



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.7109 OF 2014

1. Zilla Parishad, Wardha, through its
Chief Executive Officer,
Tah. & District : Wardha.
2. The Project Officer,
District Rural Development Agency,
Civil Lines, Wardha.

.... **PETITIONERS.**

// VERSUS //

1. Ku. Meena d/o. Ramchandra Deshmukh,
Aged Major, Occu. Service,
R/o. Near Maroti Mandir, Dhantoli,
Wardha.
2. Hon'ble Member, Industrial Court,
Nagpur.

.... **RESPONDENTS.**

Shri Naresh M. Kolhe, Advocate for Petitioners.
Smt.S.W.Deshpande, Advocate for Respondent No.1.
Ms Mukta Kavimandan, A.G.P. for Respondent No. 2.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 12, 2023

ORAL JUDGMENT :

1. Heard.

2. The judgment and order dated 04/01/2014 passed by the Industrial Court, Nagpur in Complaint (ULP) No.9 of 2008 declaring the petitioners that they have engaged in unfair labour practice under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred as “MRTU & PULP Act”) by not extending benefits of permanency on completion of 240 days’ service and by keeping her temporary on daily wages for years together, and thereby the directions were issued to make the complainant permanent and to extend her benefit of permanency on completion of 240 days’ service with all consequential benefits, is under challenge in this writ petition.

3. It is the case of the respondent No.1-complainant that she was appointed on 20/08/1987 as a Clerk after following due procedure and formalities required for appointment by the petitioner No.1. She was appointed on daily wages to perform permanent nature of work. She was terminated on 28/02/1990.

4. The said termination was challenged before the Labour Court by filing complaint, which came to be dismissed on 18/01/1996.

5. The said order was the subject matter of challenge before the Industrial Court. The Industrial Court has allowed the revision by directing the petitioners to reinstate the respondent No.1 with continuity of service and 50% back wages.

6. The challenge raised to the said order before this Court at the instance of the petitioner, failed. Accordingly, the complainant was reinstated in service by order dated 01/10/1999.

7. In the present matter, it is further the case of the respondent No.1 that as she completed 240 days in a calendar year, she acquired status of permanency and accordingly she filed a complaint before the Industrial Court for regularization, which came to be allowed vide impugned judgment and order. Hence, this petition.

8. I have heard the learned counsel for the respective parties.

9. Shri Kolhe, learned counsel for the petitioners, submits that the respondent No.1 was appointed as a daily wager and as there is no provision under the Rules of Zilla Parishad to grant any such benefit of regularization on completion of 240 days, the Industrial Court has

committed error in granting relief of regularization and permanency to the respondent No.1.

10. It is submitted that there is no unfair labour practice committed by the petitioners for the reason that the proposal for regularization was forwarded to the State Government, was rejected by the Government in the year 2010. It is, therefore, submitted that the finding recorded by the Industrial Court that the petitioners have engaged in unfair labour practice, is erroneous.

11. On the other hand, Smt. Deshpande, learned counsel for the respondent No.1/complainant argues that as there is no notification under Section 13-B of the Model Standing Orders, the Model Standing Orders will prevail over the Zilla Parishad Rules and as there is a provision under the Model Standing Orders to regularize the service of 240 days, the learned Industrial Court has rightly granted the said benefits.

12. It is further pointed out from the cross-examination of the witness of the petitioners that he admitted that while reinstating the respondent No.1 she was reinstated on a sanctioned post. She, therefore,

submits that the learned Industrial Court has rightly allowed the complaint.

13. The learned A.G.P. supports the impugned order.

14. In light of the rival contentions of the parties, I have perused the record and the impugned judgment and order.

15. As far as the date of appointment of the respondent No.1 is concerned, there is no dispute that she was appointed on 20/08/1987 and since then she was continuously working without break and as such completed 240 days service in each year till her termination on 28/02/1990 which was set aside by the Industrial Court and upheld by the High Court. Accordingly she was reinstated on 01/10/1999.

16. It has come in the evidence of the witness of the petitioners that when the respondent No.1 has admitted that when the employees were transferred on 30/06/2001 three posts of Class-III were vacant. He, further admits that earlier the Appointing and Disciplinary Authority was Chief Executive Officer of the Zilla Parishad, who appointed the respondent No.1. He further admits that after reinstatement till the date his evidence was recorded the work was available with the petitioners.

17. In the above referred backdrop, thus, there is no doubt that, there was a sanctioned post and the work was continuously available and after reinstatement in the year 1999 till the date of superannuation i.e. till 30/09/2018 the work was available and the respondent No.1 was continuously working.

18. The learned Industrial Court, after referring to various judgments, has recorded a finding that the petitioners have not filed copy of the notification as required under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 showing that the Recruitment, Discipline and Appeal Rules framed by the petitioners are notified under the provisions of Section 13-B of the Act of 1946.

19. In light of the said facts, the learned Industrial Court held the provisions of the Model Standing Orders will prevail over the Discipline and Appeal Rules of Zilla Parishad and the Services of the respondent No.1 will be governed by the Model Standing Orders.

20. Clause 4(C) of the Bombay Industrial Employment (Standing Orders) Rules, 1959 (Model Standing Orders) makes the respondent No.1 entitled for permanency on completion of 240 days

uninterrupted service during a period of preceding twelve calendar months and therefore, in absence of any contrary evidence that the respondent No.1 worked for 240 days continuously in every year, the Court has held that the respondent No.1 is entitled for regularization.

21. However, I find substance in the submission of the learned counsel for the petitioners that because the petitioners attempted to regularize the services of the respondent No.1 but the proposal was negated by the Government, therefore, the findings recorded by the learned Industrial Court that the petitioners are engaged in unfair labour practices by not regularizing the respondent No.1, is unwarranted.

22. The Co-ordinate Bench of this Court in the case of *Narhari Tatyaba Dawale .. Chief Executive Officer, Z.P. Jalna*, in W.P. No.4131 of 2016 decided on 17/10/2016, in similar facts and circumstances, held that such declaration by the Industrial Court is not necessary. In that view of the matter, to that extent, I am of the opinion that Clause (II) of the impugned order needs to be quashed and set aside.

23. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.

- ii) The impugned judgment and order dated 04/01/2014 passed by Industrial Court, Nagpur in Complaint (ULP) No.9 of 2008 is maintained to the extent the benefits of permanency from the date of completion of 240 days is granted with all consequential benefits. However, Clause (II) of the operative part of the order is hereby quashed and set aside.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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