of the sugar industry, and the decision in ***Mahindra and Mahindra Limited Vs. Sharad Laxman Dalvi and others, 2005 (2) BCR 302.***

13. Perusal of record indicates that the complainant examined himself in support of his complaint at Exhibit U-22. In the evidence of the complainant, he has stated that he was

temporarily appointed on the post of *Majdoor* on 28/03/2000. Before that, his ancestral land admeasuring 1.75 R land was acquired by the sugar factory for distillery. At the time of acquisition of the land, it was agreed that compensation would be paid and one family member would be given employment. Accordingly, as per the appointment order dated 29/07/2003, he was taken in service with effect from 01/08/2003. He was being paid monthly salary of Rs.2,500/-. In spite of repeated requests, he was continued to be trainee for years together, in different departments. With effect from 01/10/2008, he was paid regular basic salary of Rs.3,400/- of *Majdoor*. The complainant has also filed affidavit Exhibit U-26. It is specific case of the complainant that so as to avoid payment as per recommendation of Wage Board, the sugar factory has given him temporary appointment as trainee. By order dated 27/06/2010, he was transferred to Engineering Department. Further, when he went to join the duty, he was not allowed to join.

He was cross-examined at length. His cross-examination mainly appears to be directed in respect of punishment imposed on him for his unauthorized absence. Only admission given by the complainant is that his

appointment was seasonal and the sugar factory is a seasonal factory, and that he was confirmed as *Majdoor* with effect from 01/10/2008. Except this, nothing material supporting the case of the sugar factory is brought on record.

14. The complainant has categorically deposed that he was given work throughout the year. The charts of attendance of complainant produced by the sugar factory, indicate that employment of the complainant was round the year, and it was not seasonal. It is, therefore, clear that the complainant was in regular employment of sugar factory. Evidence on record further indicates that complainant started working from 28/03/2000 and he was given permanency as *Majdoor* in the year 2008. There is no oral and documentary evidence in support of complainant's claim for permanency. Admittedly, the sugar factory has not led any evidence.

15. Model Standing Orders applicable to the sugar industries issued under Bombay Industrial Relations Act, were placed before the Industrial Court. Clause 4-C of the said orders reads thus:

"4-C. Confirmation of badli or Temporary operative: A badli or temporary operative who has put in 190 days uninterrupted service in the

aggregate in any undertaking of seasonal nature or 240 days uninterrupted service in the aggregate in any other undertaking during a period of proceeding twelve calendar months, shall be made permanent in that undertaking by an order in writing signed by the Manager or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the undertaking throughout the period of the said twelve calendar months."

16. Complainant's case is squarely covered by Clause 4-C. Clause 2(b), of the M.S.O. defines "operative", as the employee who does manual work is operative. There is sufficient evidence on record to show that the complainant was employed to do manual work. Therefore, he was an "operative" in terms of definition in the Model Standing Orders. Since the complainant had putting more than 240 days of service, he was entitled to be made permanent as per Clause 4-C, when he completed 240 days after he joined on 28/03/2000.

17. The Industrial Court has recorded a finding that at the time of filing of complaint, employer-employee relationship did subsist and that is why interim order was passed, pursuant to which the sugar factory allowed the

complainant to report for duties. It is further held that, since the complaint is filed under items 5, 9 and 10 of the M.R.T.U. and P.U.L.P. Act, an individual can file a complaint under these items, and the complaint is maintainable.

18. The complainant has brought on record a fact that sugar factory used to give appointments as trainees, temporaries to avoid payment as per Wage Board recommendations. It has also come on record that permanent employees were drawing higher wages, which were paid to the complainant only after the year 2008. Thus, there is sufficient evidence brought on record by the complainant in support of his claim of permanency. The evidence brought on record is properly appreciated by the Industrial Court, and the complaint is rightly allowed by passing a reasoned order.

19. The facts in *Mahindra and Mahindra Limited* (supra), were different. In that case, learned Single Judge of this Court on the basis of pleadings and evidence led in that case considered the claim of workmen that unemployment was involuntarily foisted upon them. In these facts, it was held that complaint under item Nos. 5 and 9 of schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971, could be filed provided

the respondents-workmen first cross the threshold. The workmen therein failed to do so and approached the Industrial Court after a gap of 9 to 23 years of their last dates of employment. Hence, this Court set aside the judgments of the Industrial Court passed in favour of the workmen. This decision is therefore distinguishable on facts.

20. The decision in ***Jaihind Shakari Pani Purvatha Mandali Limited*** (supra), is in respect of determination of period of recovery of monitory entitlement of the workmen. It is held that, "*enforcement of settlement could have always been ordered for future and as for arrears, they could have been ordered only for three months as per limitation period orinarily applicable*". In this citation, the case of ***Mahindra and Mahindra Ltd.*** (supra) is considered and it is held that the said was about unfair labour practice of not recognising a claim of permanency. It is held to be continuous cause of action. Hence, this decision is also of no use.

21. In ***Maharashtra State Co-operative Cotton Growers Marketing Federation Limited*** (supra), it is held that, completion of 240 days of service is not sufficient for seasonal employees to claim permanency benefit.

In the case in hand, since there is evidence on record that, the claimant was a regular employee, this ruling is not applicable to the facts of the present case.

22. The findings recorded by the Industrial Court are supported by the evidence and documents. The Industrial Court has passed a reasoned order. No illegality or perversity is found in the order passed by the Industrial Court. No case is made out by the petitioner to warrant interference in extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane