

MHIC09-000264-2022

Exh.O-

IN THE INDUSTRIAL COURT NO.1, MAHARASHTRA
AT KOLHAPUR

Complaint (ULP)No. 92/2021
(CNR No.MHIC09-000264-2022)

Ashok Shankar Chikhalkar .. Complainant

V/s

Conservator of Forest, Kolhapur & Ors. .. Respondents.

CORAM : S. S. Khandekar, Member.
(J.O. Code :- MH-02957)

APPEARANCES : Mr. B. B. Powar, Advocate for Complainants.

Mrs. M. B. Patil, Asst. Govt. Pleader for
Respondents.

: ORDER BELOW EXH.U-2 :
(PRONOUNCED IN OPEN COURT ON 31.03.2022)

1. The Complainant has filed present complaint towards his claim of permanency along with instant application for interim relief.

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2. The Complainant is working with the Kolhapur Head Office of Respondents. The Respondents are officials of Forest Department of the State of Government. It is contended that the Respondents are selling fire wood, planting trees, protecting the forest and animals, undertake spreading of forest etc. The Respondents are conducting such systematic activities in a planned manner through various employees.

3. The Complainant is in the employment of Respondents since last many years. It was necessary for the Respondents to grant permanency to the Complainant on completion of 240 days. By indulging into unfair labour practices, the Respondents deprived the Complainant from benefits of permanency.

4. It is contended that the services of Complainant came to be terminated on 26.02.2001 (wrongly types as 28.02.2021). Therefore, the Complainant had filed complaint(ULP)No.56/2002 before the Id. Labour Court. Vide

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judgment dtd. 29.04.2011, the said complaint was partly allowed by awarding lump-sum compensation. Thereafter, the Complainant approached this Court through Revision Appl. (ULP)No.69/2011. Vide judgment dtd. 23.02.2016 the Respondents were directed to reinstate the Complainants on his previous post with continuity of service but 50% back wages. Thereafter, the Respondents had preferred Writ Petition no. 13180/2017 before the Hon'ble Bombay High Court. Vide judgment dt.d 23.01.2019, the Hon'ble High Court was pleased to dismiss the said writ petition.

5. It is contended that there is apprehension that due to filing of the present proceeding, the Respondents shall terminate the services of the Complainant. Hence, it is urged to direct the Respondents not to terminate the services of Complainant and pay him wages of permanent employee during the pendency of complaint.

6. The Respondents have opposed the present

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application by filing say and written statement vide Exh.C-3. It is submitted that the Complainant is not in regular employment. He has not been recruited by following legal procedure. There is no sanctioned post of Mazdoor. The Complainant is given work as daily wage Mazdoor in view of decision of Courts' in earlier proceedings.

7. It is contended that the Respondent department does not work to gain profit. The filing of earlier proceeding is admitted. It does not sell trees as claimed by the Complainant. The Complainant has not worked for more than 240 days continuously. As and when the work is available, the same is allotted to various candidates including the Complainant. The Complainant has mentioned wrong date of alleged dismissal. It is further urged that no case is made out for grant of interim relief.

8. On the basis of rival contentions, the following points arise for my determination and the findings are given below for reasons to follow :

NO	POINTS	FINDINGS
1	Whether the Complainant has demonstrated strong prima-facie case in his favour ?	Yes.
2	Whether the Complainant has shown balance of convenience ?	Yes.
3	Whether the Complainant demonstrated irreparable loss ?	Yes.
4	What Order ?	As per order.

: REASONS :

As to Point no. 1 To 3:-

9. As the said points are interlinked and interdependent, therefore, the same are being adjudicated upon together.

10. The Ld. Counsel for the Complainant argued that the Complainant is in the employment of Respondents since long. He is working as Van Mazoor. He has completed continuous 240 days of service. In spite of that the Respondents have not granted the benefits of permanency to the Complainant. The Complainant has apprehension that due to filing of present proceeding, he shall

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not be allotted work and his services shall be terminated. It is, therefore, argued to allow the application for interim relief.

11. The Ld. Asst. Government Pleader opposed the application. It is argued that the Forest department is not an 'industry'. It does not function to achieve profit. The Complainant failed to show that he has worked for more than 240 days. Although earlier proceedings have taken place but the Complainant is allotted work as and when the same is available. The Complainant is not entitled for interim relief. It is therefore urged to reject the application.

12. Heard Ld. Counsels at length and perused the documents. The filing of Comp.(ULP)No.56/2002 is not disputed. The Complainant has filed copies of judgment passed by my Ld. Predecessor in Rev.(ULP)No.69/2011. It demonstrates that the Respondents were directed to reinstate the Complainant with 50% back wages and continuity of services. It is also seen that the Respondent had challenged the said judgment before the Hon'ble

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High Court and the said Writ Petition is dismissed. It amply demonstrates that the dismissal of the Complainant was came to be set aside. Therefore, prima facie it shows that the Complainant is in the employment of the Respondents since long. Under such circumstances, there is force in the contention of the Complainant that the Respondent might resort to coercive action against him including terminating his services. Therefore, it is necessary to protect his employment during the pendency of the complaint. The Complainant has also claimed wages equivalent to permanent employees. Such direction cannot be issued at this stage as the litigating parties shall require to adduce evidence in support of their respective contentions. Hence, the said prayer cannot be entertained at this stage. Therefore, the Point no. 1 to 3 are answered accordingly.

As to Point no. 4 :-

13. In the premise of above facts and circumstances, the application for interim relief is liable to be partly allowed as follows :

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: ORDER :

1. The application below Exh.U-2 stands partly allowed.
2. The Respondents are directed to provide work to the Complainant as before and not to take any coercive action against him without following due process of law during the pendency of this complaint.
3. The complaint to proceed further.

Kolhapur.

Date : 31.03.2022.
RSS/-(S. S. Khandekar)
Member,
Industrial Court No.1, Kolhapur.

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