

BEFORE THE JUDGE, LABOUR COURT, AMRAVATI.

Complaint (ULP) No.31 of 2018

CNR No. MHLC270000782018

Ganesh Sohanlal Sawalkar,
R/o. Sawli kheda, Tq. Dharni
Distt. Amravati.

..... Complainant.

Versus

Shabri Adiwasi Vitta Va Vikas
Mahamandal Maryadit, through
its General Manager (Gondwan)
Nagpur and Anr.

..... Respondents

ORDER BELOW EXH.U-2

(Passed on 17.11.2018)

The complainant has filed the present application for granting interim relief directing respondent to reinstate him till final disposal of the complaint.

2] According to complainant, he was appointed as computer operator /Typist in branch of respondent at Dharni. He is workman. The respondent is an industry. It is averred that complainant adopts pleading in the complaint for the purpose of decision of this application. The complainant belongs to reserved category of S.T community. He was in the employment of respondent since 31.3.14 without any break or interruption in service. He was performing permanent nature of work. He was paid consolidated salary of Rs.3000/- per month. It was not according to minimum rate of wages. His services were not regularized. Therefore he had filed

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ULP complaint before Hon'ble Industrial Court, Amravati. In that complaint, inadvertently name of respondent was typed as Maharashtra Rajya Shakari Adiwasi Vikas Mahamandal Maryadit instead of Shabri Adiwasi Vitta Vikas Mahamandal Maryadit, Dharni Branch, Dharni . In the said complaint application for interim relief was filed and the Court was pleased to grant status quo in favour of complainant. Notice was served on Maharashtra Rajya Sahkari Adiwasi Vikas Mahamandal. The respondent got its knowledge and therefore did not allow complainant to resume duty w.e.f. 2.4.2018 with malafide intention. It is averred that complainant was in continuous service since 31.3.14 without any break or interruption in service till the date of termination. Thus he has completed more than 240 days in a year. The termination of complainant is oral and no reason has been assigned. One month notice was not served on complainant nor salary in lieu of it was paid. Complainant was not paid retrenchment compensation. As such provisions of Sec.25F are not complied by the respondent. Further appropriate government was also not served with the notice. Therefore termination of complainant is illegal. It is by way of victimization as complainant had insisted for regularization in service. After termination complainant made representation to respondent but they did not pay any heed. It compelled the complainant to file the present complaint. It is necessary to direct respondent to reinstate complainant till final decision of the case. The complainant has prima facie case and balance of convenience lies in his favour. If interim relief as prayed is not granted then he will suffer irreparable loss. On these grounds, it is prayed to allow the application.

3] The respondents filed reply-cum-written statement vide Ex.C-5 and resisted the application. It is denied that complainant is

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an employee and respondent is an industry. It is submitted that complaint is not maintainable. As per G.R dated 9.12.98 Shabri Adiwasi Finance and development Corporation was created. It has 12 branches. It works under Tribal department of the State Govt. It was decided that post in the respondent Corporation should not be filled up independently. Excess staff in Adviwasi Vikas Mahamandal was to be absorbed in respondent Corporation. The government has sanctioned 72 post to be absorbed to the respondent Corporation. Therefore there cannot be direct appointment of any staff. The complainant can never be appointed to post of computer operator/ Typist. As such he can never be employee of respondent. His appointment was illegally effected by then Branch Manager in April, 2016. Therefore he cannot be termed as workman. It is necessary to adjudicate issue of employer and employee relationship. It is denied that respondents are engaged in unfair labour practices and terminated complainant illegally. It is denied that complainant was in continuous employment since 31.3.14 and performing work of permanent nature. The appointment of complainant was illegal and therefore there cannot be application of any statutory provisions or service conditions. It is denied that he was discharging duty of computer operator /typist. It is admitted that he had filed ULP complaint before Industrial Court. It is denied that he was in continuous service and completed 240 days in preceding last year of alleged termination. As complainant was illegally appointed he is not entitled for retrenchment compensation. It is denied that there is violation of Sec.25F or any mandatory provision. In view of G.R dated 13.12.99 there was no requirement to issue notice to appropriate government. It is denied that respondents have engaged other hand in place of complainant. It is denied that complainant made representation to re-

spondent. Alternatively it s submitted that complainant would be entitled for compensation if it is found that he was illegally terminated. Therefore it is not necessary to grant interim relief. On these grounds, it is prayed that the application be rejected.

4] The Points for determination alongwith findings thereon are as under :

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether complainant has shown prima facie case ?	... Yes
2] Whether the balance of convenience lies in favour of complainant ?	... Yes
3] Whether complainant will suffer irreparable loss, if relief of injunction as prayed is not granted ?	... Yes.
4] What order ?	... Application is allowed.

REASONS

5] **As to point nos.1 to 4** : Heard the learned advocate for the complainant. Ld. Advocate for the respondent filed written arguments vide Ex.C7. Complainant is claiming himself to be employee of respondent. The respondent has denied relationship of employer and employee between them. In support of his complaint, complainant has produced photo copy of letter issued by Branch Manager i.e. respondent no.2 in favour of General Manager of respondent. It shows that complainant was appointed on the post of Typist on 31.3.2014. He was appointed in payscale of Rs.3000/- per month. In remark column of Annexure of said letter it is mentioned that services of complainant are necessary for the Branch. Thogh

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the respondents have denied that there exist relationship of employer and employee. It is seen that they have admitted appointment of complainant at Dharni branch. Therefore prima facie relationship of employer and employee between the parties is seen.

6] The respondents disputed that complainant was appointed on 31.3.14. According to respondent, complainant was illegally appointed by then Branch Manager in April, 2016. However, at this stage no documentary evidence in support of said contention is produced. In view of aforesaid letter dated 24.6.16 issued by respondent no.2 it is seen that complainant was appointed on 31.3.14. It is undisputed that complainant had filed ULP complaint before Hon'ble Industrial Court for regularization of his service and interim relief was granted in his favour. The question of regularization of service of complainant is beyond the scope of present application. However, it is seen that after service of notice of complaint the complainant was immediately terminated by respondent. Thus it is seen that if the complainant had not filed ULP complaint he would not have been dismissed from service. Prima facie this fact shows that he was malafidely terminated.

7] The respondents have referred G.R dated 13.12.99. It is in respect of absorption of posts between Shabri Adiwasi Vikas Mahamandal and Maharashtra Rajya Co-op. Adiwasi Development Corporation. Whether steps were taken or not to absorb post as per G.R can be considered while deciding the complaint finally. At this stage it is seen that complainant was working with the respondent since 31.3.14 to 2.4.2018. He was orally terminated by respondent without issuing any notice, no retrenchment compensation was paid to him. As stated above, it was due to filing ULP complaint against

the respondent. Leaned advocate for the respondent has relied on the decision in the case of **Executive Engineer, MSEB, Morshi -Vs- Industrial Court, Amravati (2001 (3) Mh.L.J. 320)** wherein it is held that care should be taken by the court while granting interim relief. It should not of such nature that it would amount to granting final relief. In the case in hand there appears exceptional circumstances as due to filing of complaint, the complainant is immediately terminated by the respondent. The question of entitlement of compensation or reinstatement can be considered while finally deciding the complaint. Till then if complainant is not reinstated the he will suffer great loss. Under such circumstances, it is seen that complainant has shown prima facie in his favour, balance of convenience lies in his favour. He will suffer irreparable loss if injunction is refused. Hence point nos.1 to 3 are answered in the affirmative . Hence application deserves to be allowed. Hence in answer to point no.4 following order is passed.

ORDER

- 1] Application is allowed.
- 2] The respondents are directed to reinstate the complainant in service till the decision of main complaint.
- 3] Parties to bear their own costs.
- 4] The respondents shall comply this order within one month from today.

Amravati

Dated : 17.11.2018

Sd/-

(M. M. Shaikh)

Judge,

Labour Court, Amravati.

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