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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7424 OF 2020

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| 1. The State of Maharashtra
Through the Civil Surgeon,
Civil Hospital, Nandurbar
Taluka and District – Nandurbar | PETITIONERS |
| 2. The Chief Secretary,
Public Health Services,
Government of Maharashtra
Complex Building
G. T. Hospital Compound, 10,
Mumbai | |
| 3. The Commissioner (Family Welfare) & Mission
Director (N.R.H.M.) 3 rd Floor, Aarogya Bhavan
Saint Georges Hospital Compound
P. D.Melar Road,
Mumbai 400 001 | |
| 4. The Deputy Director,
Public Health Department,
Near Nashik Division District Hospital
Nashik, Taluka and District – Nashik | |

VERSUS

Kalyansing Vasant More Age – 39 years, Occ – Nil R/o Old Bhoi Galli, Near Teli Wadi Nandurbar, Taluka and District -Nandurbar	RESPONDENT
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Mrs. Geeta L. Deshpande, Assistant Government Pleader for the
petitioners – State

Mr. S. S. Patil, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 25th APRIL, 2023

PRONOUNCED ON : 4th MAY, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the learned advocates for the parties heard finally.

2. By this petition, the petitioners challenge impugned order dated 7th March, 2018 passed by learned Labour Court, Dhule in Complaint (ULP) No. 3 of 2016, which is confirmed by the learned Member, Industrial Court, Dhule vide order dated 15th June, 2019 in Revision Application (ULP) No. 2 of 2018.

3. The respondent filed Complaint (ULP) No.3 of 2016 in the Labour Court, contending that, he possesses diploma of X-Ray Technician. One Suresh Rajaram Sonar was working on the post of ECG Technician, on the establishment of the petitioners and he retired on 31st July, 2012. So as to avoid inconvenience, the respondent was appointed in the place of Mr. Sonar from 12th June, 2012, on contract basis. No appointment letter was issued to the respondent, however, he was being paid wages of Rs.275/- per day. He was also given one months' training of ECG Technician. By order dated 13th June, 2014, the respondent was

appointed as contractual employee under the National Rural Health Scheme (hereinafter "NRHS" for short) for a period from 2nd April, 2014 to 28th February, 2015. Even after completion of the said period, his services were continued up to 20th March, 2015. Thereafter, without giving him further extension, his services were brought to an end. He, therefore, filed the Complaint and prayed for reinstatement in service, with continuity and back wages in lieu of compensation.

4. The petitioners opposed the said complaint, by filing a detail say. They denied the contention of the respondent that they are engaged in unfair labour practice. They claimed that the respondent was appointed for a fixed period and on expiry of the said period, his employment was required to be terminated. Therefore, according to the petitioners, this does not amount to retrenchment. It is further claimed that the respondent does not possess necessary qualification for the post of ECG Technician.

5. After recording evidence, the Labour Court allowed the complaint and set aside the termination order dated 21st March, 2015 and directed the petitioners to reinstate the respondent in service as X-Ray Technician / ECG Technician.

6. Petitioner No. 1 – the Civil Surgeon, unsuccessfully

challenged the judgment and order passed by the Labour Court, by filing Revision Application (ULP) No. 2 of 2018 before the Industrial Court, Dhule. Hence, the present petition.

7. Heard learned Assistant Government Pleader for the petitioners and the learned advocate for the respondent. Perused the paper book of the petition and the original record and proceedings and the citations relied on by the learned Assistant Government Pleader.

8. Learned Assistant Government Pleader assailed both the impugned orders submitting that admittedly, the respondent was appointed in NRHS for a particular period i.e. vide order dated 13th June, 2014 for a period from 2nd April, 2014 to 28th February, 2015. Said appointment was on the payment of honorarium, for a specific period, there is no sanctioned post. Before appointing the respondent, neither advertisement was issued nor interviews were conducted. Thus, the respondent was given back door entry. She further pointed out from the record that the NRHS scheme, in which the respondent was appointed, was a Central Government scheme, which was implemented through the State Government. According to her, there is no employer-employee relationship between the petitioners and the respondent. Further submission is, admittedly, the respondent was appointed on

contractual basis. She submits that from 2017 onward, NRHS was not continued. There is no sanctioned post and, therefore, both the courts have erred in granting relief in favour of the respondent. In support of her submissions, she placed reliance on "*Gangadhar Pillai V/.s Siemens Ltd*" 2007 (1) SCC 533 and unreported Judgment of the Supreme Court dated 7th October, 2021 in Civil Appeals No. 5689-5690 of 2021 (*Union of India and Others V/s ILMO Devi and Another*).

9. Per contra, learned advocate for the respondent submits that considering the evidence on record, both the courts are justified in passing the impugned orders. He submits that considering the concurrent findings of fact recorded by both the courts, no case is made out by the petitioners to interfere in the extraordinary writ jurisdiction. There is no substance in the petition and the petition may be dismissed.

10. It is a matter of record that the respondent was initially appointed on 12th June, 2012 on contractual basis and he was being paid Rs.275/- per day salary. He is qualified as X-Ray Technician. One month's training of ECG Technician was given to him. On 13th June, 2014, he was shown to be appointed on contractual basis in NRHS from 2nd February, 2014 to 28th February, 2015. After he completed the said tenure, he was

allowed to continue from 1st March, 2015 to 20th March, 2015. Since, thereafter, no extension was given, his services were brought to an end. It is, therefore, clear that prior to the appointment of the respondent as ECG Technician, in NRHS, he was working with the petitioners since 12th June, 2012. In the light of these facts, the arguments of the petitioners that the appointment of the respondent was under NRHS for fixed tenure and he is rightly terminated under the said scheme, is unacceptable.

11. The petitioners have examined Dr. Raghunath Bhoje, Civil Surgeon, in support of their case. He has admitted that Suresh Rajaram Sonar, who was working on permanent post of ECG Technician, on their establishment was to retire on 31st July, 2012 and so as to avoid inconvenience, the respondent was appointed on 12th June, 2012 on contractual basis. Accordingly, he joined on the post, however, no appointment order was given to him. He was being paid salary @ Rs.275/- per day. In view of these admissions, it is not possible to accept the contention of the petitioners that the respondent was not given appointment on regular establishment / permanent post and he was given appointment in NRHS. He has admitted in his cross-examination that it is true that as on that date, not a single ECG Technician is

available in Nandurbar Civil Hospital. Due to non availability of ECG Technicians, ECG of serious patient is done by the concerned physician / doctor. When he was confronted with the documents at Exhibit-U-19 and C-20, he admitted that at Navapur both the posts of ECG Technician and X-ray Technician are vacant, at Taloda one post of ECG Technician is vacant, at Molgi and Khandbara one post each of X-ray Technician is vacant and all these hospitals fall under Nandurbar Civil Hospital.

12. The petitioners, in spite of directions issued by the Labour Court, failed to produce muster roll of the respondent for the period 31st July, 2012 to May, 2014. The Labour Court, therefore, has rightly drawn adverse inference against the petitioners. The respondent's experience certificate (Exhibit-U-16) issued by the Civil Surgeon, shows that the respondent has proper experience of his work and his behaviour was also good. The muster roll of the respondent, produced by the petitioners of June, 2014 to December, 2014 shows his 100% attendance. Thus, it is clear that the respondent was in continuous service from 12th June, 2012 to 20th March, 2015. Admittedly, posts of X-Ray Technician and ECG Technician are vacant in the hospitals in Nandurbar District.

13. The Labour Court has held that the conduct of the

petitioners towards the respondent was amounting to victimization and colourable exercise of employer's power in contradiction to section 25 F of the IDA Act. The Revisional Court has also observed that according to the guideline No.3 and 4 issued by the petitioners, the respondent ought to have been absorbed and regularized on the post of X-ray Technician or ECG Technician in pursuance of advertisements Exhibits-U-10 and U-11 as well as the guidelines at Exhibit-U-17. It is further held that -

“The facts that the respondent No.1 (Civil Surgeon) has admitted in his evidence about the availability of the vacant post of ECG Technician and X-ray Technician and that even though the guidelines for recruitment of a contractual employee had been issued by the Mission Director, N.R.H.M. Mumbai on 31/08/2010 (Exh. C-19) and that the Coordinator, N.R.H.M. as well as, Respondent No. 1 and Chief Executive Officer, and District Health Officer of Zilla Parishad, Nandurbar had proposed for the availability of the vacant post of X-ray Technician and ECG Technician at Sub District Hospital, Navapur, Sub District Hospital, Taloda and Sub District Hospital, Molgi, Taluka: Akkalkuwa, Dist-Nandurbar, by the Officer Note dated 03/04/2012, the respondents No.3 and 4 (petitioners No.3 and 4) did not consider the same for sanction, approval to the continuation of the services of the Complainant (respondent) or for the absorption and regularization of his services”.

14. According to the petitioners, for working on the post of ECG Technician, diploma in ECG is the requisite qualification.

However, considering the fact that the respondent has worked on the said post for almost three years' period, the respondent can be said to have acquired necessary experience to continue on the said post.

15. The record further indicates that Family Welfare Department has issued notification (Exhibit-U-17) under which the respondent was entitled to be absorbed on a parallel post, particularly in view of the admission given by the Civil Surgeon that work of Technicians, who handle various machines in the hospital is of perennial nature. It is further clear from the record that the petitioners have not followed section 25 F of the Industrial Disputes Act, which is applicable to the facts of the respondent's case, before terminating his services. Fact remains that the respondent was required to be absorbed or regularized on the post of X-Ray Technician or ECG Technician in the Government Service, pursuant to the advertisements at Exhibit-U-10 and U-11 and the guidelines at Exhibit-U-17.

16. In "**Gangadhar Pillai** " (*supra*), the Apex Court held that project related employees cannot, as a matter of right demand any status or privileges of permanent employees. Once the period of contract was fixed and the same was done keeping in view nature of job, it cannot be said that act of employer in

terminating services of the appellant was actuated by malice. It is further held that only because the employee has been engaged as casual or temporary employee for that he had been employed for a number of years, the same by itself may not lead to any conclusion that such an appointment had been made with the object of depriving him of the status and privilege of a permanent employee.

17. In the present case, admittedly, the respondent was appointed in the year 2012, on contractual basis as ECG Technician and one month's training of ECG Technician was imparted to him by the respondents. Subsequently, the respondent is shown to be appointed under NRHS. In terms of the policy (Exhibit-U-17), he was required to be absorbed. In that view of the matter, the above observations are not helpful to the case of the petitioners.

18. In "*ILMO Devi*" (*supra*), by relying on *Uma Devi's* judgment, it is held that there are no sanctioned posts in the office where the respondents were working and the High Court had directed to create and sanction posts, which is beyond the jurisdiction of the High Court in exercise of power under Article 226 of the Constitution of India. In this case, the respondents were working as contingent paid part time sweepers in post

office. It was not disputed that there were no sanctioned posts of Safaiwalas in the post office. There was no documentary evidence that the respondents were working continuously. The respondents did not claim that their appointments were made after following due procedure of selection. Then, the Union of India brought regularization policy dated 30th June, 2014. In these facts, the Apex Court held that part time employees were not entitled to seek regularization, as they were not working against any sanctioned post and there cannot be any permanent continuance of part time temporary employees.

In view of the admissions given by the Civil Surgeon that sanctioned post of ECG Technician and X-Ray Technician are vacant, this ruling does not help the petitioners' case.

19. On the basis of the record, the Labour Court as well as the Industrial Court are justified in coming to the conclusion that the petitioners have indulged in unfair labour practice and the respondent is rightly held to be entitled for the relief. The Labour Court and the Industrial Court have appreciated the facts of the case and evidence on record, in the proper perspective and have correctly applied the law applicable to the present case. No fault can be found in the concurrent findings of fact recorded by the Labour Court and the Industrial Court, on the basis of the

material available on record. There is no illegality or perversity in the orders impugned in the present petition. No case is made out by the petitioners for exercise of extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed. Rule is discharged.

[NITIN B. SURYAWANSHI]
JUDGE

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