



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12662 OF 2023

Munja Ramrao Chavan and Another ...Petitioners

Versus

Maharashtra Animal and Fisheries
Science University and Anr ...Respondents

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Mr. P. V. Barde, Advocate for the Petitioners.

Mr. K. P. Rodge, Advocate for the Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 03, 2024

PER COURT :

1. Petitioners take exception to order dated 11.08.2023 passed below Exh. U-2 in complaint ULP No. 20/2023 whereby learned Industrial Court, Jalna dismissed application for interim relief.

2. Parties are referred to as complainants and College for the sake of brevity.

3. The facts which led to the filing of this Petition can be narrated in brief as under:

Complainants claim themselves to be employees of Respondent No.2/College. In spite of working for

more than 240 days in each year, they claimed to have been deprived of permanency and the benefits at par with the permanent workman. With these averments, complaint ULP no. 142/2019 was filed before the Industrial Court. By judgment dated 12.02.2022, said complaint came to be allowed by holding that College has committed unfair labour practices. A direction is issued to college to consider claim of the complainant for regularization along with wages and regular monthly benefits at par with permanent employees and to send proposal of the complainants in that regard to the State Government for regularization. The said judgment came to be challenged before this Court by filing Writ Petition No. 5157/2022. This Court after hearing both sides, granted rule but the order impugned is not stayed.

4. In this backdrop, another complaint ULP no. 20/2023 came to be filed by the complainants against college alleging that since passing of the order in the complaint of unfair labour practices, the college has stopped payment of wages to complainants. Hence, it is claimed that non payment of wages amounts to unfair

labour practices being breach of service conditions. An application for interim relief was moved vide Exh. U-2. College appeared in the said complaint and filed say. The learned Industrial Court dismissed interim relief application filed by the complainants. Hence, this Petition.

5. Learned Counsel for the Complainants submit that the observations made by the learned Industrial Court while deciding the complaint ULP No. 142/2019 sufficiently show that complainants were working with college on clear vacant post and college had no right to keep them temporary for years together. It is also observed therein that the complainants were appointed by following due process of law on clear vacant post. It is submitted that at no point of time the college had raised plea that the complainants were engaged through outsourcing agency and now asking complainants to receive wages from outsourcing agency is not justified. According to him, there is no evidence to hold that complainants are engaged through such agency. He further argued that undisputedly the complainants are performing same duties as they were doing at the

time of their initial appointment as well as at time of decision of complainant ULP No. 142/2019. It is thus submitted that non payment of wages amounts to breach of service conditions and hence, unfair labour practices under Maharashtra Recognition of Trade Unions and prevention of Unfair Labor Laws Practices Act, 1971 (for short '**the Act**').

6. Learned Counsel for Respondents opposed the said contentions mainly relying upon the affidavit-in-reply filed in this proceeding. In the said reply filed by the Assistant Register of the College it is submitted that the appointment of the complainants were on contract basis for a fixed period and, therefore, they are not entitled for the permanency in the services and after expiry of the said period their services will come to an end. It is also claimed therein that the college has not issued any appointment order to the complainants and that they have been working through outsourcing agency and for this reason it is not responsibility of the college to pay them salary as claimed. He further argued that pursuant to the order passed by the learned Industrial Court in

complaint ULP No. 142/2019, a proposal was sent to the State Government for regularization of services of the complainants, however, the said proposal has been turned down and hence, there is no question of their regularization or even payment of salary at par with permanent employees.

7. Undisputedly, complainants filed complaint ULP No. 142/2019 with specific contention that they are performing duties which are permanent in nature and in spite of completion of service of 240 days in each year, they are denied regularization and benefits at par with regular employees. The said complaint is decided on merit with observations that the engagement of the complainants was against vacant post by following due process of law. It is also held that they are doing permanent nature of work and hence, direction was issued to the college to seek regularization of these complainants from the State Government. Though Writ Petition filed against the said order has been admitted but in spite of hearing both sides, this Court has not stayed the said order. It is thus clear that as of today the findings recorded by the Industrial court

in complaint ULP No. 142/2019 are binding on the parties.

8. It is pertinent to note that during the hearing of the complaint ULP No. 142/2019 it was never the case of the college that the complainants were engaged through outsourcing agency. There is no dispute about the fact that till 12.02.2022 complainants have worked and were paid wages for the said work by college and not by any agency. It is pertinent to note that even in reply filed in the complaint ULP No. 20/2023 college does not claim that the complainants are appointed through outsourcing agency but a specific plea is raised in paragraph 2 of the reply, which reads thus:

2. The Respondent is fairly say and give their proposal to complainant that till the Final Judgment of Hon'ble High Court or Sanction from the State Government is come, the respondent will pay the payment as per the wages paid to the workers which are appointed from out sourcing. As soon as the Judgment from High Court or sanction from State Government approval came they are entitled to get the difference amount of wages. But the complainant/Applicant refused to accept that proposal. The Respondent act as a Model employer after rejection of Exh-U-2 in main complaint ULP

142/2019, and also the tenure is completed as per their appointment still they continued them as per the principle of les pendency.

9. This reply of college clearly shows that at no point of time it was the case of the college that the complainants are engaged through outsourcing agency. What has been contended is that the college would pay the wages as per wages payable to outsourcing agency meaning thereby that wages at par with the workman of outsourcing agency and not through agency. In spite of such specific stand in the reply, now it is sought to be claimed that the complainants are engaged through outsourcing agency and that no appointment are issued by the college. Since no such plea was raised before the Industrial Court, this Court has no hesitation to record that the reply filed by the college before this Court is an outcome of afterthought. Apart from this, there is no iota of evidence even to *prima facie* hold that the complainants were appointed/engaged by outsourcing agency. In such circumstances, question of they being paid wages by outsourcing agency does not arise.

10. There is no dispute about the fact that the complainants are performing same duties as earlier. Admittedly till 12.02.2022 they were paid wages by college though not at par with the regular employees. Thus, *prima facie* the service condition of the complainants as it existed as on 12.02.2022 is sought to be altered adversely without following due process fo law. *Prima facie* such act of Employer, therefore, amounts to unfair labour practices as contemplated by item 9 of Schedule IV of the Act.

11. Learned Industrial Court has failed to take into consideration the above relevant and undisputed facts and drew wrong conclusions that the complainants are refusing to accept the wages. If the statement of Respondents is considered that the Respondents never offered the wages to the complainants and hence, Industrial Court was not justified in making such observations that it is complainants who are not accepting the wages though the wages that are offered by the College.

12. The Act aims at preventing unfair labour practices and once *prima facie* case is made out by the

complainants that unfair labour practices are committed by the college, it was obligatory on the part of the Industrial Court to direct the college to cease and desist from such unfair labour practices temporarily during the pendency of the complaint. This Court, therefore, finds no reason to uphold the impugned order. Hence, impugned order passed below Exh. U-2 in complaint ULP No. 20/2023 stands set aside.

13. Since *prima facie* material on record indicates that the complainants were paid wages by college as on 12.02.2022, and as it is not open for the college to change service conditions of the complainants adversely without following due process of law, it must be held that the college is responsible and liable to make payment of service at par with the wages paid as on 12.02.2022. It is clarified that this order is passed by way of interim arrangement and does not affect right of complainants in any manner whatsoever to claim wages in consequence of decision in Complaint ULP No. 142/2019 including arrears, if any.

14. At this stage, learned Counsel for college seeks reasonable time to make payment of wages to

complainants. In view of this request and considering the fact that for payment of wages administrative approvals are required, the wages be paid to the complainants within six weeks from today.

15. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

Malani