



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO.4796 OF 2011

[Krushi Utpanna Bazar Samiti ..vs.. Raju Mangal Boyat]

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

Court's or Judge's order

Mr R. D. Bhuibhar, Advocate for Appellant.
Mr S. T. Harkare, Advocate for Respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 8th JANUARY, 2025.

1. Having heard both the sides and having gone through the material placed before me, it appears that the respondent was working in the establishment of the petitioner since 1988 as a Sweeper, initially as a part time and since 1993 as a full time Sweeper. In the year 1998, the respondent raised a grievance that though he has been taken on permanent establishment, is not paid due wages.

2. The matter was referred to Conciliation Officer and parties arrived at settlement in terms of Section 12 of the Industrial Disputes Act, 1947 (hereinafter referred to as, the Act of 1947"). The parties agreed that the respondent has been taken on permanent establishment since January, 1998 and his name has been taken on muster and salary register. It was further agreed that he will be given work for 8 hours daily and will be paid due wages as per Minimum Wages. He was, however, not given benefit of permanent employee and therefore, he filed complaint under Section 28 read with Item No.5, 6 and 9 of Schedule - IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 being Complaint (ULP) No.163/1999.

3. The Industrial Court, while holding the petitioner/employer to have indulged into unfair labour practice under Item Nos.6 and 9, observed thus :

“19) The learned Representative for the complainant made a submission that the complainant be given all the benefits of permanent employee since 1992. On the other hand, the learned counsel for the respondent has vehemently argued that as per Section 35 of the A.P.M.C. Act, a market committee may employ a Secretary and such other officers and servant as may be necessary for the management of market, provided subject to general and special directions which the Director may issue in this behalf or be created only with the prior approval of the Director.

20) Now the only crucial point which remains that when the complainant is throughout working since 1993 as a full time Sweeper and the post of Sweeper is also lying vacant and as per the settlement before the Assistant Commissioner of Labour, the complainant is brought on the establishment of permanent employee then he is entitled for all the benefits of the permanent employee, at least from the date of settlement which took place on 1st July 1998 and his name has been recommended to the Director for giving him the benefits of a permanent employee. Admittedly, the work extracted from the complainant is of the full time Sweeper since 1993, however after the settlement before the Assistant Commissioner of Labour, it was agreed by the respondent to take him on the permanent establishment from the month of January 1998 and has given the benefits of permanent employee by way of payment from the month of July 1998. But such benefits are denied and the complainant is deprived of all the benefits of permanent employee, though he is working as a full time Sweeper. Therefore, it amounts to the unfair labour practice under Item 6 & 9.”

4. As could be seen, the Industrial Court, taking into consideration the settlement arrived at before the Assistant Commissioner of Labour, took a view that the respondent was

entitled for the benefit of permanent employee. The Industrial Court has also held that the post of Sweeper is/was laying vacant. Accordingly, the Industrial Court, considering the settlement arrived at between the parties before the Assistant Commissioner of Labour, directed the petitioner/employer to extend the benefits of permanent employee with all consequential benefits to the respondent/complainant and to recommend his name to the Director of Agricultural Marketing for approval and regularization as a permanent employee.

5. The counsel for petitioner submits that the Industrial Court has misread the settlement. According to him, the parties have categorically agreed that the respondent will be paid as per the Minimum Wages Act, 1948, and shall be continued to be paid wages accordingly. That being so, he submits that the respondent was not extended benefits of permanency.

6. I do not find substance in the aforesaid submission. The counsel for respondent has rightly countered the same. The fact that since January, 1998, the respondent was taken on permanent establishment, is not disputed. In addition, it is recorded that his name is entered into muster and salary register. This settlement is recorded in the backdrop of the grievance made by the respondent that though he was taken on permanent establishment, is being paid lesser salary. In context there with, the parties arrived at an agreement that the respondent will be paid minimum wages. The settlement further indicates that the petitioner agreed to extend all benefits as available under law. The statement that the respondent will be paid minimum wages cannot be read in isolation to deprive him of the benefits available in law. The agreement/contract to that effect, even otherwise, is hit by Section 23 of the Indian Contract Act, 1872.

7. In the circumstances, once the respondent was taken on permanent establishment and once it was agreed that all benefits as available under law will be extended to him and having not disputed that the post of Sweeper was laying vacant, it was incumbent upon the petitioner to take steps in terms of Section 35 of A.P.M.C. Act, which provides that a Market Committee may employ a Secretary and such other officers and servants as may be necessary for the management of the market for the collection, maintenance etc. and for carrying out duties under the Act and that such servants shall be paid such salaries and allowances, pension or gratuity etc. in accordance with law. It further provides that the appointment shall be made by the Market Committee with prior approval of Director.

8. In the present case, the post was not required to be created because the post of Sweeper was laying vacant. In other words, the post was already created. There is no dispute that the respondent continued to work as Sweeper with effect from 1993. In the circumstances and in terms of settlement arrived at between the parties under Section 12 of the Act of 1947, the petitioner on its own ought to have extended benefit of permanency to respondent. Having not done so, he was left with no other alternative but to file a complaint, which the Industrial Court has rightly dealt with and decided. No interference is, therefore, called for in the writ jurisdiction. The petition is accordingly **dismissed**.

9. At the request of learned counsel for petitioner, the order shall take effect after eight weeks.

JUDGE