



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

930 WRIT PETITION NO. 6686 OF 2015

1. The State of Maharashtra.
2. The District Sports Officer.

...Petitioners

VERSUS

1. Babruwan s/o Dadarao Sasane,
2. Sadhu s/o Dhondiba Savant (Died)
L.Rs.
- 2a. Ranjit Sadhu Savant,
- 2b. Suresh Sashu Savant,
3. Mahamad Javed Mahamad Ayub,
4. Sanjay Sadhu Savant,
5. Shaikh Rahim Shaikh Khana (Died)
L.Rs.
- 5a. Sahikh Baby Begam Shaikh Rahim,
- 5b. Shaikh Nawaz Shaikh Rahim.

...Respondents

...
AGP for the Petitioners-State : Mr. B. A. Shinde
Advocate for Respondents No.1 to 5: Mr. R. D. Khadap
...

CORAM : R. M. JOSHI, J.

Dated : June 25, 2024

ORAL ORDER :-

1. The petitioners State of Maharashtra and District Sports Officer are challenging order passed by the Labour Court in Complaint ULP No.35/2011 whereby the complainants were directed to be reinstated in the service by quashing and setting aside their oral termination and the order passed by the learned Industrial Court in Revision ULP No.40/2013 confirming the said order.

2. The facts as they appear from the record indicate that respondents / original complainants filed Complaint ULP No.35/2011 before the Labour Court, Aurangabad alleging commission of Unfair Labour Practices by petitioners/ respondents therein. It is alleged in the said complaint that the defendants are employed by the respondents and there exist employer employee relationship between them. It is alleged that the respondents have illegally and orally terminated the services of the complainants with effect from 24/03/2009. On the basis of these averments, complaint is filed by seeking of reinstatement their services with back-wages and continuity of service with effect from 24/03/2009.

3. Respondents appeared before the Labour Court and filed written statement denying the averments in the complaint. It is specifically contended that the complainants were engaged purely on temporary basis as and when work was available. It is further claimed that they were not appointed on any sanctioned/ vacant post by following due procedure of law for giving the appointment. As far as the termination is concerned, it is claimed that there is no oral termination as claimed by the complainants, but the

complainants have voluntarily stopped from reporting for work. On the basis of these averments, learned Labour Court framed issues calling upon complainants to prove that their termination from services being illegal and amounts to Unfair Labour Practices.

4. Complainants examined Babruwan Dadarao Sasane at Exhibit U-8. He deposed on behalf of all complainants and relied upon number of documents filed along with Exhibit U-10. On the other hand, respondents adduced evidence of Nilima Suryakant Adsul, District Sports Officer, Beed.

5. Learned Labour Court after considering the evidence on record led by both sides, recorded the finding that the complainants are employees of respondents and their services are terminated with effect from 24/03/2009 orally and without following due process of law. It is specifically observed by the learned Labour Court that though it is stated in written statement that the appointment of these complainants was not against any sanctioned/ vacant posts and by following due process of law, but respondents have failed to prove this contention by leading any evidence. Considering evidence on record, the learned Labour Court allowed the complaint by

holding that the act of respondents of terminating the services of the complainants by oral order dated 24/03/2009 amounts to Unfair Labour Practices, and complainants were directed to be reinstated in services with continuity but without back-wages.

6. Being aggrieved by this order, the present petitioners took exception thereto by filing Revision ULP No.40/2013 before Industrial Court, Aurangabad, unsuccessfully. Hence this petition.

7. Learned AGP for the petitioners submits that the respondents/ original complainants do not have any right in the post in which they were working as their appointment was not against a sanctioned/ vacant post nor any due process was followed for their appointment. It is his contention that even assuming that the complainants had performed the work for continuously for more than 240 days, no right is created in their favour in the post and also to seek regularization. To support his submission he placed reliance on Judgment of the Hon'ble Supreme Court in case of ***Mahadeo Bhau Khilare (Mane and Ors. vs. State of Maharashtra and Ors, Vishnu Kapase vs. State of Maharashtra and Ors., reported in AIR 2007 SC (Supp) 1320***. He further submits that even this

Court in Writ Petition No.4651/2009 while dealing with the similar issue has held that once employment of the complainants is not by following due process of law, there is no question of their reinstatement in service by way of regularization.

8. Learned Counsel for the respondents/ complainants supported the impugned orders. It is his contention that once the complainants prove unfair labour practices on the part of the respondents, and on it being held that the termination is oral and without following due process of law, the only consequence would be to set aside such termination and direct the respondents to reinstate the complainants in service.

9. The complainants filed complaint before the Labour Court with specific averments that they are working as Security Guards/ Ground boys with effect from 01/08/1993 and they were appointed by the District Collector, Beed. It is further claimed that some of the complainants were appointed in the year 1997 as 'Safai Kamgar' by District Sports Officer. It is specifically claimed they are continuously working with the respondents on their respective posts. There is allegation that on 24/03/2009, their services were orally

terminated which is illegal termination amounts to Unfair Labour Practices committed by the respondents. Respondents filed written statement and claimed that complainants services are never terminated but the complainants voluntarily stopped reporting for work and left the work from 18/03/2009. It is also claimed that the complainants have no right to seek any employment as the post on which they claimed to have been appointed are not vacant and sanctioned posts.

10. With these averments evidence was led. The evidence led by the complainants indicate that they are working with the respondents from the date of appointment as claimed in the complaint. There is specific oral evidence of the complainant No.1 to indicate that the services of the complainant were terminated on 24/03/2009. The complainants, therefore, discharged initial burden on them to prove the act of oral termination and commission of Unfair Labour Practices by the respondents. The burden therefore shifted on the respondents to prove otherwise. As rightly recorded by the learned Labour Court from the evidence of respondents witness it is clear that there are no orders to show that the

complainants were appointed for a specific period or on specific contingency. It is also admitted by witness about there being no evidence to show that the complainants have voluntarily left the job. Question arises for consideration of the Court, as to what could be the reason for the complainants to leave the job abruptly voluntarily if they are in service of the respondents for number of years. In the light of facts and circumstances appearing from record the learned Labour Court has held that it is a case of oral termination of the complainant by the respondents. Having regard to the evidence and overall circumstances of the case, this Court finds no perversity in the said finding recorded by the Court.

11. As far as the Judgments cited by the learned AGP to substantiate his contention are concerned, perusal of the same indicates that these Judgments pertain to the case where a regularization in service was granted by the Courts. In considered view of this Court, cited Judgments would have no application to the present case as the issue of regularization was never involved here in this case. However, once it is held that the termination of a workman is illegal, the only consequence thereof could be setting

aside such illegal termination and reinstatement of complainants in the service. Such directions cannot be considered as regularization in service. This Court therefore finds it appropriate to clarify that the order of continuity of service granted by the Labour Court not to be treated regularization of complainants in the service. It is however open for the complainants to pursue the said claim of regularization in accordance with law. In the instant case, no back-wages are awarded by the learned Labour Court to the complainants and the same order of refusal of back-wages has attained finality for want of challenge.

12. For the above stated reasons, no case is made out by the petitioners to cause interference in the impugned order. In the result, petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.