

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1614 OF 2023

Maharashtra Employees' Union

...Petitioner

vs.

The Additional Principal Chief
Conservator of Forest and Another

...Respondents

Mr. Shailesh Pathak a/w. Mr. Jay Vora, Mr. T.R. Yadav, for the
Petitioner.

Mr. P.P. Pujari, AGP for the State.

CORAM : N. J. JAMADAR, J.

DATE : JULY 25, 2023

ORDER

1. Heard Mr. Shailesh Pathak, the learned counsel for the
Petitioner and Mr. P.P. Pujari, learned AGP for the respondents-
State.

2. This petition under Articles 226 and 227 of the Constitution
of India calls in question the legality, propriety and correctness of
the judgment and order dated 12th December, 2022 passed by
learned Member, Industrial Court at Mumbai in Complaint (ULP)
No. 224 of 2016 whereby the learned Judge was persuaded to
dismiss the complaint of unfair labour practice.

3. The petitioner is a trade union. The petitioner filed a

complaint on behalf of 44 employees of Sanjay Gandhi National Park Division, Borivali, (SGNP), under the control and management of the respondents. The petitioner asserted SGNP is a unit of social forestry department. The respondents are responsible for maintenance and preservation of forest, wild life protection and they also provide certain amusement and entertainment facilities.

4. Forty four employees, whom the petitioner represents have been working as a Van Majdoor, Watchman and Gardner with the respondents for years together. They have rendered more than 240 days of service in each year; year after years. Though the respondents have absorbed certain daily wage employees pursuant to Government Resolution dated 16th October, 2012 yet the employees in question have not been rendered the same dispensation. The petitioner asserted there is no difference in the nature of work performed by the employees to whom permanency benefits have been extended and the employees concerned in this complaint. Hence, the complaint of unfair labour practice under Item 1(a) of Schedule II and Items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971).

5. The respondents resisted the complaint by filing an affidavit in reply. It was denied that SGNP is an industry, within the meaning of Industrial Disputes Act, 1947. The employees concerned were appointed on purely temporary basis as daily wage workers and their services were utilized as and when work was available. The respondents contested the claim of the petitioner that 44 concerned employees have rendered 240 days of services in each of the years continuously. Thus, the claim for permanency as well as the allegations of unfair labour practice on account of denial of benefits as extended to the permanent employees were put in contest.

6. The petitioner examined two witnesses. The respondents did not adduce any evidence. After appraisal of the pleadings and evidence adduced by the complainant, the learned Member, Industrial Court was impelled to dismiss the complaint holding, inter alia, that though there was un-impeached evidence to demonstrate that the concerned employees had worked for 240 days in the previous year and satisfied one of the requirements under clause 4(c) of the Model Standing Orders, yet, in the absence of sanctioned/vacant posts, those employees were not entitled to permanency benefit. The learned Member, Industrial Court was of the view that as the complaint of unfair labour practice under Item

6 of Schedule IV was the principal grievance and the complainant failed to establish the same, the alleged unfair labour practice under Items 5 and 9 of Schedule IV also did not merit countenance.

7. Being aggrieved, the petitioner has invoked the writ jurisdiction.

8. Mr. Shailesh Pathak, the learned counsel for the petitioner submitted that the learned Member, Industrial Court non-suited the complainant and the concerned employees by simply observing that there were no sanctioned posts, without there being any evidence in support thereof. The facts that the respondents did not lead any evidence in rebuttal and even did not cross examine the complainant's witnesses, except few suggestions to Mr. Sanjay Dattu Kavle, complainant's witness No. 2, that there was no advertisement to fill up the vacancies by forest department, nor there was any criteria of qualification when he had joined the forest department, were not properly weighed by the Industrial Court.

9. In contrast, the respondents did not place on record the documents which the petitioner had sought and the learned Member recorded that for failure to produce those documents,

adverse inference was required to be drawn against the respondents and, yet, the learned Member dismissed the complaint by a single line reasoning, urged Mr. Pathak.

10. Mr. Pathak further submitted that in two complaints, being Complaint (ULP) Nos. 203 of 2003 and 295 of 2015 in respect of similarly circumstanced employees working with the respondents, the Industrial Court had declared that respondents indulged in unfair labour practice under Items 5, 6 and 9 of Schedule IV of the Act, 1971 and directed the respondents to provide to them the wages, benefits and privileges as given to the permanent daily rated employees and those employees be treated as equivalent to permanent daily rated employees. This aspect was also not at all adverted to by the Industrial Court while passing the impugned order, urged Mr. Pathak.

11. In opposition to this, Mr. Pujari learned AGP strenuously submitted that the mere fact that the concerned employees had worked for more than 240 days was, in itself, not sufficient to confer them the benefit of permanency. In view of the settled position in law that in the absence of sanctioned post, permanency cannot be claimed and granted, the learned Member, Industrial Court

committed no error in dismissing the complaint, urged Mr. Pujari. To lend support to this submission, Mr. Pujari placed reliance on a judgment of this Court in the cases of **Municipal Council Tuljapur vs. Baban Hussain Dhale (Dead) Through LRs**¹ and a Division Bench judgment of this Court in the case of **Municipal Council, Tirora and Another v s. Tulsidas Baliram Bindhade**².

12. The Division Bench of this Court in the case of **Municipal Council, Tirora** had on a reference by a learned single Judge, in view of conflicting decisions, had ruled that in the absence of vacant sanctioned posts with Municipal Council, a workman who had put in continuous service of 240 days cannot invoke clause 4-C of Model Standing Orders to claim either permanency or regularization.

13. There can be no duality of opinion on the aforesaid proposition. However, the question as to whether the sanctioned posts exist is essentially a question of fact.

14. In the case at hand, the learned Member, Industrial Court observed that on the basis of Government Resolution dated 16th October, 2014 whereunder 5089 supernumerary posts were created

1 Writ Petition No. 1843 of 20152 Dt. 26/02/2015

2 (2016) 6 Mah LJ 867.

for the temporary workers and they were made permanent, it can not be inferred that there are sanctioned and vacant posts against which the concerned employees could be accommodated and given the benefit of permanency. It was further observed that the complainant did not adduce any evidence to show that there are sanctioned and vacant posts against which the concerned employees could be accommodated.

15. The aforesaid findings are required to be appreciated in the light of the fact that no evidence was adduced by the respondents. Moreover, the respondents did not place on record the documents of which the production was sought by the complainant and the Industrial Court reckoned that for non production of those documents, an adverse inference was required to be drawn against the respondents. To add to this, the testimony of complainant's first witness went completely unchallenged. Whereas, only two suggestions, as noted above, were put to complainant's second witness. In the circumstances, where the respondents did not make any endeavour to rebut the complainant's case either by effectively cross examining or by adducing evidence, the complainant could not have been non-suited by simply observing that there were no sanctioned and vacant posts.

16. The copies of the judgment in Complaint (ULP) Nos. 203 of 2014 and 295 of 2015 (Exhibits C and D to the petition) delivered by the Industrial Court on 17th June, 2019 between the same parties where the complainant was espousing the cause of another set of similarly circumstanced employees, indicate that in those complaints, the learned Member, Industrial Court found that the denial of the wages, benefits and privileges which were given to permanent daily rated employees to the complainants therein amounted to unfair labour practice under Items 5, 6 and 9 of the Schedule IV of the Act, 1971 and directed the respondents to provide wages, benefits and privileges which are given to the permanent daily rated employees. In the impugned judgment, the learned Member, Industrial Court did not adequately consider as to whether the acts complained of by the complainant qua 44 employees would fall foul of Item 5 and 9 of Schedule IV of the Act, 1971 on the premise that the alleged unfair labour practice under Item 6 was the principal grievance and the reliefs under Items 5 and 9 overlapped with the relief under Item 6 of the Schedule IV.

17. This aspect, warrants consideration. In the face of the aforesaid judgment in respect of similarly circumstanced co-employees, the learned Member, Industrial Court ought to have

delved into the question as to whether the denial of wages, benefits and privileges which are given to permanent daily rated employees to the concerned employees amounted to unfair labour practice under Item Nos. 5 and 9 of Schedule IV and redressal was warranted.

18. I am, therefore, persuaded to hold that the aforesaid issues require a fresh determination by the Industrial Court. Hence, the petition deserves to be partly allowed.

Hence, the following order.

ORDER

- 1] The petition stands partly allowed.
- 2] The impugned judgment and order stands quashed and set aside.
- 3] The Complaint (ULP) No. 224 of 2016 stands restored to the file of learned Member, Industrial Court at Mumbai.
- 4] The learned Member, Industrial Court, is requested to decide the complaint afresh after providing an effective opportunity of hearing to the parties including an opportunity to lead the evidence, if the parties chose to.
- 5] The learned Member, Industrial Court is requested to make an endeavour to decide the complaint as expeditiously as possible on

its own merits and in accordance with law.

6] Since the protection granted by the Industrial Court vide order dated 24th January, 2023 and continued by this Court by an order dated 7th February, 2023 is in operation and the concerned employees have been in employment for years together and each of them is claimed to have been in employment for more than 10 years, the interim protection shall continue to operate till the disposal of the complaint.

7] The petition disposed.

8] No costs.

(N. J. JAMADAR, J.)