

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1416 OF 2022

Rashtriya Abhiyantriki and Tantraniketan Karmachari Sangh, Nagpur

vs.

Daga Memorial Government Hospital and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R. B. Khan, Advocate for petitioner.
Mr. S. M. Ukey, Additional G.P for respondent No.1.

CORAM : ANIL S. KILOR J.

DATE : 07/02/2023

In this writ petition, the order on preliminary issue of maintainability passed by the Industrial Court No.5, Nagpur in Complaint(ULP) No. 199/2019, holding that the complaint is not maintainable as there is no direct employer-employee relationship between the respondent No.1 and the concerned employees is under challenge.

2. It is the case of the petitioner-employees that they were working in the respondent Government Hospital in the capacity of 'Attendant' or 'Safai Kamgar' since the various dates ranging from 22/04/2008 to 31/11/2015. The nature of work performed by them is of continuous and perennial in

nature. However, to deny their rightful claim and the benefits they have been time and again shown to be engaged through the contractors i.e. respondent Nos.2 and 3.

3. It is the specific case of the petitioners that they were never engaged by the contractors and therefore, to get the benefits of permanency, regularization under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act), the complaint was filed before the Industrial Court bearing Complaint(ULP) No.199/2019.

4. The respondent No.1 by filing written statement resisted the complaint and raised a preliminary objection that the complaint is not tenable for want of employer-employee relationship. It is the case of the respondent No.1 hospital that the petitioners were never appointed by them, but they were appointed by the contractors.

5. Thereupon, the Industrial Court framed a point of consideration to the effect that, whether the complaint is maintainable. After considering the oral as well as documentary evidence brought on record

by the petitioner-employees, it is held that the complaint is not maintainable as there is no employer-employee relationship between them.

6. I have heard the learned counsel for the petitioner-employees and learned AGP for the respondent No.1 Hospital. None for the respondent Nos.2 and 3 contractor.

7. From the pleadings and the oral evidence led by the petitioner-employees, it is evident that, it is the specific case of the petitioner-employees that they were appointed by the respondent No.1 Hospital and to deny their rightful claim and the benefits under the law, for permanency and regularization, the record has been created to show that, the petitioners were engaged through contractors.

8. In the cross-examination by the respondent No.1 of the witness of the complainant, Sanjivani Sanjay Bawankar, she has categorically stated that the appointment was made by oral order and no advertisement was published in news-paper, but the requirement was written on black-board.

Further the witness states that salary was paid in cash by superintendent of Daga Hospital and

not by agency or contractor. It is further denied by the witness that, the services were terminated by contractor Chaitanya Security Force.

9. Thus, from the above referred cross-examination, it can be seen that the respondent No.1 by putting questions as regards the mode of appointment and the payment of salary, has brought the said evidence on record in favour of the petitioner-employees, suggesting that they were appointed by the respondent No.1 and even the salary is paid by them.

10. No contrary evidence was brought on record by respondent No.1 by examining any witness to the effect that the respondent No.1 had engaged contractor and through the contractor the appointment of the employees were made. Further, no explanation is provided for not examining any witness to discharge its burden to prove that the employees were appointed by the contractor.

11. The learned Additional Government Pleader has placed reliance on judgment of Hon'ble Supreme Court of India in the case of ***Vividh Kamgar Sabha vs. Kalyani Steels Ltd. and another (2001) 2 SCC 381***, wherein the Hon'ble Supreme Court has

held that, if there is dispute as to whether the employees are the employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate forum that a complaint could be made under the provisions of the MRTU and PULP Act.

There is no dispute about the law laid down by the Hon'ble Supreme Court in the above referred judgment.

12. As pointed out herein above that in this case it is interesting to note that, the mode of appointment and the payment of salary, were not stated by the employees in their examination-in-chief, however, the respondent No.1 by putting questions in cross-examination to the employees brought the said evidence on record.

13. Thus, considering the oral evidence of the complainant and the fact that no witness was examined by respondent No.1, in support of its case, I am of the opinion that as the Industrial Court has committed error in ignoring the oral evidence of complainant and holding against the petitioner-employees.

14. For the reasons recorded herein above, the matter needs to be remanded back to the Industrial Court for fresh consideration including the point raised by respondent No.1 in light of the judgment of the Apex Court in the case of *Vividh Kamgar Sabha* (supra). Accordingly, I pass the following order :-

ORDER

1. The Writ Petition is partly allowed.
2. The impugned judgment and order dated 02/02/2022 on preliminary issue passed by the Industrial Court No.5, Nagpur in Complaint (ULP) No.199/2019, is hereby quashed and set aside.
3. It is directed that the Industrial Court No.5, Nagpur shall decide the preliminary issue afresh after keeping in view the observations made by this Court and after giving sufficient opportunity to both the parties **within one month** from the date of submission of copy of the order.
4. Learned counsel for the petitioner-employees undertakes not to press contempt till decision of the preliminary issue.

15. Needless to say that the learned Industrial Court shall not influence by the observations made in this order while deciding the preliminary issue afresh.

[ANIL S. KILOR J.]