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Duration Y. M. D.
00 06 05

Exh.

BEFORE THE JUDGE, LABOUR COURT, AKOLA.

Complaint (ULP) No. 13 of 2018
(CNR-MHLC30-000147-2018)

Kamal S/o. Sonulal Bhati,
Age : 33 years, Occu; Nil,
R/o. Yelvan, Post: Yeranda,
Tq. & Dist: Akola.

----- **COMPLAINANT.**

Versus

General Manager,
Adani Power Plant,
R/o. Yelvan, Post: Yeranda,
Tq. & Dist: Akola.

----- **RESPONDENT.**

CORAM :- Shri. S. S. Shinde, Judge.

APPEARANCES :- Shri. R. R. Rathi, Adv. for Complainant.
Ex-parte against Respondent.

: J U D G M E N T :
(Delivered on 06/12/2018)

Complaint is filed under Section 28 r/w. Item 1 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

01] Complainant has filed complaint against respondent under Section 28 read with Item 1 of Scheduled IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (In short MRTU & PULP Act) for declaration that respondent has engaged in unfair labour practice by terminating the complainant w.e.f. 12/04/2018 and further, prayed for reinstatement with continuity in service and full back wages.

In short facts of the complaint are as under: -

02] It is the contention of complainant that he was working as a Security Guard/ Chaukidar with respondent since 2012 on daily wages basis. It is his further contention that he was orally appointed by the respondent since 2016 for maintenance of garden. It is his further contention that he was getting daily wages of Rs. 220/-. It is his further contention that he had worked more than 240 days in every year. It is his further contention that his service record is clean and unblemished and he has worked more than 6 years. It is his further contention that on 12/04/2018, when he reported on duty as usual he was informed that his services are no more required and thus, he was orally terminated. It is his further contention that respondent has not followed mandatory provisions of Section 25-F of Industrial Disputes Act, 1947 (In short I. D. Act) before terminating his services and thereby engaged in unfair labour practice. It is his further contention that prior to his termination, there was quarrel amongst Security Guard Shri Uparikar and complainant, however respondent has not called any explanation from

the complainant in that respect and he has been terminated illegally. It is his further contention that neither notice was issued nor any charge sheet has been given to the complainant. It is his further contention that respondent has not given opportunity to the complainant to defend himself by initiating inquiry. It is his further contention that he has approached respondent several times and requested him to allow him to resume on duty, however, respondent did not respond. It is his further contention that since the date of termination, he is out of service and his family is starving. It is his further contention that he had issued notice through Advocate Piyush to the respondent, however respondent had not replied the same. It is his further contention that he is 33 years old and he has lost all means of Government employment and further, there are 6 members in his family and they are depend on his income. It is his further contention that he has no other source of income. It is his further contention that therefore, he has filed the present complaint for declaration that the respondent has engaged unfair labour practice and for setting aside his termination order and directing the respondent to reinstate him with continuity in service and full back wages. Hence, this complaint.

03] Notice was issued to the respondent vide Exh. O/4, however, despite of service of said notice, he has avoided to accept the same. Therefore, order was passed below Exh. U-1 on 25/10/2018 to proceed matter ex-parte against respondent.

04] In view of the above said facts and pleadings of the complainant, following points arises for my consideration, I have given my findings with reasons as stated below.

Sr. No.	Points	Findings
1	Whether complainant proves that respondent has illegally terminated his services without following mandatory provisions of Section 25 of Industrial Disputes Act, 1947 ?	In affirmative.
2	Whether complainant proves that respondent has engaged in unfair labour practice under Item 1 Schedule IV of MRTU & PULP Act, 1971 ? ?	In affirmative.
3	Whether complainant is entitled for relief's claimed ?	Partly in affirmative.
4	What order ?	As per final order

REASONS

05] Complainant in order to support his contention, he has filed his evidence on affidavit at Exh. U/9. He relied on documentary evidence i.e. copies of Identity Cards issued on 06/04/2017 and 31/05/2016 at Exh. U/10 and U/11 respectively. He closed his evidence vide pursis Exh. U/12.

As to point No. 1 to 4 :-

06] It is argued on behalf of the complainant that he was working since since 2012 as Chowkidar with the respondent on daily wages of Rs. 220/- for maintaining garden. It is further argued that he has completed 240 days in every year and continuously worked for 6 years till 12/04/2018. It is further argued that on 12/04/2018, when he reported on duty as usual, he was orally informed that his services are no more required and thus, his services were terminated illegally. It is further argued that respondent has neither issued show cause notice nor issued charge sheet. It is further argued that even respondent has not issued one month notice for pay in lieu of notice or retrenchment compensation. It is further argued that he has been terminated by the respondent without any reason and thereby engaged in unfair labour practice under Item 1 of Schedule IV of MRTU & PULP Act. It is further argued that he has filed his evidence on affidavit vide Exh. U/9 and further, in order to support his contention that he was working with respondent, he has filed Identity Cards at Exh. U/10 and U/11 respectively issued by the respondent. It is further argued that it appears from said cards that complainant was working with respondent. It is further argued that complainant has pleaded as well as adduced evidence that he was not in gainful employment after his termination. It is further argued that respondent has neither appeared nor cross-examined him therefore, his evidence has remained unchallenged. It is further argued that he has discharged his burden by adducing evidence however,

respondent has not rebutted the same. He relied on ratio laid down in **Bholanath Lal and others-vs- Shree Om Enterprises (P) Ltd. reported in 2018-III LLJ 579 (Del)** wherein Hon'ble Apex Court has observed that,

'It is notice that all these Petitioners/workmen in their affidavits tendered in evidence that they could not obtain any employment and they remained unemployed since illegal termination of their services by the Respondent/Management. However, in support of its pleadings and to rebut the testimonies of all the Petitioners, the respondent/Management has failed to adduce any evidence. The onus thus stands shifted to the Respondent/Management to show that after the termination, the Petitioners/workmen remained gainfully employed.'

It is further argued that complainant has proved that he was working with the respondent and he has been illegally terminated without following mandatory provisions of Section 25-F of I. D. Act. It is further argued that he was not in gainful employment, therefore, in view of ratio laid in case law cited supra, he may be reinstated with continuity in service and full back wages. Hence, complaint may be allowed as prayed.

07] Perused complaint, oral and documentary evidence on record. Heard learned Advocate for the complainant. I have gone through the case law cited on behalf of the complainant. On perusing

record, it appears that complainant has filed complaint to challenge his oral illegal termination dated 12/04/2018 by the respondent. It is pertinent to note that complainant has pleaded that he was working since 2012 and further, complainant was working was appointed to maintain garden since 2016. Complainant has filed Identity cards at Exh. U/10 and U/11 issued by the respondent to show that he was working with respondent. It further appears that complainant has pleaded and stated on evidence on affidavit that he has been terminated without following mandatory provisions of Section of 25- F of I. D. Act. It is pertinent to note that as respondent has not appeared in the proceeding and even there is no material on record to show that one month notice was issued or wages were paid in lieu of one month notice to the complainant or retrenchment compensation was paid. Respondent has not cross-examined the complainant. Further, it is the contention of complainant that since the date of termination, he is out of employment and despite of several oral request, respondent had not allowed him to resume on duty. It is pertinent to note that complainant has filed his evidence on affidavit at Exh. U/9 and reiterated the contents in his complaint. It is pertinent to note that respondent has neither appeared nor cross-examined the complainant therefore, evidence of the complainant has remained unchallenged.

08] In view of ratio laid down in case law cited supra, it is settled law that if complainant discharges his burden then onus shifts on

the respondent. In the present case, complainant has filed his evidence on affidavit, however, as discussed above he has not been cross-examined on behalf of respondent. It was the duty of the respondent to adduce evidence and rebut the contentions of the complainant. Thus, from the material on record, it appears that complainant has proved that he was working with respondent on daily wages basis and he has been terminated illegally by the respondent without following mandatory provisions of Section 25-F of I. D. Act. It is settled law that if termination has been held illegal, then employee is entitled for reinstatement with continuity in service and full back wages. However, it is also settled law that so far as daily wager is concerned, relief of back wages may not be granted. However, considering the facts and circumstances of the present case, that there is no rebuttal evidence on record, therefore, I am of the view that complainant is entitled for reinstatement with continuity in service. However, he is entitled for 50% back wages. Hence, I am of the view that complainant has proved his contention, therefore, I answer point Nos. 1 and 2 in the affirmative, point No. 3 partly in affirmative and in answer to point No. 4, I proceed to pass following order :-

ORDER

- 01] Complaint is partly allowed.
- 02] It is declared that respondent has engaged in unfair labour practice under Item 1 of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971.

- 03] Respondent is directed to cease and desist from engaging in unfair labour practice of Item 1 of Schedule IV of M.R.T.U. and P.U.L.P., Act, 1971.
- 04] It is declared that oral termination dated 12/04/2018 of complainant by respondent is illegal and hence, set aside.
- 05] Respondent is directed to reinstate complainant with continuity in service within one month from the date of order.
- 06] Respondent is directed to pay 50% of back wages to the complainant from the date of dismissal till the date of reinstatement.
- 07] No order as to cost.

Akola.

(S. S. Shinde)

Judge,

Labour Court, Akola.

Date :- 06/12/2018.

Argued on : 06/12/2018.
Judgment dictated on : 06/12/2018.
Judgment transcribed on : 06/12/2018.
Judgment checked and signed on : 06/12/2018.

Ram/-