

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3241 OF 2023

SANTOSH
SUBHASH
KULKARNI

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KULKARNI
Date: 2023.03.17
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M/s. Rajdhani Hotel

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Aditya Aklekar, for the Petitioner.

Mr. P. P. Pujari, AGP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED : 14th MARCH, 2023

ORDER:-

1. This petition takes exception to a judgment and order dated 4th May, 2022 passed by the learned Member, Industrial Court, Pune, in Complaint (ULP) No.62 of 2019 declaring that the petitioner - respondent therein had committed unfair labour practice within the meaning of Item 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 ("the MRTU & PULP Act") and directing the respondent to allow the respondent - complainant therein to resume the duties with backwages from the date of the complaint.

2. The respondent – complainant was working as a watchman-cum-room boy with the petitioner since the year 2005. The complainant alleged that on 16th September, 2018 the

respondent restrained the complainant from resuming the duties. Thus a complaint of unfair labour practice within the meaning of Item 9 and 10 of Schedule IV of the MRTU & PULP Act was lodged.

3. The learned Member, Industrial Court, recorded the evidence of the complainant. The respondent – petitioner, herein, did not participate in the proceedings. Neither the evidence adduced by the complainant was challenged by way of cross-examination nor evidence was adduced in the rebuttal. The learned Member, Industrial Court, thus returned a finding that the employer failed to prove that the complainant abandoned the services on his own. It was concluded that the complainant's services were apparently terminated on account of the change in the management, which was no reason to restrain the complainant from resuming his duty. Petitioner was thus held to have indulged in unfair labour practice as envisaged by Item 9 of Schedule IV. Consequential relief of direction to allow the complainant to resume the duties and pay backwages was granted. Industrial Court, however, did not find any evidence in proof of unfair labour practice within the meaning of Item 10 of the Schedule IV.

4. Being aggrieved the petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Aklekar, the learned Counsel for the petitioner.

6. An endeavour was made to draw home the point that the impugned judgment and order warrants interference in exercise of writ jurisdiction. I do not find any justifiable reason to do so.

7. Evidently, the learned Member, Industrial Court, had recorded a justifiable finding based on evidence that the complainant had been working with the respondent since the year 2005 and the defence that the complainant voluntarily abandoned the services was not at all borne out by the material on record. Refusal to participate in the proceedings and adduce evidence in defence that the complainant never worked under the new management was at the peril of the respondent. In the absence of cogent evidence, it would be difficult to agree with the submission on behalf of the petitioner that the complainant left the services on his own volition.

8. In the circumstances, there is no reason to exercise extraordinary writ jurisdiction.

9. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]