



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH

**WRIT PETITION NO. 5470 OF 2011**

- 1] Maharashtra State Board of Secondary and Higher Secondary Education, through its Secretary, Divisional Board, Amravati.
- 2] Maharashtra State Board of Secondary and Higher Secondary Education, through its Chairman, Amravati Divisional Board, Amravati.
- 3] Maharashtra State Board of Secondary and Higher Secondary Education, through its Secretary, Shivaji Nagar, Pune.

**...PETITIONERS**

**Versus**

- 1] Umesh S/o. Madhukarrao Shekhar, resident of Gandhinagar, Gandhibagh, Amravati.
- 2] Shridhar s/o Govindrao Nimbalkar, resident of C/o. S.K.Bhoyar, B & C Quarters 8/P, Tope Nagar Camp, Amravati.
- 3] Pramod s/o Devidasrao Labade, resident of Saroj Colony, Near Dr. Tayade's Hospital, Amravati.

**Amended as per  
Court's order dated  
30/8/2022.**

- 3(1)] Smt. Jyoti wd/o Pramodrao Raut, aged about 48 years, Occ. Daily Wager.
- 3(2)] Satyam s/o Pramodrao Raut, aged about 27 years, Occ. Student.
- 3(3)] Om s/o Pramodrao Raut, aged about 23 years, Occ. Student.

All R/o Sut Girni Road, Near Annapurna Provisions

Saroj Colony, Sai Nagar, Amravati – 444607.

- 4] Ramesh s/o Rambhau Thotange,  
resident of C/o. Pandhurangji Rithe,  
Near Flour Mill, Gadge Nagar, Amravati.
- 5] Sk. Rashid Sk. Mehata,  
C/o. Near House of Shri Mohd. Ibrahim Thekedar,  
Datta Mandir, Bicchu Tekdi Camp, Amravati.
- 6] Chandrashekhar Sudhakar Rao Mahure,  
resident of Mudhliar Nagar,  
Near Dr. Timane's Hospital, Amravati.
- 7] Pramod Dnyeshwar Rao Wasnik,  
resident of Pravin Nagar, Behind V.M.V.College,  
Amravati.
- 8] Suresh S/o. Marotrao Satnurkar,  
resident of Shivanagar, Near Vilas Nagar,  
Amravati.
- 9] Shriram S. Zolekar,  
resident of a Rukhmini Nagar,  
Near Atul Mangal Karyalaya, Amravati.
- 10] Madhao Shrikrishna Gawande,  
resident or C/o. M. B. Pohekar,  
Near Pundlik Baba Mandir,  
Vinayak Nagar, Amravati.
- 11] Rajesh s/o Balwantrao Armal,  
resident of At Post Pimpalakhuta,  
Tahsil and District – Amravati.
- 12] Gajendra Vijayrao Gosavi,  
resident of Kiran Nagar No.1, Amravati.

...RESPONDENTS

Mr. S.R. Charpe, Counsel for the petitioners.  
Mr. Raj Wakode, Counsel for the respondents.

**CORAM : ANIL L. PANSARE, J.**

**DATE : APRIL 5, 2025**

**ORAL JUDGMENT :**

The petitioners – Maharashtra State Board of Secondary and Higher Secondary Education, have challenged the judgment and order dated 29/7/2011 passed by the Member, Industrial Court, Amravati, in Revision Application (ULP) No. 75/2002. The Industrial Court has dismissed the revision by which the petitioners had challenged the judgment and order dated 21/6/2002 passed by the Judge, Labour Court, Amravati, in Complaint ULP No. 158/1999.

2] The respondents – original complainants had approached the Labour Court with a prayer of re-instatement with full backwages and continuity of service by contending that they were engaged as Peon on daily wages by the petitioners. According to them, after having worked for substantial period, the petitioners, on 30/7/1999, have terminated their services without due compliance of the provisions under Section 25F of the Industrial Disputes Act, 1947 (for short “ID Act”). Thus, it was the case of the

respondents that termination of services were in colorable exercise of the employer's right.

3]           The learned Counsel for the petitioners submits that the petitioners took a stand that the respondents' appointments were made through Contractor and, therefore, there is no relationship of employer-employee.

4]           During the course of hearing, I was informed that in earlier round of litigation, this issue of employer-employee has been duly considered and decided by this Court in Writ Petition No. 1747/2006. The Court upheld the finding of the Industrial Court that the respondents have completed more than 240 days of continuous service preceding the date of termination. Thus, the issue of appointment and continuance of service has attained finality in the earlier round of litigation.

5]           In the second round, the issue before the Courts below was whether there is compliance of Section 25F of the ID Act. Both the Courts found that this compliance is missing. The petitioners failed to prove that notice or wages in lieu of notice or retrenchment compensation was given to the respondents.

6] As such, the petitioners examined two witnesses. Both the witnesses did not utter a word on this point. These witnesses have re-iterated the petitioners' stand that the respondents were engaged through Contractor on contract basis. The witnesses, however, failed to substantiate the said claim. The Courts below noted that the petitioners have neither produced any list of labour contractors nor was any advertisement issued in this regard placed on record nor was any other evidence submitted. The Courts further found that there is no evidence of payment of wages given in lieu of notice, which is required to be issued under Section 25F of the ID Act. The Court further noted that the evidence on the point of retrenchment compensation was also absent.

7] On the point of following procedure before termination, as laid down under Section 25G of the ID Act, the Court below noted that the objection from the respondents, on seniority list, was not called. The date of publication of seniority list was also not provided. Accordingly, the Court held that the seniority list placed on record was not an authenticate document because it does not disclose the date of publication

nor it disclose the signature of the competent person.

8] It further appears that the petitioners' witnesses had clearly admitted in cross-examination that work is available with them. Accordingly, the Court below noted that there is breach of Sections 25F and 25G of the ID Act read with Rule 81 of the Industrial Disputes (Bombay) Rules, 1957.

9] In the light of the aforesaid concurrent finding of the Courts below, a specific query was made whether any evidence was placed on record to show that the respondents were appointed through Contractor, the petitioners' Counsel failed show any. Similar is the status on the point of seniority list. The petitioners failed to show that the respondents were heard before publishing seniority list. The focus of the learned Counsel is on contractual appointment. This fact, however, has been decided by this Court in earlier round of litigation and, thus, cannot be re-opened. The findings that the petitioners had appointed the respondents and continued in service for 240 days preceding the date of termination has attained finality. The Court further held that the petitioners failed to comply with Sections 25F and 25G of the ID Act before

terminating the respondents' services.

10] The learned Counsel for the petitioners has then invited my attention to the order granting backwages. He submits that the respondents had neither pleaded nor proved that after the date of termination and till the order of reinstatement was passed, they were not in gainful employment. In support, he has relied upon the judgment of the Hon'ble Supreme Court in the case of *Allahabad Bank and Ors. Vs. Avtar Bhushan Bhartiya [(2022) 13 SCC 202]*, wherein the Court has held thus :

*“36. The reliance placed upon the decision in Pawan Kumar Agarwala v. SBI (2015) 15 SCC 184, may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase (2007) 2 SCC 433. This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.”*

11] As could be seen, in the first instance there is an obligation on the part of the employee to plead that he is/was not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish that

the employee was gainfully employed in intervening period. Since the respondents failed to discharge initial burden, the petitioners have not led any evidence. Accordingly, it is argued that the respondents were not entitled for backwages.

12] The above argument will require acceptance. The respondents' Counsel failed to show that the respondents had pleaded and/or proved that they were not in gainful employment during the intervening period. That being so, the order passed by both the Courts below, to that extent, will have to be set aside.

13] Resultantly, the following order is passed :

**ORDER**

I] The writ petition is partly allowed.

II] The judgment and order dated 29/7/2011 passed by the Member, Industrial Court, Amravati, in Revision Application (ULP) No. 75/2002, affirming the judgment and order dated 21/6/2002 passed by the Judge, Labour Court, Amravati, in Complaint ULP No. 158/1999, is quashed and set aside to the extent of granting backwages to the respondents from the date of termination till the date of order of

reinstatement. Rest of the order passed by the Industrial Court will remain intact.

III] Rule is disposed of in above terms. No costs.

**JUDGE**

Sumit