



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3817 OF 2016

(Deepak Dnyaneshwar Malode Vs. The State of Maharashtra thr. its Secretary,
Revenue and Forest Department, Mumbai and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. A. U. Deshmukh, Advocate for Petitioner.
Mr. B. M. Lonare, AGP for Respondent Nos.1 to 4/State.

CORAM: R. M. JOSHI, J.

DATE: 20th JUNE, 2025.

1. This petition involves the question as to whether the petitioner whose service/employment has been terminated in the year 2008, can file complaint subsequently under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the 'MRTU and PULP Act') for seeking the benefit of Government Resolution seeking permanency without challenging the order of termination and getting the same set aside, from Court of competent jurisdiction.

2. The petitioner claims that he is within right to seek benefit of Government Resolution dated 16.10.2012 which entitles him to get status of permanency. It is his further case that the criteria required for seeking the permanency is duly satisfied and hence it is not open for the Government – Forest Department not to apply the said resolution to the petitioner. Since, the benefit of

permanency has not given to the petitioner, he has preferred complaint U.L.P. No.36/2013 seeking direction to the respondent for extending the benefits of the Government Resolution dated 16.10.2012. Respondent filed written statement therein raising objection about the maintainability of the petition on the ground that the complainant is not an employee and there is no employer – employee relationship between the parties. This contention of the respondent is accepted by the Industrial Court with observations that the services of the complainant were terminated in the year 2008 and that there does not exist any employer employee relationship. With these observations the complaint came to be dismissed at the threshold without going into the merits of the case.

3. Learned Counsel for the petitioner submits that the Industrial Court has committed error in dismissing the petition without considering the contention of the workman under Section 2(s) of the Industrial Disputes Act which is adopted by Section 3(5) of the MRTU and PULP Act. It is contention that in view of the said contention, even the employee whose services are terminated in the workman and it would be open for him to file complaint under the MRTU and PULP Act.

4. In this regard, learned Assistant Government Pleader submits that the said contention has no application to the present case for the reason that there is no relationship of the employer employee before filing of the

complaint.

5. At the outset this Court would like to deal with this issue. There is no dispute about the facts that the services of the petitioner were terminated in the year 2008 and that he is not challenging the said action of termination of his service. In backdrop of this factual position, if the provisions of Section 2(s) of the Industrial Disputes Act i.e. definition of the workman is considered then it indicates that the said definition includes any such person who has been dismissed, discharge or retrenched in connection with or as a consequence of that dispute or whose dismissal discharge or retrenchment has led to that dispute. It is thus clear that in case a person challenges his dismissal, then it is not open for the employer to raise issue of maintainability of proceeding denying relationship of the employer and employee. Once, admittedly there is no challenge to the termination of year 2008 by the petitioner, the dispute sought to be raised before the Industrial Court under the ULP Act does not pertain to the discharge, dismissal or retrenchment has consequently he would not be considered as the workman under Section 2(s) of the I. D. Act.

6. In the light of this fact, this Court finds no perversity in the finding recorded by the Industrial Court that their does not exist employer employee relationship and the said issue cannot be gone into by the Industrial Court under the provisions of MRTU and PULP Act.

7. Above discussion leads this Court to consider the next submission sought to be made by the Counsel for the petitioner which is of course is on the merit of the complaint filed before the Industrial Court. It is his submission that previously i.e. in the year 1992 that on the earlier occasion the petitioner was terminated from service in the year 1992 and that he challenge the said termination by filing complaint U.L.P. No.77/1993. This complaint filed before the Labour Court, Amravati came to be decided against the petitioner. However, in Revision complaint U.L.P. No.78/2004, there was a direction for continuing him in the service. Ultimately, the revision was dismissed by order dated 20.09.2004. This order was taken exception to before this Court in Writ Petition No.4501/2004 unsuccessfully. The order of dismissal of the petition was maintained. The review application filed against this order was also rejected. Thereafter, L.P.A. bearing No.133/2005 was filed by the petitioner. However, he was again unsuccessful before the same Court. The Division Bench however, while passing order dated 09.01.2008 has made following observation:

3. Learned counsel for the appellant has invited our attention to a communication dated 19th August, 2006 issued by the Joint Secretary, Revenue and Forests Department of the State of Maharashtra to the Principal Conservator of Forests. On the basis of the said communication, it is contended that there is a scheme in contemplation to be framed the State Government to grant

regularization to the ad-hoc appointees who have put in given number of years service. It is submitted that under interim orders, the petitioner is still continuing in service. Though we are not inclined to entertain the appeal, we make it clear that if and in case the Government formulates the scheme for regularization of the services of the ad-hoc temporary employees, such as the appellant, and if the appellant satisfies the criteria so laid down under the Scheme which is said to be in contemplation, the case of the appellant shall be considered at the touchstone of the said scheme, if formulated and brought into force.

8. Learned Counsel for the petitioner submits that the right has been crystallized in favour of the petitioner in view of the order as well as the subsequent Government Resolution issued on 16.10.2012. It is his contention by relying upon the judgment of the Division Bench of this Court in Writ Petition No.10793/2022 that once such right is crystallized, it is not necessary for the party to approach the appropriate Court for the execution thereof. It is his submission that the State Government ought to have conferred the said benefits to the petitioner.

9. Learned Assistant Government Pleader opposed the said contention by stating that in any case it would not be open for the Industrial Court to issue direction to the appropriate authority to consider representation and hence such directions may not be issued in this petition.

10. Learned Counsel for the petitioner has drawn attention of the Court to the fact that representation was made by the petitioner to the appropriate authority on 11.12.2012 and 15.01.2013. This indicates that after issuance of the Government Resolution in the year 2008, the appropriate representation was made by the petitioner. It is not expected, of a welfare State that such a representation of the petitioner is not even considered till date. Now, it will not be permitted to be argued on behalf of the State that the petitioner who has retired from service in the year 2008 and who is a daily wager be called upon to approach to the Division Bench for seeking a direction to consider the said representation.

11. Moreover, in the facts of the case more particularly in view of the observation of the Division Bench in L.P.A. No.133/2005 as quoted above, this Court finds no reason that the petitioner is called upon to approach to the Division Bench for seeking specific direction to the Government/Authority.

12. Needless to say, that on the face of it perusal of the Government Resolution dated 16.10.2012 indicates *prima faice* that the case of the petitioner is covered by the said resolution and the criteria laid down therein are fulfilled. Hence, it is directed that the Government/the appropriate authority to take decision on the representation made by the petitioner within a period of three months from the receipt of this order. Learned AGP to communicate this

order to the concerned authority for its compliance.

13. The petition is disposed of in above terms.

(R. M. JOSHI, J.)

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