

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13249 OF 2021

**SMT. KADUBAI RAMKRUSHNA NAGRE
VERSUS
THE PRESIDENT, SWARNAPOOJA SHIKSHAN SANSTHA AND
ANOTHER**

...
Advocate for Petitioner : Mr. Rajesh K. Khandelwal
Advocate for Respondents : Mr. Rajaram B. Mule
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th AUGUST, 2023

PER COURT :

1. This petition filed under Article 227 of the Constitution of India, challenges the order dated 03/03/2021, passed by learned Presiding Officer, Labour Court (II), Aurangabad, in Reference (IDA) No.386/2008, thereby answering the reference in negative.

2. At the instance of petitioner, the reference was initiated in the Labour Court. Petitioner filed statement of claim contending that she joined service of respondents as Assistant Cook for the period from 20/06/2005 to 19/06/2006. After the said term was over, she was given second appointment on the post of Helper, with effect from 03/07/2006 to 02/07/2007. On 16/04/2007, respondent No.2 orally terminated her service. Though she has continuously worked for more than 240 days in 12 months, prior to her illegal termination, procedure under Section 25(F) of the Industrial

Disputes Act, 1947 (for short 'the said Act'), was not followed while orally terminating her service. Her service record is clean and unblemished. Therefore, she claims that her termination is illegal. After her termination, respondents have employed one Anita Tukaram Wagh as a Cook. She, therefore, contended that procedure laid down under Section 25(G) and 25(H) of the said Act is not followed while appointing Anita Wagh.

3. Respondents opposed the reference by filing written statement. They contended that petitioner was appointed on temporary basis, initially as a Assistant Cook and subsequently as Helper, subject to the approval from Social Welfare Officer. Petitioner has accepted the terms of appointment and joined the service. As per the sanctioned staffing pattern, there is no post of Assistant Cook available with the respondents. Social Welfare Officer rejected the proposal of petitioner for approval for the post of Assistant Cook, so also, for the post of Helper. Thereafter, petitioner voluntarily tendered her resignation on 06/08/2007. While relieving the petitioner from service, respondents paid all her legal dues to the tune of Rs.60,000/- by cheque of the same date. Labour Court after recording evidence and hearing the parties, rejected the reference. Hence, the present petition.

4. Heard learned advocate for petitioner and learned

advocate for respondents. Perused the writ petition memo, annexures thereto, the impugned order and affidavit-in-reply filed by the respondents.

5. Learned advocate for petitioner states that though the Labour Court has held that petitioner has continuously worked for more than 240 days in 12 months, it has committed an error in answering the reference in negative. He submits that it is held by the Labour Court that petitioner has failed to prove oral termination, so also, respondents have failed to prove that petitioner has tendered the resignation. In these circumstances, the Labour Court ought to have allowed the reference. Respondents are running three schools and petitioner could have been appointed on any other sanctioned post.

6. Learned advocate for respondents supported the impugned order. He submits that initially the reference was decided *ex parte* in favour of petitioner and the respondents approached this Court by filing Writ Petition No.10911/219, which was partly allowed by directing respondents to deposit amount of Rs.1 Lakh before the Labour Court. He submits that the said amount is already withdrawn by the petitioner. She is paid Rs.60,000/- by way of compensation. He further submits that since services of the petitioner are not approved, petitioner could not be continued in

service. He submits that Labour Court has passed well reasoned order, which needs no interference in exercise of extraordinary writ jurisdiction.

7. Admittedly, petitioner was appointed by the first appointment order for a period of one year, on purely temporary basis from 20/06/2005 to 19/06/2006, subject to condition that only after approval from Zilla Parishad, she will be paid salary. Initial appointment is on the post of Assistant Cook. After completion of that tenure, second appointment was on the post of Helper for the period from 03/07/2006 to 02/07/2007, subject to the same condition. It is also clear from record that approval is not granted to the services of petitioner. Amount of Rs.60,000/- is paid to the petitioner by respondents by way of cheque, which is admitted position on record. Petitioner, however, contends that the said amount was paid by her by way of donation at the time of joining the service and respondents repaid the same after her termination from services. Whereas, respondents contend that the said amount was paid to her towards compensation.

8. From the evidence led before reference Court, it is clear that there is nothing on record to show that when petitioner was appointed initially in the year 2005, sanctioned vacant post of Assistant Cook was available. Petitioner has admitted in her cross-

examination that when she joined in the year 2005 as Assistant Cook, Smt. Sunita Rathod was working there as a Cook prior to her joining. Even before the petitioner joined on the post of Helper, one Savitribai Bidve was working as a Helper prior to the petitioner. She has also admitted that twice her name was sent for approval, but both the times her approval was rejected. Petitioner has also admitted that she has received Rs.60,000/- by cheque in August, 2007. Petitioner has admitted that she has not produced mark-list of 11th or 12th standards and the caste certificate. She has also admitted that one Anita Wagh is appointed as a Cook in junior college and she belongs to Scheduled Caste. When Anita Wagh gave interview for the post of Cook, at that time, petitioner did not give the interview for said post. Petitioner has admitted that she is getting Rs.200/- per day as labour charges for working in agricultural field and she does not go for working in agricultural field.

9. Labour Court has recorded a finding that there is no cogent evidence brought on record to prove oral termination of petitioner. So also, the resignation of petitioner is not proved by the respondents. By considering the citations relied upon by the parties, a finding is recorded that termination of petitioner falls within the ambit of exception of Section 2(oo)(bb) of the said Act and her

termination does not amount to 'retrenchment'. Therefore, respondents are not under obligation to comply with the mandatory provision of Sections 25(F), 25(G) and 25(H) of the said Act. It is further held that Savitribai Bidve's name was approved, as she belongs to 'Nhavi' caste and the post of Helper was reserved for the candidate belonging to 'Nhavi' caste. The said fact is admitted by the petitioner. Smt. Sunita Rathod, though belongs to the caste of petitioner, she is senior to the petitioner. Admittedly, petitioner did not apply for the post of Cook held by Anita Wagh.

10. Petitioner has already received amount of Rs.60,000/- by way of compensation and Rs.1 Lakh, which is withdrawn by petitioner after the order was passed by this Court in Writ Petition No.10911/219.

11. Labour Court has passed well reasoned order. There is no illegality or perversity in the order passed by the Labour Court. No case is made out by the petitioner to interfere in the order impugned in present petition in extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)