

MHIC090003722021

Exh.O-

IN THE INDUSTRIAL COURT NO.1, MAHARASHTRA
AT KOLHAPUR

Complaint (ULP)No. 165/2021
(CNR No.MHIC090003722021)

1. Municipal Transport Workers Union .. Complainants
2. Samesharkhan Bhitukhan Pathan

V/s

Kolhapur Municipal Transport, Kolhapur .. Respondent

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

APPEARANCES : Mr. V. S. Chavan, Advocate for Complainants.

Mr. C. P. Jagtap, Advocate for Respondent.

: ORDER BELOW EXH.U-2 :
(Dated :- 29.03.2022)

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

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2. The Complainant no. 1 is the recognized union with the Respondent. The Complainant no. 2 is holding the post of Conductor. He came to be appointed on 01.01.1993. The Complainant no. 2 came to be appointed with the Respondent by following due legal process. He had registered his name with Employment Exchange. He was having the requisite qualification. The Complainant was called upon to face interview. His documents came to be verified. After completion of due process, the Complainant came to be appointed on the post of Conductor.

3. It is contended that the labour laws are applicable to the Respondent. The provisions of Industrial Employment Standing Orders Act, 1946 are also applicable. It contains provision towards classification of workman. The Complainant no. 2 was initially appointed as daily wage workman. As per the said Act it was incumbent on the part of Respondent to grant permanency to the Complainant on completion of 240 days. The Respondent by indulging into unfair labour practices has not conferred such benefits to the Complainant. There are various

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sanctioned vacant posts available with the Respondent. In spite of that the Complainant is continued as daily wage employee.

4. The Complainant is paid wages on daily wage basis. To by-pass his legitimate right the Respondent has appointed many contract employees. There is strong apprehension that the Respondent shall confer the benefits of permanency on such contract employees. Also the Complainant has apprehension that due to filing of this complaint the Respondent may indulge in coercive action. Therefore, it is necessary to pass preventive orders thereby protecting the service conditions of the Complainant. It is also urged to direct the Respondent to pay equivalent wages as per permanent employees and not create artificial break in his service. It is also urged not to appoint other employees by-passing the rights of the Complainant.

5. The application is opposed by the Respondent by filing say vide Exh.C-4. It is submitted that application is liable to be rejected. The present complaint is filed jointly by the

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recognized union and Complainant no. 2 employee who is working as Badli Conductor. Since last two years, there are disputes about the real office bearers of the union. It is contended that the mere completion of 240 days do not confer any right upon the employee to claim regularization. The Complainant kept mum about the settlement with recognized union dtd. 01.11.2002 which provides for seniority, efficiency, number of vacant posts, roster wise registers in respect of reservation of posts etc. Under Article 16 of the Constitution, the Respondent is a public utility service run by the Municipal Corporation. Therefore, the question relates to public employment.

6. It is contended that the Complainant no. 2 is a Badli Conductor. Therefore, such employee is considered to be continued on waiting list and cannot hold a civil post. The Respondent denied parawise contentions of the Complainant. It is submitted that it is facing huge losses. It provides transportation to the weaker section of the society at concessional rates. Under such circumstances, application is liable to be rejected.

7. 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 :-

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

9. The Ld. Counsel for the Complainant argued that the indisputably the Complainant is working with the Respondent since 1993. It was incumbent on the part of Respondent to

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provide permanency to the Complainant but by indulging into unfair labour practices he is continued as Badli Conductor since last many years. Due to filing of present complaint, there is apprehension that the Respondent shall resort to coercive action and may discontinue to provide work to the Complainant. It is therefore, urged to grant preventive order thereby protecting the service of the Complainant.

10. The Ld. Counsel for the Respondent argued that the Complainant and other employees have filed various complaints against the Respondent which resulted in multiplicity of proceeding. The complaint itself is not maintainable. The status of Badli employee remains as it is. The completion of 240 days do not confer any right to an employee claiming employment in public undertaking. Under such circumstances, the application is devoid of merits and is liable to be rejected.

11. Heard Ld. Counsel at length and perused the documents. Although the Respondent contended that the present

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complaint itself is not maintainable, this Court through the order of identical date concluded that the question can be answered only after litigating parties are afforded opportunity to adduce evidence. The Complainant has filed documents on record that demonstrate that he is working with the Respondent since 1993. Prima facie, it is seen that the Complainant has been appointed through due process. Under such circumstances, there is strength in the contention of the Complainant that the Respondent might resort to coercive step due to filing of the present complaint. Therefore, it is necessary to pass preventive order to protect the employment of the Complainant. The Complainant has also claimed identical benefit that of permanent employee and direction not to recruit other employees etc. but such directions cannot be issued without assessing the merits of the present matter which can be done only after the parties have adduced evidence. Therefore, the Point no. 1 to 3 are answered accordingly.

As to Point no. 4 :-

12. In the premise of above facts and circumstances, the

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application for interim relief is liable to be partly allowed as follows :

: ORDER :

1. The application below Exh.U-2 is partly allowed.
2. The Respondent is directed to provide work to the Complainant no. 2 as before and not to change his service conditions detrimental to his interest without following due process of law during the pendency of the complaint.
3. The complaint to proceed further.

Kolhapur.

Date : 29.03.2022.

(S. S. Khandekar)
Member,
Industrial Court No.1, Kolhapur.

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