



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

968 WRIT PETITION NO. 9697 OF 2023

PRATIBHA DINKAR MODHAVE
VERSUS
NAGAR PANCHAYAT PARNER THROUGH ITS CHIEF OFFICER AND OTHERS

Mr. P. V. Barde, Advocate for the petitioner
Mr. C. R. Thorat, Advocate for respondent nos.1 to 3.

CORAM : R. M. JOSHI, J.
DATE : 27th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the judgment and order dated 25/11/2019 passed by the Labour Court, Ahmednagar in Complaint (ULP) No. 10/2016, whereby the complaint came to be dismissed. Revision (ULP) No. 1/2020 filed against the said judgment also resulted into dismissal. Hence, this petition.
2. Parties are referred to as 'workman' and 'employer' for the sake of brevity.
3. Workman filed complaint under the provisions of the Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 (for short 'MRTU and PULP') alleging the workman was appointed as a Clerk with employer (erstwhile Grampanchayat with effect from 03/04/2015) she claims that she

continued to serve with the employer i.e. erstwhile Grampanchayat as well as Nagar Panchayat subsequently, till the date of her termination i.e. on 07/01/2016. She has specifically averred in the complaint that she has completed 240 days of service in a year and that her termination is illegal.

4. Employer filed written statement contending that the appointment of the workman was not in accordance with the rules and therefore, she has not acquired any right to become permanent in a service. There is, however, no dispute about the fact that she was appointed on 03/04/2015 but it is claimed in the written statement that the appointment of the workman is illegal. It is further contended in the written statement that in order to reduce the financial burden on the Municipal Council, the termination of the temporary employee was necessary.

5. While deciding Complaint (ULP) No. 10/2016, learned Labour Court recorded findings that the workman has completed 240 days of service in a year. The Labour Court, however, refused to grant relief on reinstatement on the ground that her appointment is since not in accordance with law, she is not entitled for any relief. This order is confirmed by the Industrial Court in Revision (ULP) No.1/2020.

6. The employer has not challenged the findings recorded by the Labour Court with regard to the workman having completed 240 days of service in a year. The question arose before the Labour Court is as to whether the termination of the workman by general notice dated 07/01/2016 displayed on the notice board of the Municipal Council amounts to illegal termination and therefore unfair labour practices.

7. There is no dispute with regard to the fact that the provisions of Industrial Disputes Act (for short "the Act") are applicable to the parties. Section 25F of the Act provides that there cannot be termination of service of a workman who has completed 240 days service in a year except giving one month notice to the workman or notice pay and workman has been paid at that time retrenchment compensation which is equivalent to fifteen days of average pay for every completed year of continuous service.

8. Retrenchment is defined under Section 2(oo) of the Act which reads thus:

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health”

9. The above provision clearly shows that the said definition is void enough to cover any termination effected by the employer of the service of the workman but for the exception provided therein. Undisputedly exceptions carved out in clause Nos. (a) to (c) have no application to the present case.

10. “Workman’ is defined by Section 2(s) of the Act, which reads thus;

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity,

draws wages exceeding 3[ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”

. The above provisions shows that term workman even covers an apprentice. Thus, it is clear that no distinction is drawn by legislature between temporary and permanent workman.

11. Thus, even a temporary workman who is retrenched is entitled for receive the retrenchment compensation. Needless to say that Section 25F of the Act is mandatory provision and in absence of compliance thereof the termination cannot sustain.

12. Once the Labour Court has recorded findings that the workman has completed 240 days of service, the compliance of Section 25F of the Act becomes mandatory for the employer before termination of her services. Admittedly no notice was given as contemplated by Clause (a) of Section 25F of the Act to the workman nor retrenchment compensation was paid before effecting termination of her services

13. The Labour Court has erroneously considered the case of the complainant for regularization/ permanency rather than challenge to the termination of her services. Since the issue before the Labour Court was restricted to the validity of the termination of her services, the said Court

ought to have taken into account provisions of Section 25F of the Industrial Disputes Act and to ascertain compliance thereof. In absence of compliance of the said provisions, the order of termination of services of workman cannot sustain and the same amounts to unfair labour practices under item 1(a), (b), (d) of Schedule IV of the MRTU and PULP Act. This court therefore finds substance in the challenge to the impugned judgments to this extent, as the learned Labour Court has failed to take into consideration this relevant aspect.

14. The complaint is filed for reinstatement as well as with wages at par with the regular employee. Learned counsel for the petitioner, on instructions, makes statement that the petitioner does not wish to press the relief of back wages. He, however, contends that continuity of service may be granted, as unless continuity of service is granted, even after reinstatement of workman, she will not be able to get wages as payable as of today or adequate compensation on her retrenchment, effected if any.

15. Learned counsel for the respondent opposed any such concession to be given to the workman.

16. As discussed herein above since the termination of workman is illegal and in non compliance of the provisions of Section 25F of the

Industrial Disputes Act, the same cannot sustain. As the employer has engaged into unfair labour practices, a direction is required to be issued for cessation thereof. The impugned judgment, therefore, stands set aside. Petition is allowed in following terms:

- (i) It is held that the termination of workman is contrary to provision of Section 25(F) of the Act and hence illegal and also amounts to unfair labour practices committed by Employer.
- (ii) Employer to directed to cease and desist from unfair labour practice.
- (iii) The workman is directed to be reinstated in the service with continuity of service but without back wages in the same capacity at the time of her appointment.
- (iv) Though, continuity service is granted, it is clarified that the same is granted only for the limited purpose that the workman on her reinstatement would be entitled for wages payable as of today and not for regularization/permanency.
- (v) Order of reinstatement would not preclude the employer from terminating her services by following due process of law.
- (vi) It is always open for the workman to substantiate her claim for permanency if permissible in law.

17. Petition is allowed in above terms.

(R. M. JOSHI, J.)

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