

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

WRIT PETITION NO. 3722 OF 2023

**SANTOSH
SUBHASH
KULKARNI**

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- 1 Sahitya Ratna Lokshahir Annabhau
Sathe Development Corporation Ltd.,
Mumbai, Administrative Building, 3rd
Floor, Ramkrishna Chemburkar Marg,
Chember (East), Mumbai – 400 071
Through its Managing Director
- 2 M/s. Sahitya Ratna Lokshahir
Annabhau Sathe Development
Corporation Ltd., District Office, Nashik
Dr. Babasaheb Ambedkar Samajik
Nyaya Bhavan, Near Nasardi Bridge,
Nashik-Pune Road, Nashik – 422 011

...Petitioners

Versus

Shri. Pravin Satva Telang
Age – 29 years, Occ. NIL
Panchsil Nagar, Behind Vijay – Mamta
Theater, Nashik – 422 006

...Respondent

Mr. Chandrakant Chandratre, for the Petitioner.
Mr. Avinash Jalisatgi, a/w T. R. Yadav and Divya Wadkar, for
the Respondents.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 11th JULY, 2023

PRONOUNCED ON : 4th NOVEMBER, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.
2. This petition under Articles 226 and 227 of the Constitution of India assails the legality, propriety and

correctness of the judgment and order dated 4th July, 2022 passed by the learned Member, Industrial Court, Nashik, in Revision Application (ULP) No.43 of 2021 in Complaint (ULP) No.15 of 2020, whereby the learned Member, while rejecting the revision application preferred by the petitioners, was persuaded to modify the interim order to the extent of payment of 50% of salary instead of full interim reinstatement, ordered by the learned Judge, Labour Court, Nashik.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:

(a) Petitioner No.1 is a Corporation established by the State Government to ensure Economic and Social Up-liftment of persons belonging to 13 specified castes. It has also been registered as a limited company under the Companies Act, 1956. The State Government in Social Justice Department exercises all pervasive control over the affairs of petitioner No.1. It is thus a State within the meaning of Article 12 of the Constitution of India.

(b) The respondent was initially appointed as a peon on daily wage basis under an order dated 1st December, 2012. By a further order dated 31st May, 2013 the respondent was confirmed as a regular employee and was appointed on

probation of one year. By a subsequent order dated 21st August, 2014 the respondent was declared to have satisfactorily completed the probationary period.

(c) The respondent approached the Labour Court with a complaint of unfair labour practice under Schedule IV Item 1(a), (b), (d), (f) and (g) of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 ("the Act, 1971"), with the allegations that despite the respondent having been appointed on a clear and vacant post by following the procedure, which petitioner No.1 had adopted in giving employment to all its employees, a notice was served on the respondent on 5th October, 2015 calling upon him to show cause as to why his services be not terminated. Since such notices were issued to other employees as well, a complaint of unfair labour practice, being ULP Case No.115 of 2015, was filed before the Industrial Court. During the pendency of the said complaint, on 5th May, 2016 the respondent was allegedly unlawfully suspended. As the subsistence allowance was not paid to the complainant in ULP No.430 of 2015, the learned Member, Industrial Court, passed certain interim orders. Thereupon by an order dated 10th October, 2017, suspension came to be revoked and the respondent resumed his duties at

Nashik office – petitioner No.2, on 28th August, 2017. The respondent further alleged that petitioner No.1 had served a charge-sheet on the respondent on 28th June, 2017. However, till the petitioner came to be terminated by an order dated 27th July, 2020 disciplinary proceedings were not conducted. Indeed, by the said order dated 27th July, 2020, the petitioner's services came to be terminated without adhering to the mandate of law.

(d) In the complaint, the respondent alleged that the purported claim of petitioner No.1 that the respondent came to be appointed without following regular recruitment process and it was a case of back-door entry, is a subterfuge. Since the establishment of petitioner No.1 Corporation had never resorted to and followed any recruitment process, respondent was appointed on a clear and vacant post by following the method which the petitioner No.1 adopted in the matter of appointment of employees. It was further alleged that against few of the employees, who were also allegedly appointed without following regular recruitment process, no action was taken. Moreover, even the employees, who came to be appointed subsequent to the respondent and rendered relatively less service, were also protected. The respondent, thus, alleged that discriminatory

practices were adopted by petitioner No.1. In the said complaint respondent took out an application for interim relief under Section 30(2) of the Act, 1971.

(e) The petitioners resisted the complaint and interim application by filing a written statement. The petitioners contended that the respondent was appointed by the then management of petitioner No.1 in the absence of any sanctioned post. No recruitment process as such, was followed. As a large scale fraud and mismanagement in the affairs of petitioner No.1 was noticed, an enquiry was instituted, and the said enquiry revealed that 82 employees were given back-door entry in the absence of sanctioned posts and sans any recruitment process. Respondent was one of them. Since it is a case of “public employment”, the appointment of the respondent was wholly illegal since inception. It was, therefore, not necessary for the petitioners to follow any disciplinary proceedings. Yet the respondent was given an opportunity to show cause and, thereafter, the termination order came to be passed.

(f) As regards the interim relief, the petitioners contended that the interim relief sought by the respondent was in the nature of final relief and, thus, cannot be granted during the pendency of the complaint.

(g) The learned Judge, Labour Court, after appraisal of the material on record was persuaded to grant interim relief directing the petitioners to allow the respondent to resume his duties during the pendency of the complaint. The learned Judge was of the view that the termination in question was not a simplicitor discharge but a stigmatic termination. The employer had resorted to terminate the services of the petitioner without following the due process of law and in utter disregard to the principles of natural justice. Holding that the balance of convenience lay in favour of the respondent and that the latter would suffer irreparable loss, the learned Judge repelled the challenge based on the ground that interim relief would partake the character of final relief.

(h) The petitioners carried the matter in revision before the Industrial Court. By the impugned order, the learned Member, Industrial Court, rejected the revision holding, *inter alia*, that even if the entry of the employee was not in conformity with the recruitment process, the termination must be in conformity with the procedure established by law. The learned Member, Industrial Court, also found that there was apparent discrimination as few of the employees, over whose employment also there was a cloud of doubt, like the respondent, were

spared and retained in service. The learned Member, Industrial Court, however, found it appropriate to modify the order to the extent of payment of salary, post interim reinstatement, and directed that the respondent be paid 50% of the salary.

4. Being aggrieved, the petitioners have invoked the writ jurisdiction.

5. I have heard Mr. Chandratre, the learned Counsel for the petitioners, and Mr. Jalisatgi, the learned Counsel for the respondent, at some length. The learned Counsel took the Court through the pleadings and documents on record and the impugned orders.

6. Mr. Chandratre, the learned Counsel for the petitioners, submitted that the learned Judge, Labour Court, as well as the learned Member, Industrial Court, committed a manifest error in not appreciating the substance of the matter. Incontrovertibly, according to Mr. Chandratre, the petitioner is a State within the meaning of Article 12 of the Constitution of India and the respondent was appointed without following any recruitment process. An enquiry found large scale irregularities in the administration of the affairs of the petitioner No.1 – Corporation. Since the appointment of the respondent and similarly circumstanced employees was wholly illegal and clearly

amounted to backdoor entry in breach of the constitutional imperative of equality in the matter of public employment and sans any recruitment process worth its name, the termination of the services of the respondent cannot be faulted at. The learned Judge, Labour Court and the learned Member, Industrial Court, failed to appreciate the real question that arose for consideration while granting interim relief, namely, should the illegality in appointment be perpetuated?

7. Mr. Chandratre submitted that it is well settled that illegal appointments cannot be countenanced and do not deserve any protection. Both the courts below lost sight of the fact that by directing reinstatement of the respondent by way of interim relief, an illegal order of appointment would stand revived. To bolster up this submission Mr. Chandratre placed reliance on the decisions of the Supreme Court in the cases of *State of Manipur and others vs. Y. Token Singh and others*¹ and *Arbind Kumar vs. State of Jharkhand and others*².

8. Mr. Chandratre would further submit that the impugned orders are also legally unsustainable as the reinstatement of the respondent during the pendency of the complaint, at an interim stage, has the effect of granting the final relief which the

1(2007) 2 Supreme Court Cases (L&S) 107.

2(2019) 2 Supreme Court Cases (L&S) 213.

respondent would otherwise be entitled to only upon proof of unfair labour practices. It was submitted that it is well neigh recognized that by way of interim relief reinstatement cannot be ordered as that would revive the employer – employee relationship which was brought to an end by termination. On this count, the impugned orders deserve to be interfered with. Mr. Chandratre placed reliance on a judgment of a Division Bench of this Court in the case of *State of Maharashtra and others. vs. Pandurang Sitaram Jadhav*³, wherein the Division Bench held that the provisions of Model Standing Orders by themselves cannot and do not confer any right of permanency unless and until the other prerequisites are satisfied, i.e. (i) appointment being in conformity with rules relating to appointment and (ii) permanent sanctioned vacant post being in existence.

9. Mr. Chandratre also invited the attention of the Court to an order dated 13th October, 2020 in Writ Petition (St) no.92902 of 2020 in the matter of *Amrat Rajaram Pawar and others vs. Lokshahir Annabhau Sathe Corporation Ltd. and ors.*, whereby while, admitting the petition of the similarly circumstanced terminated employees of the petitioner No.1, this Court declined to grant any interim relief observing that there was no question

3Letter Patent Appeal No.14/2008 in WP/4141/2006.

of granting of any interim relief as the employer's main contention was that the petitioners appointments were made without following due process of law. Mr. Chandratre would urge, in the event, the complaint is allowed and it is held that the petitioner indulged in unfair labour practices, appropriate order regarding reinstatement with continuity of service with backwages can be passed. However, till the termination holds the field, the Courts below were in error in ordering reinstatement, especially when the appointment of the respondent was *ex facie* illegal.

10. Mr. Jalisatgi, the learned Counsel for the respondent, countered the submissions of Mr. Chandratre by canvassing a two-fold submission. One, even though initial appointment is found to be illegal yet the employer is statutorily enjoined to follow the mandate of the provisions contained in Section 25-F and the succeeding provisions in the matter of termination of the services of the employee which amounts to retrenchment. Mr. Jalisatgi would thus urge that, in other words, even where the initial appointment can be said to be tainted with illegality, the termination of the employee cannot be illegal. To buttress this submission, Mr. Jalisatgi placed a very strong reliance on

the decision of the Supreme Court in the case of *Ajaypal Singh vs. Haryana Warehousing Corporation*⁴.

11. The second limb of the submission of Mr. Jalisatgi was that the petitioner has indulged in invidious discrimination, in the matter of action against the employees who were allegedly appointed without following recruitment process. Inviting the attention of the Court to the averments in the complaint especially as regards the nine employees against whom no action of whatsoever nature has been taken and the fact that out of 82 employees action is initiated against only 58 persons, Mr. Jalisatgi submitted that such invidious discrimination between the similarly circumstanced employees in itself furnishes a sustainable ground to grant interim relief. Mr. Jalisatgi would urge that the said allegation of discrimination have virtually gone unchallenged. To this end, Mr. Jalisatgi placed reliance on a decision of the Supreme Court in the case of *Bhartiya Seva Samaj Trust through President and another vs. Yogeshbhai Ambalal Patel and another*⁵.

12. Mr. Jalisatgi further submitted that the petitioner – Corporation had in fact appointed 200 odd employees. None of the employee was appointed by following any recruitment

⁴(2015) 6 Supreme Court Cases 321.

⁵(2012) 9 Supreme Court Cases 310.

process. Therefore, the petitioner cannot be urged to say that the appointment of the respondent was, in a sense, a backdoor entry.

13. To start with, it may be apposite to note that the character of the petitioner No.1 as an instrumentality of the State appears rather incontrovertible. The petitioner No.1 being an instrumentality of the State, the principle of “public employment” governs the appointment of the employees in the petitioner No.1 establishment.

14. It is not the case of the respondent that the respondent came to be appointed with the petitioner No.1 after following a recruitment process. On the contrary, it is the bold case of the respondent that since the year of the establishment of the petitioner No.1 – Corporation no recruitment, followed by a public advertisement, has been resorted to. The respondent was also appointed in a similar fashion under an order passed by the Managing Director dated 1st December, 2012. The respondent further claimed that on 28th September, 2012 after having learnt about the vacancy in the petitioner No.1 establishment, he had applied for the said post and after finding him suitable in all respect, he came to be appointed as a peon and subsequently confirmed.

15. In the case of *State of Karnataka vs. Umadevi*⁶, the Supreme Court enunciated that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. A distinction was drawn between illegal and irregular appointment. A mechanism to absorb the persons in service whose appointments were irregular, as distinct from illegal, was also devised. If the appointment is illegal there is no question of regularization.

16. In the case of *Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmachari Sanghathna*⁷, the Supreme Court clarified that *Umadevi* (supra) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working

6(2006) 4 SCC 1.

7(2009) 8 SCC 556.

exist. *Umadevi* (supra) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.

17. Banking upon the aforesaid enunciation of law in the case of *Casteribe* (supra) Mr. Jalisatgi would submit that the termination of the services of the respondent, even on the premise that the initial appointment was illegal, ought to have been in conformity with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. An illegal appointment *per se* does not justify an illegal termination.

18. In the case of *Ajaypal Singh* (supra) on which a strong reliance was placed on behalf of the respondent, the following question arose for determination:

Whether the validity of initial appointment of a workman can be questioned in a case in which court/tribunal has to determine whether the termination of service of the workman which comes within the meaning of “retrenchment”, is violative of Section 25-F of the Industrial Disputes Act?”

19. The aforesaid question arose before the Supreme Court in the backdrop of the following facts. The appellant therein was a workman within the meaning of 2(s) of the Industrial Disputes Act, 1947, with the Haryana Warehousing Corporation – respondent therein which was an industry within the meaning of Section 2(j) of the Act, 1947, and the appellant had completed more than 240 days of service in the preceding calander year and yet his services were terminated with effect from 1st July, 1988 without notice pay or compensation in terms of Section 25-F of the Act, 1947.

20. The aforesaid question was answered by the Supreme Court in paragraphs 21 to 24 as under:

“21. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of re-employment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

22. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms

of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

23. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal.

24. In the present case, the services of appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was not open for the High Court to deny the benefit for which the appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India.”

(emphasis supplied)

21. The aforesaid arguments found favour with the learned Member, Industrial Court. I have given anxious consideration to the proposition sought to be canvassed by Mr. Jalisatgi. I find it difficult to accede to the broad submission of Mr. Jalisatgi that *de hors* nature of initial appointment the termination must be in conformity with the mandate contained in Section 25-F of the

Act, 1956. The judgment of the Supreme Court in the case of *Ajaypal Singh* (supra), if considered in the correct perspective, cannot be said to lay down such an absolute proposition. On the contrary, it appears that in the said case, the order of retrenchment was not on the ground that the initial appointment was illegal. When the workman therein challenged the retrenchment, an endeavour was made on behalf of the State to justify the termination on the ground that the initial appointment itself was illegal. It is in that context, the Supreme Court held that, without giving any specific reason at the time of retrenchment, it was not open to the employer of public industrial establishment and undertaking to take a plea that initial appointment of such employee was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

22. In the instant case, as noted above, after the enquiry report revealed that large scale appointments were made with the petitioner No.1 Corporation without following any recruitment process, a notice was issued calling upon the respondent and the similarly circumstanced employees to show cause as to why the services of the petitioner should not be terminated. The termination order dated 27th July, 2020

records that since the initial appointment of the respondent was found wholly illegal and unconstitutional, a notice to show cause was served on respondent No.1 on 5th December, 2015 and the respondent had given an explanation thereto on 9th October, 2015. Whether the termination of the respondent was legal and valid would undoubtedly be a matter for adjudication in the complaint of unfair labour practices. However, it cannot be said that the petitioner has tried to justify the termination, which otherwise amounts to retrenchment, by subsequently asserting that the initial appointment was illegal. In fact, the very basis of initiating the action by the petitioner was the enquiry report that there were large scale illegal appointments. In a situation of the present nature, in my view, the decision of the Supreme Court in the case of *Ajaypal Singh* (supra) cannot be applied with equal force.

23. The learned Judge, Labour Court, was of the view that the termination of the respondent was stigmatic and the said order was passed without conducting disciplinary enquiry and following due process of law and thus it *prima facie* amounted to unfair labour practice. It was, *inter alia*, observed that the question as to whether the appointment of the petitioner was illegal was required to be determined by conducting a proper

departmental enquiry by appointing an independent enquiry officer.

24. The learned Judge, Labour Court, it seems, lost sight of the fact that so far as the right of the employer to justify the termination of an employee before the Industrial adjudicator, a case of “no enquiry”, by and large, stands on the same footing as that of a, “defective enquiry”.

25. In the case of *The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt) Ltd. vs. The Management and Ors.*⁸, while culling out the principles which emerged before the introduction of Section 11-A in the Industrial Disputes Act, 1947, the Supreme Court in paragraph 33 enunciated that before imposing a punishment, the employer is expected to conduct proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and to, adduce evidence before it. It is open to the employer to adduce evidence for the first time

8 (1973) 1 SCC 813.

justifying his action; and it is open to the employee to adduce evidence contra. It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

26. Secondly, the courts below did not properly appreciate that on facts, *prima facie*, there was not much dispute. In the complaint itself, the respondent-complainant asserted that on 28th September, 2012 the respondent had tendered an application to appoint him to the post of peon and after finding the him suitable, he came to be appointed by an order dated 1st December, 2012. The respondent nowhere claimed that he had participated in any recruitment process. On the contrary, it was the stand of the respondent that the petitioner never made appointment by following a recruitment process. It is in the backdrop of these uncontroverted facts, the allegations of unfair labour practices were required to be determined, for the limited purpose of grant of interim relief.

27. Under the provisions of Section 30(2) of the MRTU and PULP Act the Court/Tribunal is empowered to grant interim relief. However, it is well recognized that normally the interim

relief ought not to be the whole relief to which a party would be entitled to at the stage of final adjudication. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of *Management of Hotel Imperial and ors. vs. Hotel Workers' Union*⁹, wherein in the matter of grant of the interim relief by the Industrial Tribunal, the Supreme Court had enunciated that ordinarily interim relief should not be the whole relief that the workman would get if he succeeds finally.

28. It is equally well settled principle that where the employer - employee relationship is brought to an end by an order of termination, ordinarily, during the pendency of the complaint/reference the Court/Tribunal shall not direct the reinstatement of the terminated employee as that would amount to compelling the employer to continue to employ a person whose services have been terminated on account of the misconduct or otherwise. If at the conclusion of the proceedings, the Court finds that the employee was wrongfully terminated from the service, the Court is equipped to pass appropriate orders, including reinstatement with all consequential benefits. A profitable reference in this context can be made to the judgment of this Court in the case of *United*

9AIR 1959 SC 1342.

Ink and Varnish Co. Ltd. vs. Chandrashekhar Kuvre and others¹⁰, wherein it was observed as under:

“8. The legal position is no more res intergra that inter alia where an order of dismissal of an employee on the ground of misconduct is passed without holding the domestic enquiry, it is open to the employer to prove the misconduct in the Court. That being the legal right available with the employer, we hardly find any justification in the order of the Industrial Court directing the employer to reinstate the complainant and pay him wages during the pendency of the complaint. That order, in our view, is not justified even in exercise of the power under Section 30(2) of the MRTU and PULP Act. The order passed by the Industrial Court, if allowed to stand, would occasion in failure of justice inasmuch as despite the right having been given in law to the employer to prove the misconduct in the Court in a case where the order of dismissal was not preceded with by the domestic enquiry, such legal right would be seriously prejudiced. On the other hand, if ultimately, the employer fails to establish the misconduct and the complaint is allowed; the order of dismissal is set aside, obviously, an appropriate consequential order shall be passed by the Court.”

29. Mr. Jalisatgi submitted that the learned Member, Industrial Court, has adverted to the invidious discrimination on the part of the employer in the matter of taking action on the count of illegality in the appointments. The learned Member referred to the fact that out of 82 employees charge-sheet was served against 74 only. No action at all was initiated against nine employees. Out of 74 employees, action of termination was taken against 58 employees. Few of them were subsequently reinstated. This apparent discrimination constitutes an unfair

10 2006 SCC Online Bom 1431.

labour practice and, therefore, the impugned order does not warrant any interference, submitted Mr. Jalisatgi.

30. In the case of *Bhartiya Seva Samaj Trust* (supra) on which reliance was placed by Mr. Jalisatgi, the Supreme Court declined to grant relief to the employer despite having found that the employee was not qualified to be appointed as it was established that the employer had acted with malice towards the respondent therein and it was not merely a case of discrimination rather it was a clear case of victimisation of respondent by the employer for raising his voice against exploitation.

31. In the case at hand, the allegations of the respondent – complainant that no action has been taken against few of the employees who were junior in service to him or no action was initiated against few of the employees, appear to have not been specifically denied by the petitioners-employers. However, I find it rather difficult to persuade myself to hold that those acts or omissions on the part of the employer furnish a sustainable ground to order reinstatement of the respondent in service, by way of an interim order, when *prima facie*, the initial appointment of the petitioner was not in adherence to the principle of equality in public employment and against a

sanctioned post. The aspect of discrimination urged on behalf of the respondent complainant merits adjudication while finally deciding the complaint as there can be reasons/circumstances peculiar qua those employees. At an interim state, the said factor ought not to have been given such weight as to direct reinstatement of the respondent during the pendency of the complaint.

32. The conspectus of aforesaid consideration is that the Courts below committed an error in law in directing reinstatement of the respondent complainant in service during the pendency of the complaint, where it was not the case of the complaint that his appointment was in adherence to the principle of equality of opportunity in public employment. The impugned orders, therefore, warrant interference.

33. Hence, the following order:

: O R D E R :

- (i)** Petition stands allowed.
- (ii)** The impugned order passed by the learned Member, Industrial Court, dated 4th July, 2022 stands quashed and set aside.

- (iii) The order passed by the learned Judge, Labour Court, dated 22nd September, 2021 also stands quashed and set aside.
- (iv) The application for interim relief (Exhibit-U2) stands rejected.
- (v) The learned Judge, Labour Court, shall make an endeavour to decide the Complaint (ULP) No.16 of 2020 as expeditiously as possible and preferably within a period of nine months from today.
- (vi) It is clarified that the consideration was confined to determine the legality, propriety and correctness of the impugned orders at an interim stage and this Court should not be construed to have expressed opinion on the merits of the complaint (ULP) No.16 of 2020 and the same shall decided on its merits and in accordance with law without being influenced by any of the observations hereinabove.
- (vii) In the circumstances of the case, there shall be no order as to costs.

Rule made absolute to the aforesaid extent.

[N. J. JAMADAR, J.]