

(2014) 5 ALLMR 836 : (2015) 147 FLR 231

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 5837 of 2006

Rashtrasant Tukdoji
Regional Cancer
Hospital and Research
Center

APPELLANT

Vs

Sau. Sushila

RESPONDENT

Date of Decision: Aug. 5, 2014

Acts Referred:

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28

Citation: (2014) 5 ALLMR 836 : (2015) 147 FLR 231

Hon'ble Judges: A.P. Bhangale, J

Bench: Single Bench

Advocate: S.N. Bhattad, Advocate for the Appellant; D.C. Naukarkar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

A.P. Bhangale, J.

Heard Mr. S.N. Bhattad, learned Counsel for the petitioner and Mr. D.C. Naukarkar, learned Counsel for Respondent No. 1.

2. The petitioner has challenged the Award, dt. 11.8.2006 passed by the Industrial Court, Nagpur in Complaint (ULPN) No. 203 of 2005 whereby the respondent (Original Complainant) was ordered to be given work with effect from 11.8.2006 after declaring termination of the respondent from service as unlawful. Consequential relief that she shall not be forced to work under any other Contractor was also granted.

3. Sometimes in the year 2000, the petitioner had decided to recruit the workers for class III and class IV category of employees. According to the petitioner, the work was not of

regular or permanent nature, but as per need of the hospital. The respondent had joined the service with the petitioner as a Sweeper in the hospital on 14.1.2000. The respondent had joined as a Sweeper, but her service was discontinued by coercing her to work under another Contractor while obtaining her signature upon a blank paper. Thus, complaint of unfair labour practice was filed under Item No. 9 of the schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complainant was seeking declaration/adjudication and prayer was for issuing direction to the employer to desist from such unfair labour practice breaching the service condition falling within mischief of Item No. 9 of Schedule IV of the Act. The unfair labour practice was held as proved. The petitioner, it is found, that had withheld wages since March 2005.

4. The submission is that, in the dispute between the employer and the employee, the Industrial Court cannot go into merits unless the employer gets the industrial dispute adjudicated. Mr. S.N. Bhattad, Learned Counsel for the petitioner contended that preliminary objection was raised about relationship of the employer and the employee. It is argued that if the employee was working under the contract covered by the Contract Labour (Regulation and Abolition) Act, then the Labour Court or the Industrial Court as adjudicating Authorities cannot have jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. Unless the employee establishes the fact that she is an employee under the employer under the Industrial Dispute Act, the complaint would not be maintainable. Reliance is placed upon the following rulings :-

A. Cipla Ltd. vs. Maharashtra General Kamgar Union & Ors., 2001 I CLR 754. In para 7, it is observed thus :

7. But one thing is clear-if the employees are working under a Contract Labour (Regulation & Abolition) Act then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant-company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate industrial Tribunal or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all.

B. [Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another](#), wherein it is observed thus :

6. Faced with this situation it was submitted that the Respondent Company had always recognised the members of the Appellant Union to be their own workmen. It is submitted that a formal denial was taken only to defeat the claim. We see no substance in this submission. In the written statement it has been categorically denied that the members of the Appellant Union were employees of the Respondent Company. The question has been agitated before the Industrial Court. The Industrial Court has given a finding, on facts, that the members of the Appellant Union were not employees of the Respondent Company. This is a disputed fact and thus till the Appellants or their members, get the question decided in a proper forum, this complaint was not maintainable.--

C. [Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others,](#)

D. [Hindustan Coca Cola Bottling S/W Pvt. Ltd. and Another Vs. Bhartiya Kamgar Sena and Others,](#)

(Ratio-where the employer had never recognised the workmen as employees and throughout treated the persons as employees of the Contractors, the Court constituted u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of unfair labour practices Act (briefly MRTU & PULP Act) will have no jurisdiction to entertain the complaint.

E. Maharashtra General Kamgar Union vs. Royal Western India Turf Club Ltd., 2006 (2) Mah L.J. 115.

5. On the other hand, Mr. D.C. Naukarkar, learned Counsel for the respondent, has contended that the complaint regarding unfair labour practice is maintainable in the Labour Court when there was no question involved of the contract labour directly or indirectly. It is submitted that the question as to relationship between the employer and the employee is a pure question of fact and ordinarily the High Court would not interfere with the finding in exercise of the power of judicial Review. He relied upon the following rulings:-

a) [Fulchand Baburao Gedam Vs. Lokmat, Proprietors, Lokmat Newspapers Ltd.,](#)

In Fulchand"s case, after the analysis of the issues involved it is held thus :

17. It is also seen that even it was not the employer"s case that the complainant"s were Contractor"s employees genuinely employed as such, and therefore complaints were not maintainable. The entire case of employer was of plain and simpliciter denial, as it claimed that the workman concerned may have been employed/engaged by its officers in their individual capacities.

As in Fulchand"s case, it is not the case of the respondent/employee Sushila here that she was employed by the Contractor. It is her case that she was doing the job of Sweeper regularly under the petitioner/employer. The employer had barely denied the employer

and the employee relationship. Thus, the issue of contract labour is not involved in the present case either directly or indirectly.

b) Indo European Breweries Ltd. vs. Dnayneshwar S/o. Shyamrao Dhanawate & Ors. 2011 I CLR 923 (Bom. H.C.).

6. In a complaint of unfair labour practice made by an employee, merely because the employer denies relationship of the employer and the employee, the jurisdiction of the Industrial Court is not ousted. The jurisdictional fact as to whether the employer and employee relationship exist between the parties has to be examined by the Industrial Court.

7. Nothing prevented the petitioner to examine the contractor, as alleged in this case, to substantiate its contention that respondent no. 1 was engaged through the Contractor and not directly, as claimed in the complaint, as to the unfair labour practice. Case of respondent no. 1 was clear that she was engaged by the petitioner and not by the Contractor and the stand of the respondent remained unrebutted by any evidence from the petitioner. The Industrial Court, Nagpur, by its well-reasoned Judgment and Order, held that the Complaint is maintainable and that the petitioner/employer had engaged in unfair labour practice. It resulted in termination of the employment. Discontinuation of the work of respondent was found in violation of the provisions of law. Under these circumstances, the employee was held entitled to the relief of getting the work from the employer as long as the relationship of the employer and the employee continues.

8. I have considered the submissions advanced in the light of the rulings cited. Once it is found that there was relationship of the employer and the employee between the petitioner and respondent no. 1; respondent no. 2, the alleged Contractor remained absent and none appeared at the final hearing on behalf of respondent no. 2, I do not find any perversity, arbitrariness or serious infirmity in the impugned Judgment and Order to require interference by this Court in exercise of the powers of judicial Review under the extraordinary writ jurisdiction. The petition is, thus, found without merit and stands dismissed with costs.