IN THE INDUSTRIAL COURT, MAHARASHTRA, BENCH AT : AURANGABAD.

[Presided over by Vimalnath S. Tiwari, Member]

COMPLAINT (ULP) NO.125 OF 2014

[CNR NO.: MHIC20-000290-2014]

Savitribai Chandrabhan Waghmare ... APPLICANT

Versus

Maharshi Shikshan Prasarak Mandal
Sanchalit - Kilbil Balak Mandir and
Prathmik Shala, Aurangabad. ... RESPONDENT

Appearance :- Adv. Mrs. S. P. Malode for Applicant.
Adv. Mr. P. L. Shahane for Respondent.

ORDER BELOW EXH. U-2

[Passed on 26/04/2022]

1] The Complainant has filed the present Complaint under Section 28, r/w. Item Nos. 5, 6, 9 and 10 of Schedule - IV of the MRTU and PULP Act, 1971 against the respondent for having committed unfair labour practice by showing favoritism or partiality to one set of workers, regardless of merits and that the applicant is employed as 'badlis' or casuals and is made to continue as such for years together in order to deprive her the

status and privileges of permanent employee and have failed to implement the Award, Settlement or Agreement therein and had indulgence in an act of force or violence. Along with the said Complaint, the applicant has also filed the present application seeking interim relief under Section 30(2) of the said Act.

2] The relevant fact for the purpose of deciding the present application are as under :-

The applicant is serving as 'Peon' with the respondent since 1996 for over 18 years with sincerity and without there being complaint against her. It is also the case of the applicant that on the dawn of everyday at 07:00, she had remained on her duties in the respondent School performing work of cleaning class rooms, filling water for the need of students, waiting near the School gate during assembly and after school gets over' looking after children and various other miscellaneous work pertaining to School. Initially, the applicant used to get Rs.200/- which continued till 2004 and between 2005 and 2007 she received enhanced amount of Rs.500/- per month, which further rouse to Rs.1,000/- between 2008 and 2010 and between 2011-2012 to Rs.1800/- and since September 2014 she has been receiving Rs.3,400/- per month. She has been managing her expenses on such meager amount paid by the respondent. Further, an advance amount given as loan to the applicant on the first instance for Rs.7,000/- and on other occasion for Rs.50,000/- by the respondent was deducted regularly from the salaries of the applicant.

3] It is also the case of the applicant that despite having worked sincerely, the respondent instead of making the applicant permanent on the post of Peon, chose to appoint Shri. Prakash R. Joshi in the year 2009, thereby confirming him in the year 2014. When the said fact was questioned by the applicant from the officers of respondent, she was threatened of being dismissed from service on 14.11.2014. As the respondent have threatened the applicant therefore, there is every livelihood of she being terminated from the service. Thus, looking to the said aspect, the applicant has approached before this Court for seeking protection as there is a strong prima facie case in her favour and no harm would cause to the respondent, in the event, the interim relief in the form of protection is granted to the applicant.

4] The respondent appeared upon the notice issued by this Court on 20.11.2014 wherein, Say-cum-written statement came to be filed through Advocate Shri. P. L. Shahane at [Exh.C-6]. The learned advocate for the respondent has taken preliminary objection by submitting that the respondent – school has not been undertaking any profit oriented activity. On the contrary, the said institution runs School with benevolent object of imparting education and therefore, according to him, the respondent does not come within the ambit of the term 'industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947 and accordingly the provisions of MRTU & PULP Act,

1971 are also not applicable. He would further submit that the applicant has alternate remedy under the law to approach before the School Tribunal to ventilate her grievance on the grounds raised by her and the present complaint according to him is not maintainable.

5] The Learned Advocate for the respondent has denied various other contentions raised by the applicant in toto. He, has however, admitted that the applicant is engaged as Part-Time 'Attendant' to carry out incidental work in Pre-primary section of respondent - School wherein, the applicant performed her duties between 09 to 12 just for three hours. He has also admitted that the amount of Rs.50,000/-, Rs.21,000/- and Rs.7,000/- respectively was advanced to the applicant on occasion of her daughter's marriage, which was deducted from her salaries.

6] He would further submit that the work of the applicant was not satisfactory since inception stage of her joining as Attendant and she was not diligent in performing her duties. The applicant was arrogant with her superiors and she is into habit of making false allegations on school teachers on the pretext of caste, compelling respondent to engage other Attendant to perform her job. He would further submit that there is no permanent work available with the respondent nor there are any approved staffs provided by the Government. Therefore, the applicant is not entitled for any relief of any

nature as prayed by her. Eventually, he has prayed to reject the application with heavy costs by vacating the ad-interim order dated 20.11.2014 granted by this Court.

7] Having gone through the contentions of rival parties, and the documents submitted in support of the same, following points arise for my consideration, and I record my findings thereon as under, for the reasons to follow.

Sr. No.	**P O I N T S**	**F I N D I N G S**
1]	Does the complainant make out a prima-facie case **?**	Partly Yes.
2]	Does the balance of convenience lies in favour of the complainant **?**	Partly Yes.
3]	Would the complainant suffer any irreparable loss or injury if the interim relief as sought for is rejected **?**	Partly Yes.
4]	What order **?**	As per final order

R E A S O N S

AS TO POINT NOS.1 TO 3 :-

8] The Learned Advocate for the applicant in support of her contention has filed the photocopies of muster roll for the year 2012 to 2014, the receipt acknowledgment for the amount of Rs.7,000/- lend by the respondent - School to the applicant as

loan amount, the photographs showing the applicant working and participating in various activities in the respondent - School. These documents are placed on record as per list of documents below [Exh.U-4]. The Learned Advocate for the applicant has on the point of jurisdiction of this court has relied on the citation of Hon'ble Supreme Court of India in **Bangalore Water-Supply & Sewerage Board Vs. R. Rajappa & Ors. [1978 AIR 548] and Miss A. Sundarambal Vs. Government of Goa, Daman and Diu & Ors. [JT 1987 (2) 101]**.

9] On the contrary the Learned Advocate for the respondent has filed Written Report of Respondent, copy of Letter dated 22.07.2021 issued by Education Officer, Zilla Parishad, Aurangabad addressed by the complainant to the respondent, copy of Complaint dated 23.06.2021 addressed to Education Officer, Zilla Parishad, Aurangabad, copy of Letter dated 19.12.2020 addressed by the complainant to the respondent, copy of Letter dated 25.10.2021 issued by respondent to complainant. These documents are placed on record as per the list of documents below [Exh.C-8].The Learned Advocate for the respondent has also on the point of jurisdiction has filed citations of Hon'ble Bombay High Court in **Adarsha Shikshan Sanstha, Beed and Anr. [2009 III CLR 960] Vs. Jaiprakash Ramvilas Lohia and Anr. and Chango Dasaram Rangari Vs. Vinod Education Society (H.S.) & Anr. [2014 (7) LJSOFT 74]**.

10] This Court had vide order dated 20.11.2014 restrained the respondent directing not to terminate or take any action against the applicant adversely affecting her interest until further order, with an observation that 'even when the applicant is serving since 1995, permanency benefits are not conferred on her and the juniors are made permanent.' Thereafter, the said ex-part ad-interim order came to be extended from time to time and in between this matter was thrice referred to Trained Mediator, initially on 29.08.2016, thereafter on 17.04.2017 and 13.12.2017 respectively without any success. This Court had vide order dated 11.02.2022 impressed upon the Learned Advocate for the applicant to argue the present application as the ad-interim order is running in applicant's favour since over last 7 years, failing which, necessary order to vacate ad-interim order shall be passed. This matter was argued by the Learned Advocate for the applicant and so also by the Learned Advocate for the respondent and this is how the present application is decided on merits.

11] Heard both the Learned Advocates appearing for respective parties at length. I have perused the complaint, the interim relief application and the Say / W.S. filed by the respondent and I have also gone through the documents relied upon by both parties and citations produced in support of their contention. The applicant in order to seek interim relief has to prima facie show that the respondent has shown favoritism or partiality to one set of workers, regardless of merits and have

employed the applicant as ‘badlis’, casuals or temporary for years together with an object of depriving her the status and privileges of permanent employee and have failed to implement the Award, Settlement or Agreement against the applicant. Before these aspects are looked into by this Court, it is necessary to answer the argument of Learned Advocate for the respondent as regard to preliminary objection taken by him wherein it is stated by him that the respondent is an institution running School with benevolent object of imparting education with 'no profit' oriented motive or activity and respondent is therefore, not a 'industry'. Therefore, the provisions of MRTU & PULP Act, 1971 and Industrial Disputes Act, 1947 would not be applicable and this Court cannot go into the grievance of the applicant. He has also strenuously argued that the applicant has an alternate remedy before School Tribunal which is a proper forum to look into the grievance of the applicant and this Court has no jurisdiction to entertain the present complaint. In support of the said contention, he has relied upon the citations stated Supra.

12] On the contrary, the Learned Advocate for the applicant had submitted otherwise and she has argued that this Court has jurisdiction to entertain the present complaint and entertain the grievance of the applicant for the unfair labour practices committed by the respondent. She has also argued that though there could be an alternate remedy available to the applicant to move before the School Tribunal, however, the law

does not bar the applicant from ventilating her grievance before the Industrial Court for the relief sought herein.

13] This Court is of considered view that the plain answer to the issue raised by the Learned Advocate for the respondent would be in the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad passed in Writ Petition No.1572/2015 with Writ Petition No.1602/2015. It is therefore, necessary to make a useful reference to para Nos.45 to 47 of the said judgment which reads as under :-

> ***"45.*** *Learned Advocate for the respondent Shri Shinde has placed reliance upon the judgment delivered by this Court (Coram : P.R. Borkar, J.) in the matter of Adarsh Shikshan Sanstha Vs. Jaiprakash Ramvilas Lohia and another [2010 (1) BCR 810 = 2010 (2) Mah.L.J. 924]. It appears that this Court was of the view that there is a special legislation covering employees of private schools and hence the non-teaching employees have a remedy to approach the School Tribunal and not the Labour Court. It cannot be ignored that the view taken by the Hon'ble Apex Court and this Court in the cases of Venubai Umap (supra), Ms. A. Sundarambal (supra), Christian Medical College (supra), Satyavadi Ganpatrao Pimple (supra), and Peoples' Welfare Society (supra), were not cited before the Court in Adarsh Shikshan case (supra).*

46. *Considering the above and the fact that the view taken by this Court in the above mentioned cases concluding that a non-teaching employee / workman of a school, college or University can approach the Labour Court against the proposed / threatened termination / dismissal or actual termination / dismissal, was not cited, the view taken by this Court (Coram : P.R.Borkar, J.) cannot be said to be a good law.*

47. *A strenuous submission of Shri Shinde that the learned Full Bench of this Court in the case of St. Ulai (supra) has settled the issue, needs to be negated in the light of the specific observations of the learned Full Bench in Clause (vii) of it's conclusions reproduced above, that the availability of the remedy under the Industrial legislation to a member / workman of the non-teaching staff, has not been adjudicated upon by the learned Full Bench."*

14] In the case of **Banglore Water Supply and Sewarage Board Vs. R. Rajappa [AIR 1978 SC 548]**, the issue of an "industry" under Section 2(j) of the ID Act was considered and school, colleges, universities, temples etc., have been held to be an "industry" under the ID Act.

15] In view of the above citations, it is settled law that Schools are held to be an 'industry' and a non-teaching workman of a school, college or University can approach the Labour Court against the proposed or threatened termination or dismissal or actual termination or dismissal. Thus, this Court has very much jurisdiction to look into the grievance of the applicant and therefore, the citation relied by the Learned Advocate for the respondent would not be of much helpful to him in view of above.

16] Now, coming to the merit of the case, it is not in dispute that the applicant has been working on the post of Attendant since last several years, though the applicant states that she is employed since 1996, however, the same is otherwise disputed by the respondent. The copies of the muster roll at document No.1, placed on record would show the name of the applicant to be at Sr.No.4, which is duly signed by her for having attended her duties in the month between June 2012 to December 2012, January 2013 to December 2014, January 2014 to September 2014 respectively. The contents of these documents would show that the applicant has regularly attended the respondent - School in order to perform her duties as an Attendant. The amount of Rs.50,000/- lend by the respondent to the applicant is also not denied by the respondent. It is also not denied that each month Rs.500/- was deducted from the salary of the applicant to repay the said amount lend. The respondent-school has been functioning since

1996 is also an admitted fact and therefore, it cannot be denied that the applicant must have been engaged since inception stage. The above discussion clearly shows that the applicant has been working with the respondent from last several years as Attendant performing various duties.

17] It is also the contention of the learned advocate for the applicant that the applicant has been kept temporary for years together and another employee named Reshambai Kamble who joined at the very same time when the applicant joined was made permanent employee. Similar is the case of Shri. Prakash Ratnakar Joshi, who was appointed in 2009 as a Peon was made permanent in 2014. Both these contentions alleged by the applicant is however denied by the respondent. Whether the contention of the applicant appointing Reshambai Kamble and Shri. Prakash Ratnakar Joshi as permanent employee keeping aside the claim of the applicant, needs evidence, which cannot be decided at the interim stage and same needs to be decided on merits. However, the allegation of threat given to the applicant on 14.11.2014 on account of query raised by the applicant from the school administration making Reshambai Kamble and Shri. Prakash Ratnakar Joshi as permanent and subsequently filing the present complaint immediately thereafter, cannot be ruled out. Therefore, this Court is of considered view that prima facie, the applicant has made out a case and balance of convenience prima facie appears to be in favour of the applicant. In the event, the ad-interim order dated 20.11.2014 granted

earlier by this Court is not confirmed, the applicant shall suffer irreparable loss. Eventually, it goes without saying that an employee is to be paid for the number of days of duties performed by her. 'No work no pay' is the cardinal principle of labour jurisprudence. Hence, the application needs to be allowed and I therefore, answer point Nos.1 to 3 in partly affirmative. Thus, I pass the following order :-

O R D E R

1] The application is hereby partly allowed.

2] The respondent is hereby directed to cease and desist from committing unfair labour practice against the complainant.

3] The ad-interim order dated 20.11.2014 passed earlier by this Court is hereby confirmed subject to direction not to terminate or take any action against the applicant adversely affecting her interest without following due process of law.

4] The present application is disposed of in above terms.

Place :- Aurangabad

Dated :- 26/04/2022.

[Vimalnath S. Tiwari]
Member,
Industrial Court, Aurangabad.

-JSK-