

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1515 OF 2024

Daulat Panipurvatha Sahakari Sanstha
Maryadit Malhar Peth Through Its
Chairman and Anr. ... Petitioners
V/s.
Hanmant Ramchandra Gaikwad ... Respondent

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**WITH
WRIT PETITION NO.1516 OF 2024**

Daulat Panipuravatha Sahakari Sanstha
Maryadit Malhar Peth Through Its
Chairman and Anr. ... Petitioners
V/s.
Bharat Ganpati Panaskar ... Respondent

Mr. Kalpesh U. Patil, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 8, 2024

P.C.:

1. Both the petitions arises out of judgment rendered by Labour Court Satara granting relief of reinstatement along with the continuity of service of consequential benefits from the date of termination.

2. Respondent No.1 in reference No.4 of 2013, was appointed on 1st January 1984 as Patkari. According to respondent No.1,

despite clean and unblemished service, he was orally terminated on 13th August 2010 as he was, therefore, approached Labour Officer who sent the reference on 13th August 2012 before the Industrial Court in reference No.4 of 2013. Respondent No.1 was appointed on 23rd December 1985 as Patkari. In both cases, reference was sent on 13th August 2012.

3. According to respondent No.1, they worked for more than 240 days and without following provisions of Section 25(F) of the Industrial Disputes Act, 1947 and the issuance of charges or holding inquiry, their services were terminated, in breach of principle of natural justice without considering prayer for reinstatement to their original post with continuity and full back-wages along with consequential benefits.

4. The petitioners filed written statement and raised defense of petitioners not being an industry. According to the petitioners, the Respondent No.1, failed to remain present and on the charge of unauthorized absence his services were terminated. Due to such unauthorized absence, the petitioners' work hampered resulting in financial loss. Therefore, decision was taken in general body meeting of 13th August 2010.

5. The Labour Court based on pleadings framed necessary issues including issue as to whether the petitioners are industry within the meaning of Section 2(J) of the Industrial Disputes Act, 1947. The Labour Court based on material on record, recorded a finding that considering the nature of respondent Nos.1's work, they are workmen within the meaning of Section 2(J) of the

Industrial Disputes Act, 1947. There is no serious challenge to the said finding.

6. The Labour Court, thereafter, relied on the judgment of Apex Court in the case of **Banglore Water Supply and Sewerage Board Vs. A. Rajappa**; reported in 1978 II L. 73 (S.C.) recorded a finding that the petitioner is an industry within the meaning of Section 2(J). According to the petitioners it being a society registered under the Maharashtra Co-operative Societies Act, 1960 working for the benefit of its members on “no profit” basis and, therefore, it cannot be termed as ‘industry’. However absence of profit is not a sole factor for deciding the status of the employer as ‘industry’. It is not in dispute that the petitioners provide services to its members of supply of the water. The bye laws of the society permits petitioner to collect charges for such service. The nature of work performed by the petitioner requires utilizing services of skilled or unskilled persons and, therefore, no fault can be found with the findings recorded by the Industrial Court. The petitioner cooperative society is an industry within the meaning of Section 2(J) of the Industrial Disputes Act, 1947.

7. Learned counsel for the petitioner submitted that considering the financial capacity and position of the petitioners which is running into losses, the order of payment of full back-wages was not justified. At this stage, it needs to be noted that the respondent No.1 worked with the petitioner from 1984 till 2007 i.e. the date of termination. They were appointed on a permanent post. Their services were terminated without serving charges or without holding inquiry. No evidence was laid down before the

Labour Court to justify the termination. The respondent No.1 pleaded in their claim and stated before the Labour Court on oath that they were not in gainful employment after termination. Therefore, it was for the employer to place on record the material for absolving them from the payment of back-wages. Weak financial position is the relevant factor. However, material to support such contention needed to be placed before the Labour Court. It is not in dispute that the materials to show that the petitioner is incurring losses have not been placed before the Labour Court. Therefore, no fault can be found with the direction of the Labour Court to reinstate respondent No.1 with full back-wages and consequential benefit does not suffer from any legal infirmity.

8. There is no compelling reason to interfere with the impugned order under writ jurisdiction.

9. Hence, both the writ petitions are dismissed. No costs.

(AMIT BORKAR, J.)