

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3193 OF 2023**

Mahesh Shantaram Borkar	...	Petitioner
versus		
The Chief Executive Officer, Zilla Parishad, Ratnagiri and Anr.	...	Respondents

Mr. Siddhartha R. Ronghe, for Petitioner.
Mr. Rohit Sakhadeo for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 13 JUNE 2023

ORAL ORDER :

1. The challenge in this Petition is to the judgment and order dated 14 February 2023 passed by the learned Member, Industrial Court at Kolhapur in Revision Application (ULP) No.17 of 2021 whereby the Revision Application preferred by the Respondents came to be allowed by setting aside the judgment and order dated 14 January 2020 passed by the learned Presiding Officer, Labour Court in Complaint (ULP) No.16 of 2015 whereby a declaration was made that the Respondents had indulged in unfair labour practice under Items 1(a), 1(b), 1(d), 1(f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the termination of the Petitioner by an order dated 2 March 2015 came to be quashed and set aside with a direction to reinstate the Petitioner as a permanent driver.

2. The litigation has a checkered history. The Petitioner claims to have been appointed to the post of driver with the Respondent No.1 on 7 June 2004. The Petitioner served till the year 2006 uninterrupted. A Complaint came to be filed being Complaint (ULP) No.14 of 2016. In the meanwhile, a settlement seems to have been executed between the parties. It seems, in the wake of the controversy as to whether the Petitioner was in the service of the Respondent No.1 or was appointed through a contractor Mr. Manoj Dhavade, the Petitioner preferred Complaint (ULP) No.10 of 2012 alleging unfair labour practice by not extending the benefit of permanency.

3. By a judgment and order dated 13 March 2015, the said Complaint was disposed of by the learned Member, Industrial Court at Kolhapur on the ground of maintainability as the employer – employee relationship between the Petitioner and the Respondent No.1 was not found to be undisputed. An opportunity was granted to the Petitioner to get the said issue decided under the provisions of the Industrial Disputes Act, 1947. The aforesaid judgment and order was not assailed by the Petitioner.

4. By a communication dated 2 March 2015 addressed to the alleged contractor of the Petitioner, the services of the Petitioner were allegedly terminated. The Petitioner approached the Labour Court with a complaint of unfair labour practice under Items 1(a), 1(b), 1(d) and 1(f) of Schedule IV of the the Act, 1971. The

learned Presiding Officer, Labour Court, was persuaded to allow the Complaint returning a finding that the Petitioner had rendered services as a driver for 11 years continuously and the Respondents indulged in unfair labour practice by terminating the services of the Petitioner vide communication dated 2 March 2015. The Labour Court was of the view that the stand of the Respondents that the Petitioner was a contract employee and was appointed through Mr Manoj Dhavade, did not merit acceptance as the evidence indicated that Mr. Manoj Dhavade himself served as a driver and he was not a registered contractor. In substance, the Labour Court found that the Respondents had resorted to a camouflage to hide the real employer – employee relationship. Thus, the complaint came to be allowed with a direction to the Respondents to reinstate the Petitioner in service.

5. Being aggrieved, the Respondents carried the matter in Revision before the Industrial Court at Kolhapur. By the impugned Judgment and order dated 14 February 2023, the learned Member, Industrial Court, interfered with the order passed by the Labour Court as the finding recorded by the Industrial Court in Complaint (ULP) No.10 of 2012 that there was no undisputed employer and employee relationship had attained finality. In the face of the said finding recorded by the Industrial Court, in the opinion of the learned Member, the Labour Court could not have recorded a contrary finding and, thus, there was an apparent error of law which was required to be corrected.

6. It was submitted on behalf of the Petitioner that the learned Member, Industrial Court committed an error in interfering with the reasoned order passed by the Labour Court and, in the process, exceeded limits of revisional jurisdiction. The Industrial Court has entered into exercise of re-appreciation of evidence which is not permissible in exercise of revisional jurisdiction. The learned Counsel further submitted that the fact that the Respondents had adopted camouflage becomes evident from the documents on record and the reasons recorded by the Labour Court. Therefore, the impugned order deserves to be quashed and set aside.

7. In opposition to this, the learned Counsel for the Respondents would support the impugned order. Emphasis was laid on the fact that the order passed by the Industrial Court in Complaint (ULP) No.10 of 2012 was not challenged and, thus, attained finality. The Labour Court had not at all considered the effect of the said order and went on to record a finding which is in complete variance with the one recorded in Complaint (ULP) No.10 of 2012.

8. I have considered the rival submissions. The material on record indicates that the Petitioner was appointed as a driver in the year 2004. It seems that, in the intervening period, there had been a dispute as to whether the Petitioner was appointed by the Respondents or through a contractor. It is in the wake of the said dispute, complaints were filed. In Complaint (ULP) No.10 of 2012, the learned Member, Industrial Court was persuaded to hold that since the employer and

employee relationship was not undisputed, complaint was not maintainable.

9. Prima facie, there is material on record to indicate that the case of the Respondents that the Petitioner was appointed through Mr. Manoj Dhavade, a contractor, has to pass impediments. The Labour Court was of the view that Mr. Manoj Dhavade was not a registered contractor and was himself serving as a driver.

10. Nonetheless, the effect of the order passed by the Industrial Court in Complaint (ULP) No.10 of 2012 that there was no undisputed employer – employee relationship between the Petitioner and Respondent No.1 was not adverted to, and considered by, the Labour Court. As the said finding has attained finality, it was incumbent upon the Labour Court to consider the effect of the said order on the maintainability of the complaint. Had the Labour Court considered the effect of the said order and thereafter arrived at a finding that the complaint was still maintainable and the Petitioner was entitled to the reliefs, different considerations would have come into play.

11. In the circumstances, since non-consideration of the effect of the order passed by the Industrial Court in Complaint (ULP) No.10 of 2012 weighed with the learned Member, Industrial Court in allowing the Revision, I deem it appropriate to remit Complaint (ULP) No.16 of 2015 to the Labour Court, Ratnagiri for afresh decision after considering the effect of the order passed by the Industrial Court in Complaint (ULP) No.10 of 2012 and providing an opportunity of hearing to the

parties.

Since the parties have already led evidence, it may not be necessary to provide fresh opportunity to lead evidence and the Complaint can be decided by the Labour Court after providing an opportunity of hearing to the parties within a period of four months from the date of communication of this order.

12. In the meanwhile, the position which has been directed to be maintained by the Industrial Court by order dated 14 February 2023 and continued by this Court by an order dated 14 March 2023 shall continue to operate till the decision of the Complaint by the Labour Court.

13. The Writ Petition accordingly stands disposed.

14. It is hereby made clear that this Court has not entered into the merits of the matter on the aspect of the employer – employee relationship and the effect of the order passed by the Industrial Court in Complaint (ULP) No.10 of 2012 and the observations are confined to the determination of the Petition in the context of necessity of remitting the matter back to the Labour Court.

(N.J.JAMADAR, J.)