

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by Smt. S. Z. Khan)

Complaint (ULP) No.24/2019
(CNR No.MHLC340001042019)

Sau. Vaishali Ashok Thaware
Aged 37 yrs. Occ- Anganwadi Helper
R/o Pardi (Thaware) Tah.- Nagbhid
Dist- Chandrapur.

.... **Complainant.**

-Versus-

1. Zilla Parishad, Chandrapur
Through Chief Executive Officer,
Zilla Parishad, Chandrapur.
Tah. & Dist- Chandrapur.
2. Child Development Project Officer
Ekatmik Bal Vikas Seva Yojna,
Nagbhid, Tah- Nagbhid
Dist.- Chandrapur.

.... **Respondents.**

Appearances :- Shri V. M. Dewalkar Adv. for complainant.

Shri P. M. Giradkar Adv. for respondents.

ORDER BELOW EXH. U-2
(Passed on 23rd September, 2019)

01. The present application has been filed by the employee under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for

Short “MRTU & PULP Act”) for grant of interim relief i.e. staying the effect and operation of termination order dated 06.06.2019 and for reinstatement of the complainant on her previous post till the disposal of main complaint.

02. The case of the complainant in brief can be described as under :-

The complainant was working as an Anganwadi Helper with the respondents since 2011. She was posted at village Pardi (Thaware) Anganwadi Centre no.3.

03. It is further averred that on 14/12/2018 the complainant fell ill due to food poison. The husband of complainant orally informed about the ailment of complainant to Anganwadi Sewika and thereafter filed the application for medical leave. Accordingly the medical leave for the period of 16/12/2018 to 31/01/2019 was granted to the complainant. Thereafter, on 01/02/2019, when the complainant went to join her duty, some persons of the village made hue and cry and did not allow the complainant to join her duty. This fact was informed to the Superior officer and he tried to give understanding to those villagers but, they were not in a position to listen anything. Therefore, it was directed to the complainant to stay at her house. She was further directed to furnish her medical fitness certificate. Accordingly, the complainant submitted her medical

fitness certificate but, she was not allowed to join her duty. Thereafter, on 13/02/2019 the respondent no.2 issued the compulsory leave order to the complainant. When she inquired, she was told that there is Loksabha election and therefore, in order to maintain the peace and order, she should not join her duty.

04. On 18/03/2019 the respondent no. 2 issued show cause notice to the complainant. She had submitted her explanation on 25/03/2019. Thereafter, she was issued impugned dismissal order dated 06/06/2019 without any enquiry. Such order was issued under political pressure which is illegal.

05. It is further averred that the post of the complainant is still vacant. Respondents have committed unlawful labour practice against the complainant by issuing the illegal dismissal order under political pressure. As such she had challenged the said order by filing the present complaint and sought interim relief by moving the application Exh. U-2.

06. Respondents have resisted the claim and contention of the complainant by filing their reply cum written statement vide Exh.C-6. They have admitted the fact of complainant having been employed as Anganwadi Helper with respondent since the year

2011 but, it is denied that she was illegally terminated under the political pressure .

07. Denying all the adverse allegations against them, respondents have specifically averred that the complainant was on medical leave since 16/12/2018 to 31/1/2019. On 01/02/2019, when the complainant came to join her duty, the villagers gathered at Anganwadi Centre and made protest against the complainant. They were opposing the joining of complainant and told that if the complainant will be allowed to join her duty, they will not send their children to Anganwadi. The respondent no. 2 tried to give understanding to the villagers but, they did not listen him. Therefore, complainant was directed to submit her explanation and also her fitness certificate. Thereafter, on 13/02/2019 when the complainant joined her duty, none of the villagers sent their children to Anganwadi. Therefore, it was informed to the complainant that she could not come on the duty.

08. It is further averred that on 26/01/2019 the gramsabha meeting was held wherein resolution no. 7/01 was passed. As per the said resolution, it was resolved that due to absence of the complainant inconvenience was caused to the children of anganwadi. Therefore, she is liable to be terminated. Accordingly, the complainant was informed.

09. It is further averred that on 12/02/2019 the villagers of Pardi (Thaware) had given the complaint to respondent as well as to the government that on 12/12/2018 the complainant while on her duty consumed poison and she was admitted to Cristanand Hospital, Bramhapuri. Due to which the parents as well as children of Anganwadi got frightened and due to such conduct of complainant there is every possibility of bad effect on the small kids of Anganwadi. Not only this total 235 villagers have filed different complaints against the complainant. Therefore, on 12/02/2019 respondent no. 1 had issued letter to the Sarpanch and Secretary of Grampanchayat. On 21/02/2019 the respondent called all those complainants at Grampanchayat for enquiry. Under such circumstances, the complainant could not be allowed to join her duty.

10. On 21/02/2019 the respondent conducted enquiry and recorded the statements of 99 villagers. Thereafter, the Assistant B.D.O. Child Development, Zilla Parishad Chandrapur issued letter to respondent no.2 to conduct enquiry. The anganwadi sewika of Anganwadi Centre no. 3 namely Mukhran Sanjay Bramhankar submitted the information to the respondent no. 2 regarding the incident of 01/02/2019.

11. Thereafter, on 28/03/2019 during enquiry, the anganwadi sewika submitted the information that the complainant has committed certain misconducts while performing her duty such

as she was not obeying the order of superiors, was not taking care of the children of anganwadi, she used to leave anganwadi without prior permission. So also on 13/04/2019 the report was furnished by Smt. Sheela Gedam against the complainant. Thereafter, the enquiry was conducted by respondent no. 2 and submitted the enquiry report on 15/04/2019. Thus, the enquiry was conducted against the complainant as per the Government Resolution dated 12/04/2017 and accordingly, she was terminated.

12. According to the respondents, the complainant was found guilty of misconduct therefore, she was terminated as per the government resolution. As such there is no illegality in passing of the impugned dismissal order nor respondents have committed unlawful practices against the complainant. As such it is prayed for rejection of the application.

13. Following points arise for my determination. I have given my findings thereon for the reasons given below :-

POINTS

FINDINGS

1) Whether the complainant has made out prima facie case ?

:

No.

2) Whether balance of convenience lies in his favour ?

:

No.

- 3) Whether he will suffer irreparable loss, if interim relief as claimed in application – (Exh.U-2) is refused ? : No.
- 4) What order ? : Application is rejected.

REASONS

14. Heard the learned counsel for the complainant and learned Counsel for respondents and perused the documents placed on record.

15. The complainant has placed on record the copy of dismissal order, Application for leave, order of respondent for submitting the medical fitness certificate, Certificate of Dr. Premlal Meshram, OPD card of Rural Hospital, Bramhapuri, Certificate of Christanand Hopsital, Certificate of Rural Hospital Bramhapuri, Joining letter of complainant, order of respondent, letter for explanation, Explanation of complainant, Application for reinstatement and acknowledgment alongwith Exh.U-3.

16. On the other hand respondents have placed on record the copy of Resolution of Maharashtra State dated 12/04/2007, Appointment letter of the complainant with agreement of terms and conditions dated 21/05/2011, leave applications of complainant,

Joining letter, medical certificate, show cause notice, complaints of various villagers, Resolution of Grampanchayat Pardi Thaware, letter of compulsory leave, letter of Grampanchayat Pardi Thaware about dismissal, list of complainants, letter for enquiry report, letter given by villagers to Chief Minister, report given by Mukharan, letter of Shila Gedam, enquiry report, dismissal order, letter of Commissioner, attendance register along with Exh.C-7.

AS TO POINT NOS. 1 to 3 :-

17. Needless to state that this Court is empowered to entertain application filed under Section 30(2) of MRTU and PULP Act regarding interim relief. The principle behind granting interim relief is to provide preventive relief of the aggrieved party. If essential conditions such as prima facie case, balance of convenience and causing of irreparable loss, in case application is not allowed, are fulfilled, then application for interim relief can be granted in order to preserve the rights of the parties as on the date of filing complaint. So far as making out of prima facie case is concerned, prima facie means the existence of circumstances justifying the trial of the question of facts and law raised in the litigation. In other words, Court has to consider whether there is a serious question to be tried in the litigation.

18. Perusal of record shows that complainant has challenged the impugned termination order. According to respondents, it was issued by them, when charges of misconduct were proved against complainant on the basis of evidence available in the enquiry proceeding. Against this, complainant submits that no enquiry was conducted against her and she was terminated illegally under political pressure. No opportunity was given to the complainant to defend herself. Therefore, consequently, issuance of impugned termination order is illegal one.

19. The learned counsel for the complainant argued that without conducting any enquiry against the complainant, she was terminated on account of absenteeism. She was not given opportunity to defend herself. He further argued that on the basis of the complaints made by the villagers, the complainant was terminated under political pressure. He pointed out that it was not considered that the children of those villagers who made complaints against the complainant were not learning in the anganwadi. The statements of witnesses were taken on the say of Sarpanch. Despite of the fact that some of the villagers supported the complainant and they requested to allow the complainant to join her duty, respondents did not consider the request of complainant. As such, the impugned termination order is illegal.

20. Per contra, the learned counsel for respondents argued that the enquiry was conducted against the complainant on the basis of number of complaints made by the villagers. There were allegations against the complainant that she was not performing her duty properly and that she had consumed poison during her duty. According to him, the impugned termination order was passed by following the Government Resolution dated 12/04/2007. As such, there is no illegality or unlawful practices on the part of respondents .

21. First of all, turning to the undisputed facts, it is not disputed that the complainant was appointed temporarily on honorary basis. It is also not disputed that the villagers have protested joining of the complainant on her duty. They have made complaints of various nature against the complainant. The bunch of near about more than 200 complaints is placed on record by the respondent wherein number of allegations are made against the complainant including the allegation that she had consumed poison at her work place. It is also not disputed that the villagers had stopped to send their children in Anganwadi in the event of complainant allowed to work therein and that respondents have tried to give understanding to those villagers and thereafter, the explanation was called from the complainant.

22. Respondents have placed on record the Government Resolution dated 12/04/2007 vide document no.1 which shows that in case of any misconduct on the part of Anganwadi sewika or Helper etc. the power to conduct enquiry is conferred upon Child Development Project Officer. As per the said resolution, the explanation from the concerned employee is to be called and if there is no improvement in the conduct of such employee or if explanation is not found plausible, she has to be terminated from service.

23. In the case in hand, there is controversy between the parties whether such resolution is properly followed or not but, it is not disputed that the explanation of complainant was called prior to passing of impugned termination order. Moreover, it is also not disputed that there were complaints of more than 200 villagers against the complainant regarding the alleged misconduct. Undoubtedly, the complainant has filed affidavit of four villagers to falsify those complaints but, at this stage the same can not be considered, it is a part of evidence and for deciding this controversy detail evidence is necessary.

24. It is alleged by respondents that the villagers have contended that the complainant has consumed poison on her work place. In this context, the contention of the complainant is that she

suffered food poisoning. This issue also required evidence and can be decided on merit only.

25. The contention of the complainant is that she was illegally terminated by the respondent under political pressure but, except the bare contention there is no material on record in support of the contention of the complainant rather the material placed on record by the respondent is justifying the contention of the respondent that on the basis of the complaints of villagers and the protest by them, enquiry was conducted against the complainant. The complainant has also pleaded this fact. Under such circumstances, for deciding the controversy between the parties, the detail evidence is required. It cannot be decided in absence of evidence at this interim stage. As such, at this interim stage, no prima facie case is established by the complainant showing that she was illegally terminated by the respondent. Therefore, in absence of prima facie case in favour of the complainant, the interim relief claimed by her in the nature of principal relief cannot be granted. Hence, I hold that the complainant failed to prove the existence of prima facie case in her favour.

26. So far as the balance of convenience is concerned, the complainant has come with the case that she was illegally terminated. As discussed earlier, at this interim stage, in absence of

any prima facie evidence in favour of any of the party, this controversy cannot be decided. If the complainant could establish her contention that she was illegally terminated only in such event she would be entitled to relief as claimed. But at this stage there is no material on record in favour of complainant. Under such circumstances, the balance of convenience is also not lying in favour of the complainant.

27. So far as the irreparable loss is concerned, it is well settled that in the service matter the succeeding party can be compensated in terms of monetary relief. Though, it is possible that some financial difficulties may have been faced by the complainant, it cannot be said that, the complainant would be caused irreparable loss if interim relief is not granted. Ultimately if she succeeds, she would get monetary benefits. Per contra if in absence of prima facie case, interim relief in the nature of principal relief i.e. reinstatement of complainant is granted, there is every possibility of protest by villagers and refusal to send their children to anganwadi which would directly defeat the govt. scheme of progress and development of children and thus irreparable would be caused to the public at large. As such, if the interim relief is refused, no irreparable loss would be caused to the complainant. Hence I answer point n.1 to 3 in negative.

Hence considering the aforesaid discussion, I hold that the interim relief as claimed by the complainant is not warranted in the case in hand. Hence, the following order.

ORDER

- 1) Application is rejected.
- 2) No order as to costs.

CHANDRAPUR.
Date :- 23.09.2019.

(Smt. S. Z. Khan)
Judge
Labour Court, Chandrapur.