

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1580 OF 2022**

Nitin Bodhare ... Petitioner
versus
M/s. People Education Society and Ors. ... Respondents

Mr. Keval Tachak i/by Ms. Suvarna Joshi, for Petitioner.
None for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 13 MARCH 2023

P.C.

1. The challenge in this Petition is to the judgment and order dated 6 March 2020 passed by the learned Member, Industrial Court, Maharashtra, Mumbai, in Complaint (ULP) No.87 of 2013, whereby the complaint preferred by the Petitioner came to be dismissed.

2. The Petitioner was appointed at Siddharth Arts, Science and Commerce College on compassionate grounds in view of the death of his father in harness on 10 December 2004.

3. The Respondent No.1 is the Trust which runs Siddharth College. Respondent Nos.2 and 3 are the Deputy Chairman and Secretary of Respondent No.1. Whereas, Respondent No.4 is the Principal of Siddharth College.

4. Despite the Petitioner having been appointed on class IV post in the year 2005 and rendered continuous service on the said post, the Respondents have not

extended the benefit of permanency with a view to deprive the Petitioner of the status of a permanent employee and the benefits thereof. Hence, the Petitioner lodged a complaint of unfair labour practice under Section 28 read with Items 5, 6, 9 and 10 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the MRTU & PULP Act, 1971).

5. The Respondent Nos.1 and 3 resisted the complaint by filing a written statement. It was, inter alia, contended that Siddharth College is an aided institution and every appointment is subject to the approval of the Joint Director, Higher Education, Mumbai. The proposal for approval to the appointment of the Petitioner had been sent, but not granted. The Respondents had made and were making genuine efforts to obtain the approval. Hence, there was no question of unfair labour practice on the part of the Respondents.

6. After appraisal of the evidence led by the parties, the learned Member, Industrial Court was persuaded to hold that the Complainant failed to make out a case under Items 5, 9 and 10 of Schedule IV of the Act, 1971. As regards the aspect of denial of permanency, the learned Member was of the view that there was no material to show that the Respondents had intention to deprive the Complainant of the status and benefit of permanency. On the other hand, the Respondents were pursuing the proposal with the Joint Director of Higher Education, Mumbai for grant of approval to the appointment of the Complainant. Hence, no unfair labour practice within the

meaning of Item 6 of Schedule IV also was made out.

7. Being aggrieved, the Petitioner has approached this Court.

8. I have heard the learned Counsel for the Petitioner. Perused the material on record, including the impugned order.

9. From the perusal of the material on record, the finding of the Industrial Court that no case of unfair labour practice within the meaning of Items 5, 9 and 10 of Schedule IV is made out, seems impeccable. The Industrial Court, with reference to the evidence and admissions during the course of the cross-examination of the Complainant, recorded a justifiable finding that though the Complainant was called for an interview in the selection process, the Complainant could not succeed. It does not appear that there was a similarly circumstanced co-employee and favoritism or partiality was shown to the disadvantage of the Complainant. Neither there is a case of failure to implement award, settlement or agreement. Nor there is an iota of evidence to show that the Respondents indulged in act of force or violence.

10. The learned Member, Industrial Court, specifically observed that in the context of granting permanency, the Respondents had initiated steps. Proposals were submitted to the Education Department. Once, the proposal was not approved. In the year 2013 again, a proposal had been sent. In the context of these rather uncontroverted facts, the learned Member, Industrial Court, concluded that there was no material to even show remotely that there was unfair labour practice, as

contemplated under Item 6 of Schedule IV of the Act.

11. An avenue was, however, kept open for the Complainant to seek redressal in the event the Respondents failed to move the proposal for approval within one month of the dismissal of the complaint.

12. The aforesaid approach of the Industrial Court, in my view, cannot be said to be unjustifiable. There is material to show that the Complainant had participated in the selection process, but could not succeed. Evidently, even before the lodging of the complaint, the Respondents had moved a proposal for grant of approval. In any event, intent to deprive the complainant of the status and privileges of a permanent employee is singularly absent.

13. In the circumstances, no interference is warranted in exercise of extraordinary writ jurisdiction, especially in the context of the liberty granted to the Petitioner to agitate the grievance in the event of the failure of the Respondents to pursue the case for grant of approval.

14. Hence, the Petition does not deserve to be entertained.

15. The Petition stands dismissed.

(N.J.JAMADAR, J.)