

**IN THE COURT OF
MEMBER, INDUSTRIAL COURT, AKOLA . AT AKOLA
PRESIDED OVER BY SHRI. N. A. MALUNJKAR**

Complaint ULP No.- 101 / 2022

CNR No.- MHIC30-000111-2022

Mankarna Manik Manohar

Aged 49 years, Occ. Labourer,
R/o Wani, Post Nipana, Tq. Dist. Akola.

- **Complainant**

...Versus...

The Registrar,

Dr. Punjabrao Deshmukh
Krushi Vidhyapith, Akola.

- **Respondent**

Coram :- Shri N. A. Malunjkar, Member.

Appearance :- Shri P. R. Dharmadhikari, Ld. Adv. for Complainant.

:- Shri S. G. Gawai, Ld. Adv. for Respondent.

Order Below Application Exh.- U-2

(Delivered On 16th March, 2023)

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 Schedule IV, Items 5, 6 and 9 of the M.R.T.U. and P.U.L.P. Act. The complainant in her Main complaint has prayed for directions to the respondent to give her benefits of permanency and some

other reliefs. The complainant in this Application Exh.- U-2, has prayed for restrain the respondent from removing or terminating the services of the complainant without following due procedure of law, till the decision of the main complaint.

02. A brief history of the matter, is that the complainant is working with the respondent since 1985 as a daily wages labourer. The complainant claimed herself to be entitled for regularization of her services. The complainant has 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 of working in each and every year. As such, the complainant claims herself to be entitled for the benefits of permanent employee. It is a contention of the complainant that the respondent giving the benefits of permanency to the others but not giving the same to the complainant. It is a case of the complainant that, the Respondent is engaged in unfair labor practices covered by Item 5, 6 and 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. As such, the Complainant has prayed for the directions to the Respondent 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 has filed its Written Statement-cum-Reply at Exh.- C-3 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 the 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. Based on the application for interim relief, the written statement and the documents of the complainant the following issues arise for my consideration.

Issues

Findings

- | | | |
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| <p>1. Whether Complainant make out a Prima Facie Case, for grant of Interim Relief, as is prayed for ?</p> | - | Partly Affirmative |
|--|---|--------------------|

2. Whether the Balance of Convenience & Irreparable Loss, lies in favor of the Complainant ? - Partly Affirmative
3. What order ? - As Per Final Order

REASONS

05. As To Issue Nos.- 1, 2 & 3 :- Heard Advocates for both the parties. Perused record. The complainant have filed documents with List Exh.- U-5. Said documents, reveal that, the complainant is in employment of the respondent since long back 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 almost every year of her employment. However, I find that the complainant is not having regular uniform number of working days to her credit, with the respondents. As such, I find substance in the contention of the respondents that, the respondent is 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 is 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. 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 perusal of documents, reveals 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 respondents, 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.

08. 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 respondent 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.

O R D E R

- i.** The Application Exh.- U-2, in the Complaint ULP No.- 101 of 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 :- 16-03-2023.

Sd/-

(N. A. Malunekar)
Member,
Industrial Court, Akola.