

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

WRIT PETITION (WP) NO.4570 OF 2018

1. The Chief Executive Officer,
Zilla Parishad, Wardha,
Tah. and District – Wardha.
2. The District Health Officer,
Zilla Parishad, Wardha,
Tah. and District – Wardha.

**.... Petitioners
(Ori. Respondent)**

// VERSUS //

1. Ratnamala w/o Deoraoji Khobragade,
Aged about 65 years,
Occ. : Service, R/o . Samudrapur,
Tah. Samudrapur, District – Wardha,
c/o Taluka Medical Officer,
Panchayat Samiti Samudrapur,
Dist. Wardha.

**... Respondent
(Ori. Complainant)**

Shri Jayant Mokadam, Advocate for the Petitioners
Shri S.G. Zinjarde, Advocate for the respondent

**CORAM : ANIL S. KILOR, J.
DATED : 08.02.2023**

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. In this writ petition, issuance of direction to the Petitioners/Zilla Parishad to make the respondent permanent in service from the date of filing of the complaint i.e. 16.12.2009 and also to pay monetary benefits of permanency along with difference of wages, vide judgment and order dated 26.04.2017 passed by the Member, Industrial Court No.1, Nagpur, is under challenge.

4. The brief facts of the present case are as under:

The respondent filed the Complaint (ULP) NO.467 of 2009, claiming thereby that, she was appointed as 'Attendant' on daily basis in the year 1989 and since then, she is working. It is further submitted that she was subsequently posted on Primary Health Centre (PHC), Samudrapur, which is under direct control of the petitioners. Accordingly, she claimed that she is an employee of the petitioners and as she has worked continuously more than 240 days, she sought directions to make her permanent.

5. The petitioners filed a written submission and denied the fact that PHC, Samudrapur, in which the respondent was working, is under the

control of the petitioners. Accordingly, the issues were framed by the Industrial Court and after recording the oral evidence led by both the parties and on scrutinizing oral as well as documentary evidence, passed the impugned judgment and order, partly allowing the complaint of the respondent.

6. The learned counsel for the petitioners has drawn attention of this Court to the findings recorded by the Industrial Court and it is submitted that on the basis of presumption, the Industrial Court has held that PHCs are always under the control and supervision of Zilla Parishad. As such, PHC, Samudrapur is certainly under the supervision of the Petitioners. It is submitted that the said observation is the sole basis to issue directions to the petitioners to make the respondent permanent in service from the date of filing of the complaint.

7. The learned counsel for the petitioners further points out that in cross-examination, the complainant has categorically admitted that she used to receive honorarium from the State Governemnt. It is submitted that the said admission was not considered by the Industrial Court while passing the impugned order. He therefore, submits that the impugned judgment and order is erroneous and it is liable to be set aside.

8. On the other hand, the learned counsel for the respondent submits that the petitioners are not denying that the respondent is working in PHC, Samudrapur from the year 1989. Thus, considering her period of service and the nature of work which is perennial, the Industrial Court has rightly issued directions to the present petitioners to make the respondent permanent in service. He therefore, prays for dismissal of the present petition.

9. In the light of the rival submission of the respective parties, I have perused the writ petition, the documents filed along with the writ petition and the impugned judgment and order.

10. It is the case of the respondent that in the year 1989, initially she was working as attendant on daily wages under the Zilla Parishad, Wardha and subsequently, she was posted at PHC, Samudrapur. It is further case of the respondent that PHC, Samudrapur is under the direct control i.e. District Health Officer, Wardha/Petitioner No.2, who carries work at the instance of petitioner No.1/Chief Executive Officer, Zilla Parishad, Wardha and therefore, she claimed that being an employee of the Zilla Parishad, Wardha and as she has already completed more than 240 days service, she is entitled for permanency.

11. However, the respondent has not produced any evidence in support of her case that PHC, Samudrapur is under the direct control of the petitioners and she was appointed by the petitioners and she is the employee of the petitioners. On the contrary, she has admitted in her cross examination that she receives honorarium from the State Government.

12. On perusal of the impugned judgment and order, it is evident that in absence of any evidence, as regards PHC, Samudrapur is under the control and supervision of the petitioners, on the basis of presumption, the Industrial Court has held thus:

“5. ... Moreover, the Primary Health Centers are always under the control and supervision of Zilla Parishad as such the Primary Health Center Samudrapur is certainly under the control and supervision of the respondents, therefore, there is no hitch to accept that the complainant is an employee of the Zilla Parishad and has locus-standi to file the present complaint.”

13. Thus, it is clear that the above referred observations were not made by the Industrial Court on the basis of the evidence, but made purely on the basis of presumption.

14. From the impugned judgment and order, it can be seen that the Industrial Court failed to consider cross examination of the respondent

in right perspective and recorded perverse findings in the impugned judgment and order.

15. In the circumstances, considering the evidence led by both the parties and the findings recorded by the Industrial Court, I am of the opinion that, this matter needs to be remanded back to the learned Industrial court for fresh consideration. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The judgment and order dated 26.04.2017 passed by the Member Industrial Court No.1, Nagpur, is hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Member, Industrial Court No.1, Nagpur, to decide the same afresh, after hearing both the parties.

Rule accordingly, No costs.

[ANIL S. KILOR, J.]