

IN THE INDUSTRIAL COURT AT AURANGABAD
(Presided over by S. S. MAUDEKAR, Member)

COMPLAINT (ULP) NO.159 OF 2018

[CNR NO.MHIC20-000-145-2018]

Shri. Rajesh Babuganesh Jadhav.

Age: 52 yrs ,Occ:Service,

Plot No.M-2, CIDCO,M-1-05-01,

New Aurangabad.

... **COMPLAINANT**

Versus

City and Industrial Development Corporation of

Maharashtra Ltd. (Through its Authorized

Signatory/ Manager) Udyog Bhavan,

New Aurangabad.

...**RESPONDENT**

[In the matter of Application for interim relief
Section 30 (2) of the Maharashtra Recognition of
Trade Unions and Prevention of Unfair Labour
Practices Act, 1971]

Appearance:

1. Shri. B.R. Kaware ,the learned Advocate for the complainant.
2. Shri. S.B. Mene, the learned Advocate for respondent.

ORDER BELOW EXH.U-2

[Passed on 18th day of July, 2023]

This is an application filed by the complainant under
Section 30 (2) of the Maharashtra Recognition of Trade Unions
and Prevention of Unfair Labour Practices Act, 1971 (In short
the Act) whereby the complainant has prayed to direct the

respondents to not terminate or discontinue his services till the disposal of the complaint.

2] The facts in brief are as under ;

The complainant has come with a case that, the respondent is a company registered under the Indian Companies Act and is owned by the Government of Maharashtra. It has been assigned the work of development of city. There are various offices of the respondent in Maharashtra and more than 5000 direct and indirect employees work in it. So provisions of the Model Standing Orders and Bombay Industrial Employment Rules are applicable to it. The complainant is a Workman as he was appointed as a Clerk on 01-08-1994 by issuing letter of appointment. The respondent is an Industry. The complainant is having educational qualification like B.A. and technical qualifications also. His name was recommended by the Employment Exchange Office. He worked till 25-05-2004 on roll of contractor. Thereafter, the complainant was appointed by the respondent for six months on consolidated salary from 25-05-2004. He was given one day technical and artificial break. But he had completed 240 days. Initially he was paid wages of Rs.1200/- p.m. which was increased to Rs.7906/-p.m. A Complaint was filed before the Industrial Court, Thane vide Complaint (ULP) No. 124/2015 and as per the order of the Industrial Court, the services of the complainant and others were protected. The said complaint was

withdrawn and disposed of on 21-07-2018 and as liberty was granted to the complainant a fresh complaint filed before the court.

3] It is submitted that the respondent had not extended various benefits even as per its Circulars dated 06-09-2002, 29-12-2015 and resolution dated 19-05-2015 and several benefits given to regular employees, were not extended to the complainant. Some benefits were not given to retrospective effect which was contrary to the standing orders. Hence, the complainant sought declaration of unfair labour practices and sought direction to the respondent to regularize the services and grant consequential benefits. In the application, he has sought direction to the respondent to not terminate or discontinue his services and to pay salary in accordance with pay-scale applicable to his class or category with consequential benefits.

4] Initially the respondent had not turned up so the complaint proceeded without its written statement and reply. Subsequently, the respondent appeared and was permitted to file its reply and written statement which is at Exh.C-7. The respondent has admitted that it is a company and also resolution dated 19-05-2015 but it denied that the Industrial Employment Standing Orders or other provisions were applicable to it or that it is an Industry. On the other hand, it is claimed that its activities (CIDCO) are covered under Maharashtra Regional Town Planning Act, 1966. It is denied that the complainant is a Workman. Letter of appointment, continuous work of 240 days, artificial break, commission of

unfair labour practices, denial of extension of benefits etc. are denied. Similarly, entitlement of the complainant to get various benefits and consequential benefits similar to the regular employees is denied. It is claimed that there is no entitlement to get permanency and it is prayed to dismiss the complaint and reject the application.

5] The points for determination alongwith my findings thereon are as under :

Sr. No.	POINTS	FINDINGS
1	Whether prima facie case is made out in favour of the Complainant ?	Yes.
2.	Whether the balance of convenience lies in favour of the Complainant ?	Yes.
3.	Whether the Complainant will suffer irreparable loss or injury if the interim relief is refused ?	Yes.
4.	What order ?	Application is partly allowed.

REASONS

6] The complainant has filed documents vide List Exh.U-4. The respondent has not filed any document. Heard the learned counsel for the complainant Shri.B.R. Kaware and

learned counsel for the respondent Shri. S. B. Mene . According to the learned counsel for the complainant, by way of interim relief, the complainant and other similarly situated employees were protected and if the protection is taken away, it is possible that the respondent may discontinue the services of the complainant which may cause serious prejudice to him and it would render the complaint as infructuous. On the other hand, the learned counsel for the respondent has submitted that as the initial entry of the complainant cannot be said to be proper and he had accepted the terms and conditions of the employment, he cannot now claim that the respondent has engaged in any unfair labour practice. So, it is prayed to reject the application.

As to Point Nos. 1 to 3 :

7] All the points are inter-connected, hence they are clubbed together. Admittedly, the burden lies on the complainant to show that the respondent has engaged in unfair labour practices and at least a prima facie case will have to be established by him. The complainant has relied on various documents. It is gathered that the complainant is a qualified person having passed B.A. .M.A. and he is graduate as well as Typing. Deploma/Certificate is also with there. Even letter of appointment was issued and various increments were given to the complainant. There is no doubt that earlier, for some period he was shown as working on Contractual basis. Subsequent orders show that he was appointed as Clerk on temporary basis on some terms and conditions and his duties as well as

consolidated salary were fixed. But it was specifically stated that the complainant would not be entitled to get wages and other benefits received by regular employees of the respondent. Similarly, a further extension was within the discretion of the respondent depending upon the availability of work.

8] Apart from the complainant, some other employees were also given similar appointments and extensions were granted to them subsequently for 10 to 11 months till the date of filing of the complaint. Even as per the office order dated 29-12-2015, contractual employees were extended some benefits similar to the regular employees and facilities of Circular dated 06-09-2002 like revised pay-scale and implementation of the said order were extended. As per Circular dated 17-06-2016, the said employees, including the complainant, were granted various types of leaves, public holidays, annual increments, various allowances including E.L. Encashment, L.T.A., educational allowance. Annual increments were also fixed. So, there is no doubt that as the work was available to the respondent ,hence,they continuously extended the services of the complainant for 10 – 11 months etc.

9] It is quite clear that almost all the facilities extended to the regular employees were extended to the complainant except regularization or permanency . Hence, it does not lie in the mouth of the respondent now to contend that the complainant and other employees were not recruited by adopting proper procedure. On the other hand, it continued to give annual increments and benefits of circulars etc. So, it is not

possible to hold that the work is not available with the respondent or that the respondent is at liberty to discontinue the services of the complainant during the pendency of the complaint.

10] So, prima facie it is gathered that the complainant has been working with the respondent since long and his services cannot be abruptly terminated without following due procedure. Accordingly, the relief sought by the complainant cannot be said to be beyond the scope of the Court. Thus, prima facie case exists for holding that the respondent can be said to have engaged in unfair labour practice as enumerated under Item Nos. 5 and 9 of Schedule IV of the Act. Hence, if the respondent passes any order affecting the service of the complainant adversely, the complaint would become infructuous and irreparable loss would be caused to the complainant. On the other hand, if the services of the complainant and other employees are protected, they will continue to work with the respondent as earlier and no prejudice or hardship would be caused to the respondent as permanent work and permanent activities are carried out by the respondent towards engaging in activities of development of cities. Therefore, the balance of convenience lies in favour of the complainant. If the respondent takes any adverse action, irreparable loss will be caused to the complainant that may not be calculated and may also lead to the multiplicity of proceedings. Therefore, I answer Point Nos. 1 to 3 in the affirmative.

As to Point No.4:-

11] Now that the essential conditions for granting exercising powers under section 30 (2) of the Act are in existence, it is desirable to consider the appropriate relief. The question of granting relief of salary and pay-scale and consequential benefits like retrospective effect, payment of arrears or difference, etc. can be decided at the time of deciding the complaint finally. Therefore, the application is liable to be partly allowed to the extent of protecting the services of the complainant without changing the applicable service conditions . Hence, I pass the following order:

ORDER

1.	The application Exh.U-2 is partly allowed.
2.	The respondent is directed to not terminate or discontinue the services of the complainant till decision of the complaint.
3.	Costs in cause.

Place:-Aurangabad.

Date - 18-07-2023

**(S.S. Maudekar)
Member,
Industrial Court, Aurangabad**

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