

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1649 OF 2023**

MAHESH VASANTRAO JOSHI
VERSUS

SETH NANDLAL DHOOT HOSPITAL MARATHWADA
MEDICAL RESEARCH THROUGH ITS CHAIRMAN MANAGER

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Mr. Ashok A. More, Advocate for the Petitioner.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 13th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. By this petition, the challenge is to the order dated 25.09.2018, whereby in Revision (ULP) No.01/217 the findings of the Labour Court below Exhibit-U-2 dated 17.07.2015 came to be upheld. Complaint (ULP) No.97/2014 was filed against the respondent-hospital by the petitioner who was appointed as Resident Medical Officer.

3. It is the case of the petitioner that on 30.10.2014 the services of the respondent came to be terminated without any inquiry. By interim relief, petitioner sought the relief of reinstatement. Labour Court by order dated 17.07.2015, after considering the facts of the case, *prima facie* observed that the petitioner has failed to prove that he is a workman and that the respondent is an Industry and came to a finding that there is no *prima facie* allegations or documents to show that any unfair labour practice is committed and as such rejected the application for interim relief.

4. Industrial Court in Revision proceedings has on the basis of material facts on record observed that the performance of the petitioner was not up to standard and there was disobedience by the Petitioner.

5. Learned counsel for the petitioner submits that the application for interim relief could not be decided against the petitioner by holding that the petitioner is not a workman without framing an issue in that respect. In support of his submission he relies upon the decisions in case of *N. M. Wadia Charitable Hospital Vs. Dr. Ashok Vyankatesh Apate* and *N. M. Wadia Charitable Trust Hospital Vs. Dr. Ashok Vyankatesh Apte*, reported in *2011 (6) LJSOFT 20*.

6. Considered the submissions of the petitioner.

7. The petitioner had approached the Labour Court challenging the order of termination on the ground that the same amounts to unfair labour practice. By interim application, the relief of reinstatement was sought. For the purpose of grant of interim relief, the well established principle of *prima facie* balance of convenience and irreparable loss and injury has to be considered. For proving the *prima facie* case since there was doubt as to whether the petitioner being a Doctor was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, the Labour Court after considering the judicial pronouncements came to a *prima facie* finding that the petitioner has failed to prove that he was a workman. The Appellate Court thereafter on the basis of the notices which were issued to the petitioner by the respondent-hospital has come to a *prima facie* findings that no case for interim relief has been made out by the

petitioner. I do not find any perversity in the findings of the Labour Court and Appellate Court. The only submission raised by learned Counsel for the Petitioner is that issue on the point of “workman” was required to be framed.

8. The Labour Court has observed in the impugned order that after passing the order below Exhibit-U-2 the Labour Court has framed the issue. The complaint was pending before the Trial Court for recording the evidence of the plaintiff. However, as the petitioner failed to adduce the evidence, the matter was disposed of for want of prosecution on 19.10.2019. Be that as it may. The appropriate application can be filed before the Labour Court for setting aside the order of dismissal for non-prosecution.

9. The challenge of the learned counsel for Petitioner stands resolved in view of the finding that an appropriate issue as regards the issue of “workman” has been framed. In the interim application the petitioner was seeking the relief of reinstatement, which relief is in the nature of final relief and irrespective of the fact as to whether the petitioner is a workman or not or and as to whether *prima facie* case has been made out, the relief of reinstatement which is in the nature of final relief could not have been granted at the interim stage.

10. For the reason above, I do not find any infirmity in the orders passed by the Labour Court and Industrial Court. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH)
JUDGE