



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11608 OF 2016

THE EXECUTIVE ENGINEER, MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD.,

VERSUS

BHANUDAS SHANKAR VISAWE AND OTHERS

Mr. A. M. Gaikwad, Advocate for the petitioner

Mr. R. D. Biradar, Advocate for respondent Nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 10th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Maharashtra State Electricity Distribution Company Ltd. being aggrieved by impugned order passed by the Labour Court in Complaint (ULP) No. 59/2012 and confirmation thereof by Industrial Court in Revision Application (ULP) No. 01/2015 has preferred this petition.
3. The parties are referred to as complainants and company for the sake convenience.
4. The facts which led to the filing of this petition can be

narrated in brief as under:

(i) Complainants claim to be working with company for more than 15 years as Junior Technicians and that their appointment was made on vacant post by following due procedure. Complainant Nos. 1 and 2 belong to Scheduled Caste (for short 'SC') category whereas complainant No.3 is Scheduled Tribe (for short 'ST'). It is claimed that their appointments were for fulfillment of the backlog of SC and ST candidates under a Special Drive. Though they worked continuously for years together, their services were not confirmed on the ground that the wait list prepared by the company stood lapsed for want of vacancies of SC and ST categories. Complainants were terminated and being aggrieved by the same, Complaint (ULP) No. 59/2012 came to be filed. Company filed written statement claiming that it is not an industry nor the complainants are the workmen. The existence of employee employer relationship is also disputed. It is claimed that earlier Electricity Board was in existence and thereafter different companies were established for generation and distribution of electricity. It is claimed that the appointment of complainant was for three months only subject to sanction of head office and complainant had agreed to the same. It is further averred that since there was no sanction accorded to the post held by the complainant, they were terminated from service. It is claimed that notice was issued before termination and that the principles

of natural justice are followed.

(ii) Learned Labour court held that the complainants were appointed legally and had worked for more than 240 days in the preceding year of their termination and that the termination is illegal amounting to unfair labour practices. The Labour Court therefore granted the statement of the complainants in service but without back wages. This order was challenged before the Industrial Court in Revision Application (ULP) No. 1/2015 which came to be dismissed on 29/10/2015, hence this petition.

5. Learned counsel for the company has submitted that both Courts below have committed error in holding that the termination of the complainants is illegal. According to him there was wait list prepared of the candidates and for the reason that there was no backlog existing for the SC and ST categories, the said wait list lapsed. It is his contention that in any case in spite of fact of lapsing of the wait list, there was no right vested in favour of the complainants to seek employment on the ground of their enlistment. He drew attention of the Court to the pleadings and evidence led before the Labour Court and findings recorded by the Labour Court in order to canvass that it is a fit case for causing interference therein.

6. Perusal of the averments in the complaint and written statement clearly show that there is no dispute with regard to the fact the complainants were working with company for 15 years as Junior Technicians. Further there is no denial of the fact that they were appointed by following due procedure of law and that their names were included in a wait list. The only contention about company is that the said wait list lapsed after and therefore there was no backlog of SC and ST category and hence there was no question of giving any appointment to the complainants. The documentary evidence placed on record, however, runs contrary to the said stand taken by the company before the Labour Court. The communication addressed on 02/03/2009 by Chief Executive Engineer (Circle) Nashik to Chief General Manager has clearly stated that the wait list was to be prepared and till the wait list is exhausted, appointment may be done. It is thus clear that there was no specific time limit indicating life of the wait list. Though it is sought to be claimed that there was no backlog of the posts reserved for SC and ST candidates and those posts were not vacant at the time of preparation of wait list and for that reason they were not given order of appointments, communication (Exhibit U45), however, indicates that the intimation about there being no backlog in respect of the post of SC and ST candidate was wrong and inadvertent. It is therefore absolutely clear that there was no reason or justification for the company in order to

claim that on account of lapse of wait list, complainants were not issued order of permanency. Once this fact stands proved, order of termination of their services can not sustain.

7. The judgment passed by the learned Labour Court shows that or facts and circumstances including the factum of the appointment of complainants after following due process of law, inclusion of their names in wait list and availability of the vacant post etc., are duly considered by the said Court. The Court has also taken into account the relevant provisions of the Industrial Disputes Act in order to hold that the company is industry and the complainants are workmen. In absence of any genuine challenge to the relationship of employer and employee, Labour Court was not precluded from entertaining the complaints, in the facts of present case. This Court therefore finds no perversity in the findings, recorded by the Labour Court and confirmed by the Industrial Court, for causing any interference in exercise of writ jurisdiction. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

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