

BEFORE SHRI S. Z. SONBHADRE
MEMBER, INDUSTRIAL COURT, AT AKOLA

Complaint U.L.P. No. - 19 of 2022

CNR No.- MHIC30-000019-2022

Hasina Bi Shaikh Gaffar,
Aged 55 Years, Occ : Labourer,
R/o Pailpada, Tq. And Dist. Akola - **Complainant**

Versus

The Registrar,
Dr. Punjabrao Deshmukh
Krushi Vidyapeeth, Akola, - **Respondent**

Coram :- S. Z. Sonbhadre, Member, Industrial Court.

Appearance :- Shri P. R. Dharmadhikari Ld. Adv. For Complainant.

Shri S. S. Rajderkar, Ld. Adv. For Respondent.

Order Below Application Exh.- U-2

(Passed On 17-03-2022)

01. This is the Application under Section 30(2) of the M.R.T.U. and P.U.L.P. Act, filed by the Complainant along with her main Complaint under Section 28, Read with Item 5, 6 and 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. The Complainant in her Main Complaint has prayed for directions to the Respondents Regularize her Services and some other Reliefs. The Complainant in this Application Exh.- U-2, has

prayed for directions to the Respondents Not To Dismiss, Discharge or Terminate the Complainant without following due procedure of law, until decision of the main Complaint. The facts of the Application are as under :-

02. The Complainant in her Complaint stated that, she is working as a Daily Wager with the Respondents since the Year 1998, as a Daily Wages Labourer. The Complainant claimed herself to be entitled for Regularization of her Services. The Complainant have completed more than 5 Years Continuous Service, since the date of her Initial Appointment. It is further case of the Complainant that, she has completed more than 240 Days, Continuous Service in Every Year. As such, the Complainant claims herself to be entitled for the Benefits of Permanent Employee. It is a case of the Complainant that, the Respondents are engaged in Unfair Labor Practices covered by Items 5, 6 and 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. As such, the Complainant have prayed for the directions to the Respondents to Regularize her Services. By this Application Exh.- U-2, Complainant have

prayed for Protection of her Services, during pendency of this Complaint.

03. The Respondent have filed its Reply at Exh.- C-4 and have opposed the Prayer of the Complainant for Protection of her Services. It is a case of the Respondent that, the Complaint is barred by Limitation, Complaint is Not Maintainable, 240 Days are Not Completed, the Complainant is Not Appointed by Due Procedure of Law, Funds are Not Available with the Respondent, Work is Not Available Regularly. It is further case of the Respondent that it Does Not Have Any Intention To Terminate The Services of the Complainant. Work is Not Available Continuously and the Complainant is engaged as per Requirement. As such, if contingency arises, Respondent may Terminate Services of the Complainant after following due Procedure of law. It is further case of the Respondent that, it has not committed any Unfair Labor Practice and therefore, prayed for rejection of Application Exh.- U-2.

04. In view of the Rival Submissions of the Parties, the following Points arise for my determination, and I have

recorded my Findings, against each of them, for Reasons to be followed.

<u>Points</u>	<u>Findings</u>
1. Whether the Complainant Prima Facie make out a case of Unfair Labor Practice, against the Respondents, for grant of Interim Relief, as is prayed for ?	- Partly Yes
2. Whether the Balance of Convenience & Irreparable Loss, lies in favor of the Complainant ?	- Yes
3. What Order ?	- As Per Final Order

- : REASONS :-

05. As To Point No.- 1, 2 & 3 :- Heard Both Sides. Perused the Record. The Complainant have filed Documents with List Exh.- U-5 and U-9. Said Documents, reveal that, the Complainant is in employment of the Respondent since the Year 1998 and is receiving her Wages. It also appears from the said Documents that the Complainant is in service of the Respondent since more than Five Years and that the Complainant have completed more than 240 Days Service in many of the Years of her Employment. However, I find that the Complainant is not having Regular Uniform Number of Working Days to her credit, with the Respondent. As such, I

find substance in the contention of the Respondent that, the Respondent are engaging the Complainant As Per Availability of Work.

06. The Complainant is praying for Blanket Protection of her Services. However, I am of the view that, the Respondent can not be directed to employ and to continue the employment of the Complainant, even if, the Respondent are not having any work. The employment of the Complainant has to be protected, since the Complainant is in the employment with the Respondent, since long back. At the same time, difficulty and requirement of the Respondent has also to be considered. As such, it is necessary to direct the Respondent to continue to employ the services of the Complainant during pendency of the main Complaint, as per availability of work, and as per Seniority. As such, I am of the view that, the Complainant has partly made out a case of Unfair Labour Practice.

07. The Complainant have relied on the law laid down by the Hon'ble Bombay High Court, in the case of ***Saudi Arabian Airlines -V/s- Ashok Margovind Panchal And***

Another, reported in ***2002 (3) C.L.R. 743 = 2003 (1) Mh. L.J.***

745. The Complainant has invited my attention to Para 11 of the said Judgment, which reads as under -

11. Once such a complainant employees ceases to be in employment there would be no question of granting him the privileges or benefits of permanency, would be a stock plea of the employers who would very conveniently get rid of the complaint by first getting rid of such an employee. The law cannot be allowed to be defeated in this manner by unscrupulous employers. The law aims at prevention of the unfair labour practice and not to perpetuate it. If such arguments were to succeed, no complaint under item 6 would ever succeed as no sooner the casual, badli or temporary employees who have continued for years together approach the court to seek permanency and the benefits of permanency what they would first get would be a sack order and they would never even dream to become permanent in employment anywhere. In such a complaint it is the duty of the Industrial Court to protect the employment by ordering

continuation of "status quo" during the pendency of the complaint, if of course, a reasonably good prima facie case is established by such employee that he was employed and continued as badli, temporary or casual for years together. The Industrial Court has to prevent the employer from engaging in another unfair labour practice of termination of such an employee. He cannot be driven to file a complaint under item 1 of the Schedule 4 of the Act before the labour court. The Industrial Court will be well within its jurisdiction under section 30 and section 32 to direct the employer to maintain the status quo in respect of the employment, in order to accomplish the aim and object of the legislation of prevention of an unfair labour practice complained of and likely to be engaged in by the employer. Unless the badlis, temporaries or casuals who have continued for years together prima facie, are ordered to be continued so, during the pendency of their complaint under item 6, not only the whole complaint but even the item 6 itself would get frustrated, stultified and aborted. Item 6 would be reduced to redundancy and

otiose if no status quo is directed at the interim stage or if the complainant employee is not restored to his position which existed prior to his complaint for the effective order to prevent such unfair labour practice of directing the employer to make him permanent if he finally succeeds to establish the said unfair labour practice. The twin result of restoration in employment coupled with permanency benefits must flow from the success of the complaint.

08. The Complainant in the light of above Authority in *Saudi Arabian Airlines (Supra)* stated that, it is the duty of this Court to protect the employment of employees by ordering the order of status quo, during pendency of main Complaint. However, I find that, the Hon'ble Bombay High Court in Para 11, used the words as, "*if of course, a reasonably good prima facie case is established by such employee that he was employed and continued as badli, temporary or casual for years together*" As such I am of the view that No Blanket Protection can be granted in favor of the Complainant and the

Employees cannot be fastened upon the Employer, unless the Prima Facie Case is made out.

09. I find that, though the Complainant have made out a case for Regularization of her Services, since she is in the employment of the Respondent, since last more than Five Years, yet it appears that the Complainant is employed for the Different Number of Days, as per the availability of Work. It shows that, the Complainant is engaged in Services on Daily Wages basis as per the Availability of Work. As such, I am of the view that, the Employees can not be fastened upon the Employer, even when, the Respondent may not have Work available for the Complainant. As such, the liberty has to be granted to the Respondent, to take action against the Complainant, only after following the due Procedure of law. As such, the Complainant have Partly made out a Prima Facie case for grant of Interim Relief.

10. The Complainant is shown to be of the Adult Years of Age and the present employment must be the only source of her Earning Livelihood. As such, the Employment of the Complainant with the Respondents needs to be protected. At

the same time, liberty is to be granted to the Respondent Employer, to take action against the Complainant Employee as per Provisions of law. Accordingly, the Application Exh.- U-2, needs to be Partly Allowed. Accordingly, I proceed to pass the following Order.

ORDER

- i.** The Application Exh.- U-2, in the Complaint ULP No.- 19/2022, is hereby Partly Allowed.
- ii.** The Respondent is directed to continue the employment of the Complainant, As Per Availability of Work and As Per Seniority.
- iii.** Liberty is granted to the Respondent, to take Suitable Lawful Action, against the Complainant, as per Law, if the Contingency arises, by following the Due Procedure of Law.
- iv.** No Orders as to Costs.

Akola.
Date –
17-03-2022.

S. Z. Sonbhadre
Member
Industrial Court, Akola