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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10338 OF 2012

1. Zilla Parishad, Ahmednagar PETITIONERS
Through Chief Executive Officer,
2. District Health Officer,
Zilla Parishad, Ahmednagar
3. Block Development Officer (Higher Grade)
Panchayat Samiti, Karjat
4. Medical Officer,
Primary Health Center,
Chapadgaon, Taluka - Karjat
District - Ahmednagar

VERSUS

Anand Gulab Suryawanshi RESPONDENT
R/o Chande Khurd
Post Chande Budruk, Taluka - Karjat
District - Ahmednagar

.....
Mr. Ameya N. Sabnis, Advocate for the Petitioners
Mr. P. B. Shirsath, Advocate for Respondent
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[CORAM : MANJUSHA DESHPANDE, J.]

RESERVED ON : 15th JANUARY, 2025
PRONOUNCED ON : 19th MARCH, 2025

JUDGMENT:

1. Petitioner No.1 is Zilla Parishad, Ahmednagar and
Petitioners No.2 to 4 are the authorities working under the
control of the Zilla Parishad, Ahmednagar.
2. The Petitioners have challenged Judgment and Order dated

2nd November, 2012 passed by Member, Industrial Court, Ahmednagar in Compliant ULP No. 64 of 2011.

3. Case of the Petitioners is that, the Government of Maharashtra had issued Government Resolution dated 16th January, 2003, sanctioning staffing pattern for Primary Health Centers i.e. 14 posts for Primary Centers in Tribal area and 13 posts of Primary Centers in Non Tribal. It is directed in the said Government Resolution that, the posts of Drivers, Watchmen and Sweepers, should be filled in on contract basis. Petitioner No.2 - District Health Officer was initially directed, by order dated 4th January, 2010, to make appointments of drivers on contract basis in the Primary Health Centers through Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit. Thereafter, the Respondent came to be appointed as driver through the Agency which was appointed by the Petitioners to provide drivers on contract basis. Though the Respondent was appointed through Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit, during the intervening period, there was change in the agency and a new agency Samarth Sai Enterprises was appointed to provide drivers on contract basis. Even the new agency continued the Respondent on their roll. Accordingly, the Respondent was allowed to work on the same terms and conditions. The tender of the new agency was cancelled,

therefore, in view of the cancellation of the tender, the Respondent was relieved from service by order dated 9th November, 2011.

4. Being aggrieved by the order of relieving, the Respondent Filed Compliant (ULP) No. 64 of 2011 in the Industrial Court, Ahmednagar for alleged commission of unfair labour practice under items, 5, 6, 9 and 10 of Schedule IV of the MRTU and PULP Act. The Petitioners caused their appearance in the Complaint and filed their detailed written statement, denying the averments made by the Respondent. It is the specific stand of the Petitioners that since the tender of the agency, namely Samarth Sai Enterprises was cancelled, as a consequence, appointment of the Respondent who was engaged as Driver through the agency came to be automatically terminated. The Agency filed Regular Civil Suit No. 1 of 2012 in the Court of Civil Judge, Junior Division, Ahmednagar with a relief of continuation of contract. The Civil Judge, Junior Division, directed to continue the contract till 31st March, 2012, hence the services of the Respondent were continued.

5. After filing of Written Statement by the Petitioners, issues were framed by the Industrial Court. After leading of evidence by both the parties, the Industrial Court recorded a finding that the

Complainant having worked for more than 240 days in the year 2010 and 2011, has acquired status of permanent employee, by virtue of provisions of the Act. It is, therefore, held by the Industrial Court that the Respondent is entitled for permanency. It is held that the Petitioners, by continuing the Respondent as temporary employee for last three years, have indulged in unfair labour practice under item 9 of Schedule IV of the Act. Though the employer - employee relationship itself was denied by the Petitioners, the objection of the Petitioners was held to be not maintainable and the Respondent was granted benefit of permanency from 1st November, 2011 and it is declared that, the Petitioners should cease and desist from continuing to engage in unfair labour practice, vide order dated 2nd November, 2012, which is challenged in the present Writ Petition.

6. According to the Petitioners, the Industrial Court has not appreciated the documents, that were placed on record. Though the Petitioners had placed on record various documents in support of their stand that, the Respondent is a contractual employee appointed by the agency, the Member, Industrial Court has failed to give proper weightage to it. Considering that, there was no employer - employee relationship between the Respondent and the Petitioners, the Complaint was not maintainable.

7. It is urged by the learned Advocate for the Petitioners that, when the employer is a Government undertaking, it is necessary to prove that there was sanction post available, and it is filled in accordance with the Recruitment Rules. Mere completion of 240 days in a calendar year does not entitle an employee to claim permanency benefits. He relies on communication dated 4th January, 2010 addressed to the Chairman, Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit, whereby it was directed to the said society that new ambulances have been made available by the Deputy Director of Health Services, Pune and, therefore, the society should immediately make appointment of drivers on contract basis. The society was directed to submit report accordingly to the District Health Officer. Names of Talukas along with list of Primary Health Centers wherein appointments of contractual drivers were directed to be made is annexed to the communication.

8. As per the contention of the Petitioners, contract of Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit was terminated and thereafter it was given to Siddhesh Enterprises, who continued the services of the Respondent. Petitioners have placed on record two communications to support their stand that, the Respondent is a driver on contract

basis. A communication dated 28th May, 2010 addressed to Medical Officer, Primary Health Center, Chapadgaon by Siddhesh Enterprises, requesting to allow the Respondent to join duty as driver at Chapadgaon Primary Health Center, in view of allotment of contract for providing drivers on contract basis. The other communication is dated 8th June, 2011, issued by Samarth Sai Enterprises to Medical Officer, Chapadgaon, wherein request was made to allow the Respondent to join as driver, since their agency was awarded contract for providing drivers on ambulances on contract basis for a period of one year.

9. It is contended by the learned Advocate for the Petitioners that, the tender issued in favour of Samarth Sai Enterprises was cancelled and in view of cancellation of tender, services of the Petitioners were also brought to an end by order dated 9th November, 2011.

10. The Respondent immediately approached the Industrial Court and was successful in securing *status quo* order from the Industrial Court, which eventually culminated into the order of the Industrial Court allowing the Complaint filed by the Respondent.

11. Learned Advocate for the Petitioners submits that, it was their categorical stand before the Industrial Court that, the State

of Maharashtra has issued a Government Resolution with approved strength of 14 employees for Primary Health Centers in Tribal areas and 13 employees in non Tribal areas. In view of sanctioned staffing pattern, advertisement was issued calling tenders from interested agencies, for supply of contractual employees. The Respondent has been appointed on contract basis through one such agency. He was assigned duty attached to Medical Officer, Karjat, who subsequently provided work to the Respondent at Primary Health Center, Chapadgaon.

12. Learned Advocate for the Petitioners submits that, during cross examination of the Respondent, he has admitted that he has not been appointed either by the Chief Executive Officer or by the District Health Officer. This itself supports the case of the Petitioners that, the Respondent was appointed through agencies, to which work of supplying contractual drivers was allotted.

13. In the affidavit of examination in chief, the District Health Officer has categorically stated that there is no Employer - Employee relationship between the Petitioners and the Respondent. Services of the Respondent had been availed for a particular period, as per the policy decision of the State Government and the Respondent is appointed by the contractor.

It is also stated by him that the Respondent was appointed at the Primary Health Center, Chapadgaon. A request was made that the father of Respondent, who is also working as Driver at Mirajgaon should be granted deputation at Primary Health Center, Chapadgaon. Accordingly, the Block Development Officer, Panchayat Samiti, Karjat had issued an order deputing father of the Respondent at Chapadgaon from Primary Health Center, Mirajgaon. Though the Respondent was sent on deputation in place of his father, he continued to draw salary from Primary Health Center, Chapadgaon. It is clarified by the District Health Officer that usually such deputations are rare, but as an exceptional case, on the request of father of the Respondent, on humanitarian ground, he was deputed by making workable mutual arrangement between father and son. This arrangement cannot be relied to draw adverse inference against the Petitioners.

14. Learned Advocate for the Petitioners further relied on the Government Resolution dated 16th January, 2003, wherein the staffing pattern has been approved for the Primary Health Centers, within the State of Maharashtra. Learned Advocate for the Petitioners relies on the note, given in the Annexure "B" to the said GR, which stipulates that services of Security Guards, Drivers and Sweepers were to be made only on contract basis.

He further relies on the Annexure "C" to the said GR. A note to Annexure - C shows that the post of the driver should be made available to the Primary Health Center on contract basis. He has also placed on record the format of public notice containing terms and conditions for providing drivers on contract basis.

15. In an endeavour to support the stand that, posts of the drivers have been filled in on contract basis since 2003 onwards, the petitioners have relied on various documents, that are placed on record. One such tender notice dated 30th July, 2008, calling upon interested agencies to provide services of drivers on contract basis, is placed on record.

16. Per contra, learned Advocate Shri P. B. Shirsath, appearing for the Respondent contends that, the Petitioners are adopting a stand that the Respondent was appointed on contract basis, in order to defeat the claim of the Respondent. In fact the Petitioners - Zilla Parishad, had undertaken process of recruitment of driver for ambulance at Primary Health Center at Chapadgaon, Taluka - Karjat and since the Respondent was eligible to be appointed as a driver and was holding necessary qualifications along with driving licence, he was appointed by following due procedure of recruitment, by the Medical Officer, Primary Health Center, Chapadgoan on 6th January, 2010.

Accordingly, he joined services as ambulance driver at Primary Health Center, Chapadgaon. Therefore, it is undisputed that the Respondent was appointed on clear vacant and sanctioned post of driver in the employment of Zilla Parishad and his appointment is not through contractor, as claimed by the Petitioners.

17. According to him, there is established relationship of employer - employee between the Respondent and the Zilla Parishad. The Respondent has discharged duty with Zilla Parishad and had drawn salary through Medical Officer, Primary Health Center, Chapadgaon. He has also signed muster roll maintained at the Primary Health Center. This itself is sufficient to establish that the Respondent had been appointed on the post of driver, by following due procedure of law. He has worked continuously and regularly on the post of driver, a certificate has been issued by the Medical Officer, Primary Health Center, Chapadgaon certifying that, the Respondent had discharged duty as driver since 7th January, 2010 to 21st January, 2011.

18. More importantly, salary of the Respondent is paid by the Medical Officer, Primary Health Center, Chapadgaon from Account No. 1345. Thus, the Respondent has received salary from Regular Bank Account, which is maintained for

disbursement of salary of the regular Zilla Parishad employees. Reliance is also placed on the extracts of pay bills maintained for the entire period for which he has worked with the Petitioners. According to him, Rs.175/- per month had been deducted from his salary towards Professional Tax, which is disclosed in the pay bills, which also supports the stand of the Respondent that he was permanent Zilla Parishad employee.

19. It is contended that the witness of the Zilla Parishad Dr. K. R. Kharat has categorically deposed that, the Respondent had been appointed by order dated 6th January, 2010, by the Medical Officer, Primary Health Center, Chapadgaon and accordingly he joined on 7th January, 2010, by submitting joining report. He further relies on the admission given by the District Health Officer, in his cross-examination, that there is no documentary evidence to show that the Respondent was appointed through contractor. Therefore, from the admission given by the District Health Officer himself, it can be gathered that the Respondent had been appointed by the Zilla Parishad and not through contractor. Learned Advocate for the Respondent relies on a communication issued by the Medical Officer, Primary Health Center, Chapadgaon dated 6th January, 2010, wherein it is directed that the Respondent should join duty at Chapadgaon on the new ambulance No. MH-16-T-208, which is provided by the

Government. According to him, this itself is his appointment order, which cannot be denied by the Petitioners.

20. Learned Advocate for the Respondent submits that, the Respondent was also sent on deputation at Mirajgaon, by the Block Development Officer, vide order dated 26th June, 2011. Learned Advocate for the Respondent drawn my attention to pay bills of June, 2011 to February, 2012, in support of his claim that, the Respondent was paid by Zilla Parishad and not by the Contractor. Therefore, the Respondent is employee of the Zilla Parishad. Learned Advocate for the Respondent also relies on the admission given by the District Health Officer Dr. Kharat who has admitted that, the respondent had been issued appointment order vide document at Exhibit-U-6-1 and the Respondent was holding necessary documents like driving licence and fitness certificate. It is also admitted by Dr. Kharat that the Respondent is paid from the same account code i.e. 08201, which is maintained for disbursement of salary of regular Zilla Parishad employees.

21. According to learned Advocate for the Respondent, it is proved before the Industrial Court that, the Respondent was appointed on 6th January, 2010 on sanctioned vacant post; his services were required 24/7 and 365 days; record also discloses

that the Petitioners had started recruiting drivers from 8th June, 2011, while the Respondent had been appointed vide appointment order dated 6th January, 2010. It is further contended that the documents, that have been referred by the Medical Officer in his examination in chief, have not been placed on record nor were they exhibited. Therefore, reliance cannot be placed on those documents, which have neither been proved nor exhibited.

22. Learned Advocate for the Respondent placed reliance on various judgments, in support of his claim. In ***“U. P. Electricity Board V/s Pooran Chandra Pandey and Others” 2007 AIR SCW 6904*** and ***“Madhavsing Shivsing Bainade V/s State of Maharashtra and Others” 2023 (3) ALL MR 305*** which pertain to regularization, invoking Articles 14, 16 and 226 of the Constitution of India. Relying on the judgment in case of ***“State of Karnataka and others V/s Uma Devi (3) and Others (2006) 4 SCC 1*** the appeal filed by the UP Electricity Board against grant of regularization has been dismissed. The judgments relied on are not under the provisions of the MRTU and PULP Act, and, therefore, the judgments relied on by the learned Advocate for the Respondent are not applicable to be facts of the present case. Similarly, the judgments in the cases of ***“G. M. O.N.G.C. Shilchar V/s O. N. G. C. Contractual***

Workers Union” 2008 AIR SCW 3996; Ajay Pal Singh V/s Haryana Warehousing Corporation” (2015) SCC 321; are arising out of the provisions of the Industrial Disputes Act against retrenchment of workmen and, therefore, even the said judgments are not applicable to the facts of the present case. In ***“Jaggo V/s Union of India and Others” 2024 SCC OnLine SC 3826***, the Appellants therein had initially filed Original Application before the Central Administrative Tribunal and thereafter approached the High Court seeking relief of regularization of services. Hence, even this judgment will not be applicable to the facts of the present case. In the present case, the question is purely based on existence of Employer-Employee relationship, which is denied by the Petitioners. In the decisions which are relied on by the Respondent, provisions of MRTU and PULP Act are not invoked. Similarly, the issue whether there exists Employer-Employee relationship did not fall for consideration of the respective Courts in the cited judgments supra. Hence, the decisions relied upon by the learned Advocate for the Respondent are not applicable to the facts of the present case.

23. After hearing the parties and after going through the impugned judgment passed by the Industrial Court, along with record, this Court is required to decide whether there is any error

in the order dated 2nd November, 2012 passed by the Member, Industrial Court.

24. The first question that arises for consideration before this Court is that, *“whether the Industrial Court had jurisdiction to decide the Complaint filed by the Respondent under section 28 of the MRTU and PULP Act, when the Petitioners have denied Employer-Employee relationship?”*

25. According to the Petitioners, the Respondent was engaged through Contractor, as per the policy decision of the State Government vide GR dated 16th January, 2003, sanctioning staffing pattern for the Primary Health Centers, with further direction to fill in the posts of Drivers, Watchmen and Sweepers, on contract basis. Accordingly, the Respondent was appointed through Contractor, therefore, there was no existence of Employer-Employee relationship between the Petitioners and the Respondent. Though issue was framed by the Industrial Court as to whether the Complaint is maintainable, in view of denial of Employer-Employee relationship between the parties, the issue has been answered in affirmative by the Industrial Court.

26. In catena of decisions, it is held by this Court as well as by the Supreme Court that, unless Employer-Employee relationship is established, dispute under the MRTU and PULP Act is not

maintainable. It is held that, unless there is established Employer-Employee relationship, the Industrial Court cannot pass an order of declaration of unfair labour practice. Where an elaborate exercise is required to be undertaken on the basis of evidence adduced for establishing Employer-Employee relationship, such exercise is not permissible while exercising powers under the MRTU and PULP Act.

27. In ***“Sarva Shramik Sangh V/s Indian Smelting and Refining Co. Ltd., and Othes” 2003 AIR SCW 5989***, the Apex Court has held that, the workmen have to establish that, they are workmen of Respondent Company before they can file any complaint under the Act. It is open for the workmen to raise appropriate Industrial Dispute in that behalf, if they are entitled to do so before they invoke the provisions of the MRTU and PULP Act.

28. In response to the Complaint, the Petitioners have specifically averred that, there is no Employer-Employee relationship between the Petitioners and the Respondent and the Respondent has been appointed for a particular period on contract basis, as per the policy decision of the State Government, through a contractor, therefore, the Complaint is beyond jurisdiction of the Industrial Court. In view of the

objection raised by the Petitioners, issue had been framed by the Industrial Court – “whether the Complaint is maintainable”. This issue itself creates doubt, about the existence of Employer-Employee relationship between the parties.

29. Similar question fell for consideration of this Court in **“Asia Foundation and Construction V/s Engineering Kamgar Sanghatana” 2016 (2) Mh.L.J. 406**, wherein, this Court, after relying on the judgments in *“Cipla Ltd V/s Maharashtra General Kamgar Union” (2001) 2 SCC 381*; *“Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd., and Others” 2003 AIR SCW 5989*; *“Vividh Kamgar V/s Salyani Steels” AIR 2001 SC 1534*; *“General Labour Union Bombay V/s Ahmadabad Mfg and Calico Printing Company Ltd., “ (1995) 2 Lab IC 765 etc.*, has taken a view that, when the Court has specifically framed an issue whether the workers on whose behalf the complaint was filed, were the workers of respondents or not? This indicates that the Court itself was doubtful about existence of Employer-Employee relationship hence such issue was required to be framed.

30. In **“Asia Foundation and Construction** (supra), this Court has held that, it is not permissible for the Industrial Court to probe into the existence of Employer-Employee relationship, after examining the entire evidence to come to a conclusion about existence of Employer-Employee relationship between the parties. It is observed by this Court that, the said exercise is not

permissible while entertaining Complaint under section 30 of the Act of 1971. Eventually, the Appeal was allowed by setting aside the order of the Single Judge as well as of the Industrial Court, by holding that the Industrial Court as well as the Single Judge have erred in going into the question as to whether the employees were in fact employees of appellant. It is held that, such exercise is not permissible in complaint under section 30 of the Act of 1971,

31. Since, the very first issue, that was framed by the Industrial Court was, whether the Complaint is maintainable? In view of the issues framed, the objection to the jurisdiction raised by the Petitioners stands substantiated. While answering the issue, the Industrial Court has gone into and relied on the evidence, which was adduced in support of the existence of Employer-Employee relationship and has recorded a finding that the stand taken by the Petitioners about employment of the Complainant, through contractor, appears to be doubtful, and it is just to create a paper arrangement, itself amounts to exceeding the jurisdiction under the MRTU and PULP Act.

32. The Member, Industrial Court has observed that, when appointment of the Respondent is from January, 2010, there are no documents placed on record by the Petitioners in support of

their claim that, the appointment of Respondent is on contract, during that period. The copies of contract, placed on record, pertain to subsequent period. The Industrial Court has relied on the documents below Exhibits-U-6, U-8, U-9 and U-11 and Exhibits-C-11, C-13 and C-16, to arrive at the conclusion that, the Complainant is in fact employee of the Zilla Parishad, who has completed 240 days in a calender year. Hence, he was awarded status of permanent employee. It is also declared that, by keeping the Complainant temporary for the last three years, the Petitioners have indulged in unfair labour practice.

33. Though in the cross-examination the Respondent has admitted that, he has not been issued any order of appointment either by the Chief Executive Officer or by the District Health Officer, merely, relying on the communication requiring the Respondent to join duty as ambulance driver, referring to the communication under reference, the Industrial Court has presumed it to be an appointment order, when in fact, in the cross examination itself, the Respondent has accepted that he has not been issued any appointment order.

34. Reliance is also placed on the communication dated 26th May, 2010 issued by the Medical Officer, Primary Health Center, Chapadgaon, addressed to the District Health Officer, seeking

guidance under which 'head' the remuneration payable to the Respondent is to be drawn. In response to the communication, the District Health Officer has informed the Block Development Officer, on 2nd July, 2010 that remuneration of the Respondent is to be paid under the account code 08201.

35. Though reliance is placed on this communication by the Member, Industrial Court, to draw a conclusion in support of the contention of the Respondent that, salary of the regular employees of the Zilla Parishad, is also paid under the account code 08201, therefore, the Respondent is also regular employee of the Zilla Parishad, however, rest of the contents of the very communication are totally ignored by the Industrial Court.

36. In the very communication, it is stated that the Respondent is working as ambulance driver at the Primary Health Center, through the Contractor Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit; he has been appointed on consolidated remuneration of Rs.2950; he has joined his duty on 7th January, 2010; he should be paid under the ZP Code 08201. The contents of this document itself are sufficient and conclusive to hold that, the Respondent is appointed through Contractor.

37. In addition to the above referred document, the communication dated 4th January, 2010 addressed to the

Chairman Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit, Ahmednagar directing to provide Ambulance Drivers on contract basis and submit compliance report is also very much part of record. The communication contains a chart of the names of Primary Health Centers, amongst which Chapadgoan, Taluka - Karjat is at Serial No.7. The Communication dated 4th January, 2010 issued by District Health Officer evidently is in respect of the Primary Health Center, where the Respondent is appointed. In spite of the above documents, which clearly supports the stand of the Petitioners, denying existence of Employer-Employee relationship. In spite of the aforementioned documents placed on record, the Member, Industrial Court has recorded a perverse finding that, the Petitioners have failed to produce document about contractual services of the Respondent from the date of appointment.

38. The Industrial Court has also recorded a finding that, the Respondent is appointed on a sanctioned post of a Driver, by placing reliance on the cross-examination of the witness of the Petitioners. In the cross-examination, witness of the Petitioners has merely admitted that the Respondent is appointed on the post, which, is sanctioned under the staffing pattern approved by the State Government, which includes the post of Driver. The admission of the witness of the Petitioners was in context with

the Government Resolution granting approval to staffing pattern for contractual services and not about permanent sanctioned vacancy. The admission given by the witness of the Petitioners was in the context of the communication issued by the Director of Health Services about staffing pattern for the Primary Health Centers being approved for the posts of Drivers, Security Guards and Safai Guards to be filled in on contract basis along with terms and conditions mentioned in the annexures to the communication.

39. In support of his claim that he is a permanent employee appointed by following due procedure of law, the Respondent has placed reliance on various documents but he has not placed on record any advertisement calling upon applications or even his application which is made in response to any such advertisement issued by the Zilla Parishad. Even the order dated 6th January, 2010, which the Respondent claims to be his appointment order, discloses, that a reference is made to the communication which was issued by the Medical Officer, Zilla Parishad, Ahmednagar, numbered as Arogya / Niyo / 52010 / 4.1.2010, which was addressed to the Contractor to provide Drivers to the Ambulance, made available by the Government.

40. Scrutiny of the first document annexed to the Writ Petition

by the Petitioners, which is a communication dated 4th January, 2010, addressed by the District Health Officer to the Chairman Swayamsiddha Swayam Rojgar Be-Rojgar Seva Sahakari Sanstha Maryadit, reveals that, this is the very communication which is referred in order dated 6th January, 2010 which is claimed to be appointment order by the Respondent. This communication informs the Contractor that, ambulance is made available by the Government at Primary Health Center, Chapadgoan, having registration number as MH-16/T-208, and services of the Respondent are to be provided for the said ambulance, by appointing him as driver on that vehicle. Pursuant to the communication dated 4th January, 2010, communication is issued on 6th January, 2010. Thus, it cannot be termed as an appointment order from any angle.

41. It is evident from the aforementioned facts and the record that, the Member, Industrial Court has undertaken a thorough exercise to prove the existence of Employer-Employee relationship, with the aid of evidence produced by the parties.

42. When the Court is required to rely on the evidence adduced by the parties to decide the existence of Employer-Employee relationship, it was not within the powers of the Industrial Court to decide the Complaint filed by the Respondent under the

provisions of section 28 of the MRTU and PULP Act. Even otherwise, the Petitioner Zilla Parishad, being government undertaking, has its own rules of recruitment, which are required to be followed before filling any vacancy on its establishment. The first and foremost requirement is, whether there is any permanent sanctioned post available, the second is whether any advertisement was issued and the third is, whether selection procedure is conducted as per law. In the present case, the Respondent has neither produced any document nor established Employer-Employee relationship. In fact, he has admitted in his cross-examination that he was not issued any appointment order either by the Chief Executive Officer or the District Health Officer. The Respondent has also not produced any document to show that by issuing advertisement and by following due procedure of law, after undergoing selection procedure he has been appointed. In spite of failure of the Respondent to produce evidence to that effect, the Industrial Court by placing heavy reliance on the certificate of test of driving, fitness certificate issued by the Civil Surgeon and the communication of the District Health Officer, Zilla Parishad, dated 2nd July, 2010, directing to make payment to the Respondent under the head 08201, has drawn a conclusion that the Respondent was appointed on regular establishment of the Zilla Parishad. The documents

referred above cannot constitute, the documents which would prove that the Respondent is working on a permanent sanctioned post, after his selection by following due procedure of law.

43. In view of the clear position of law, laid down by the Apex Court, through its judicial pronouncements, wherein it is unambiguously held that, the Provisions of the Act of 1971 can be enforced by persons who admittedly are “workmen” and that if there is dispute about Employer-Employee relationship, the dispute must be first got resolved by raising the dispute before appropriate forum. The exercise undertaken by the Industrial Court is in violation of the above position of law, hence becomes unsustainable.

44. Assuming that the workman comes with a case that the employer with an intent to deprive the workman of his rightful claim, has raised the ground of absence of Employer-Employee relationship and it is a camouflage, even that needs to be adjudicated by appropriate Court. Such a question cannot be examined by the Labour or Industrial Court constituted under the Act of 1971. It is further observed by the Apex Court that unless it is undisputed or indisputable that there is Employer-Employee relationship, the question of unfair labour practice cannot be inquired into.

45. In a recent decision of this Court in case of ***“Tata Steel Ltd through its Senior Manager Krishna Warriar V/s Maharashtra Shramjivi General Kamgar Union” 2024 SCC OnLine Bom 3428***, this Court has once again taken into consideration the law laid down by the Apex Court in “Cipla Ltd V/s Maharashtra General Kamgar Union”, “Sarva Shramik Sangh V/s Indian Smelting and Refining Co Ltd”,. and “Vividh Kamgar Sabha V.s Kalyani Steels Ltd”., (supra) and has held that where the petitioner has clearly disputed existence of Employer-Employee relationship, the ratio in the judgments supra would apply and the jurisdiction of the Industrial Court to entertain compliant in respect of Unfair Labour Practice would be barred. In this judgment, this Court has once again taken into consideration all the judicial pronouncements holding the field on the issue of maintainability of complaint under the MRTU and PULP Act, when there is denial of Employer-Employee relationship. Hence, the ratio laid down in the judgments supra squarely applies to the present case.

46. In the above decision it is unerringly held that, dispute about Employer-Employee relationship cannot be gone into under the Act of 1971, by the Industrial Court, while exercising its jurisdiction to decide a complaint, under section 28 of the

MRTU and PULP Act. On this background, the framing of issue of maintainability of the complaint itself goes to show that there is dispute about existence of Employer-Employee relationship. Hence, the Industrial Court has committed an error by deciding the issue about existence of Employer-Employee relationship on the basis of evidence adduced. Therefore, the order passed by the Industrial Court deserves to be quashed and set aside.

47. In the result, Writ Petition is allowed in terms of prayer clause "B". Order dated 2nd November, 2012, passed by Industrial Court, Ahmednagar in Complaint (ULP) No. 64 of 2011 is quashed and set aside. Rule is made absolute in above terms.

48. In view of disposal of the Writ Petition, pending civil applications are also disposed of.

49. At this stage, learned Advocate for the Respondent prays for grant of stay to the order for a period of 12 weeks, since the order which is under challenge in this Writ Petition, was not stayed by this Court during pendency of the Writ Petition.

Considering the request made by the learned Advocate for the Respondent, this order shall remain stayed for period of 6 weeks from today.

[MANJUSHA DESHPANDE]
JUDGE