

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR

Complaint (ULP) No.49/2021

(CNR NO.MHLC340001622021)

Digambar Mukru Kukudkar,

Aged about - 38 years, Occu : Nil,

R/o Ranbothali, Po. Chaughan.

Tah. Bramhapuri, Dist. Chandrapur.

... Complainant.

-:- VERSUS -:-

1. Gram Panchayat, Ranbothalil

Through its Sarpanch,

Tah. Bramhapuri, Dist. Chandrapur.

2. Gram Panchayat, Ranbothali,

Through its Sachiv,

R/o Ranbothali, Post. Chaughan,

Tah. Bramhapuri, Dist. Chandrapur.

... Respondents.

CORAM :- R. V. Mete, Judge.

Appearance :

Shri. R. M. Awghade, Ld. Adv. for the complainant.

Shri. M. S. Chilbule, Ld. Adv. for respondents.

(ORDER BELOW EXH.U-6)

(Passed on 8th September, 2022)

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

02. The case of the complainant in brief can be described as follows.

Initially, the complainant was appointed on the post of Diwabati/Water Supplier Employee by the respondent on 24.08.2020 vide resolution no.18/2020. The respondents by levelling false charges illegally terminated to the complainant from the post of Diwabati/Water supplier Employee w.e.f. 24.09.2020 as per resolution no.2 dt. 24.09.2020. Therefore, complainant challenged the said termination before this Court. It is further contended that when the said matter is pending before this Court, respondents passed the resolution on 23.08.2022 for recruitment for the post of Diwabati/water supply employee. Also published the said advertisement of recruitment on the notice board of Gram Panchayat on 23.08.2022, and in the said advertisement it is specifically mentioned about calling of application from eligible candidates from 23.08.2022 to 02.09.2022. It is contended that the said act of the respondents is an unfair labour practice. From this it appears that respondents in order to take their relative on the said post illegally terminated the service of complainant. Therefore, complainant prayed to grant stay to the advertisement of recruitment for the post of Diwabati/water supply employee and also prayed to reinstate the complainant in service till decision of the main complaint. Lastly, prayed to allow the application.

03. The learned Counsel of respondent has filed reply vide (Exh.C-3) and taken preliminary objection that the

complainant is not a “workman” within a meaning of Industrial Dispute Act. The complainant was engaged by the Maharashtra State Electricity Distribution Company vide agreement in between Maharashtra State Electricity Distribution Company and the respondents dated 30.10.2018 and vide Government Resolution dtd. 20.10.2016. Hence, the complainant is not an employee of the Gram Panchayat and engagement is made by the agreement dtd. 30.10.2018 on temporary basis that to honorarium. That on 30.10.2018 the agreement took place in between the respondent and Maharashtra State Electricity Distribution Company and the complainant was appointed on franchise basis. Therefore, the complainant is not an employee within the definition of MRTU and PULP Act. The complainant has not made Maharashtra State Electricity Distribution Company as a party in present complaint therefore this complainant as well as interim application is not tenable for non-joinder necessary party.

04. It is submitted that the complainant was appointed by Maharashtra State Electricity Distribution Company for the period of 11 months only due to the work of meter reading, to distribute energy bills, to attend the break down and restore the supply etc. It is totally false and hence denied that, the complainant was terminated by alleging false allegations. It is also submitted that, as per the Gram Panchayat act the complainant has to made application before the B.D.O. but, the complainant has not made any application before the said authority. On this ground also, the complaint as well as

interim application deserves to be dismissed.

05. Following points arise for my determination. They are answered with my findings thereon for the reasons given on below :-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether 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, in case application – (Exh.U-6) is not allowed ?	No.
4) What order ?	: Application – (Exh.U-6) is rejected.

REASONS

06. I have heard Shri R. M. Awghade, learned Counsel for the complainant and Shri M. S. Chilbule, learned Counsel for respondents. Perused record.

07. The complainant has placed reliance the documents as per list of documents vide (Exh.U-2), (Exh.U-7) and (Exh.U-9) – Termination order dated 24.09.2020, Resolution dated 03.07,2020 and 24.08.2020, Advertisement relating to appointment dated 23.08.2022, Appointment order dated 03.07.2020 and Application dated 04.07.2020.

08. On the contrary, the respondents have placed reliance the documents as per list of documents (vide Exh.C-4) – Agreement dated 30.10.2018, Resolution dated 19.10.2018 and 24.10.2019, Government Resolution dated 20.10.2016 and Relevant page of Gram Panchayat Act - Section 61.

AS TO POINT NOs.1 to 3 :-

09. While deciding the application under Section 30(2) of the Act, the Court has to see the existence of the prima facie case in favour of the complainant on the basis of record and documents filed by the complainant. After all what is prima facie case ? It is the case which reasonable arguable, which raises debatable and serious issue, which enables the Court to say something in favour and which therefore, necessitate the matter to be proceeded to trial.

10. In the present complaint, complainant has challenged order dated 24.09.2020 alleging that it is illegal termination order. It is his contention that he was appointed on 24.08.2020 and he was served continuously with the respondents w.e.f. 24.08.2020 till 24.09.2020. It is the contention of the complainant that respondents terminated his services by leveling false charges as per resolution no.2 dt. 24.09.2020. Therefore, complainant challenged the said termination before this Court. It is further contended that when the said matter is pending before this Court, respondents passed the resolution on 23.08.2022 for recruitment for the post of Diwabatti/water supply employee.

Also published the said advertisement of recruitment on the notice board of Gram Panchayat on 23.08.2022. The said act of the respondents is an unfair labour practice. Therefore, complainant prayed to grant stay the advertisement of recruitment for the post of Diwabatti/water supply employee and also prayed to reinstate the complainant in service till decision of the main complaint.

11. The learned counsel for respondent filed their reply at (Exh.C-3) and contended that the complainant is not a “workman” within a meaning of Industrial Dispute Act. The complainant was engaged by the Maharashtra State Electricity Distribution Company vide agreement in between Maharashtra State Electricity Distribution Company and the respondents dated 30.10.2018 and vide Government Resolution dtd. 20.10.2016. Hence, the complainant is not an employee of the Gram Panchayat. It is contended that on 30.10.2018 the agreement took place in between the respondent and Maharashtra State Electricity Distribution Company and the complainant was appointed on franchise basis. Therefore, the complainant is not an employee within the definition of MRTU and PULP Act. The complainant has not made Maharashtra State Electricity Distribution Company as a party in present complaint therefore this complainant as well as interim application is not tenable for non-joinder necessary party.

12. It is further contended that the complainant was appointed by Maharashtra State Electricity Distribution

Company for the period of 11 months only due to the work of meter reading, the distribute energy bills to attend the break down and restore the supply etc. It is totally false and hence denied that, the complainant was terminated by alleging false allegations. It is also submitted that, as per the Gram Panchayat act the complainant has to made application before the B.D.O. but, the complainant has not made any application before the said authority. On this ground also, the complaint as well as interim application deserves to be dismissed.

13. Herein in this case, through this application complainant prayed for reinstatement in service till the decision of main complaint and also prayed for stay to the advertisement to recruit the person on the post of Diwabatti/water supply employee issued by the respondent as per resolution dated 23.08.2022.

14. The complainant in the present complaint has challenged his termination order dated 24.09.2020 on the ground that his termination is illegal and it is his contention that his services are terminated by leveling false charges against him. At the time of filing of main complaint, no interim relief application has been filed by the complainant. Now, the present interim relief application is filed only on the ground that the respondents have published advertisement for filling the post of Diwabatti/water supply employee. It is his contention that since the advertisement has been published therefore he is entitled for reinstatement. Therefore,

respondents have opposed the present application filed by the complainant contending that the services of the complainant are already terminated, therefore, there is no question of reinstatement only because of advertisement has published. Grant of interim relief application has to be based on strong prima facie case shown by the complainant. Conduct of complainant at the time of filing of complaint itself shows that there is no strong prima facie case in his favour and therefore he did not file any interim relief application with the main complaint. Only because the respondents have published advertisement for filling the post Diwabatti/water supply employee can not be the ground to reinstate the complainant in service. Admittedly, the service of the complainant was terminated by leveling charges against him and therefore unless and until that termination order is held illegal there is no question of reinstatement of the complainant in service.

15. The apprehension of the complainant in the present application is that once the post is filled up then it will not be possible to reinstate the complainant in service. The said apprehension is misconceived, as if the termination order is held illegal then the respondents are bound to follow direction issued by this Court, whether the post is vacant or not will be irrelevant if any such a direction is given. Therefore, on the basis of apprehension without showing anything as to how the termination order is illegal, order of reinstatement cannot be granted. Even otherwise service of the complainant is already terminated, therefore, grant of interim relief in terms

of reinstatement in service will amount to grant of final relief to the complainant which cannot be granted to him in an application for interim relief. Therefore, on that ground, prayer of complainant cannot be considered. Therefore, the prayer of the complainant in the application of reinstatement of service till the decisions of main complaint can't be entertained and needs to be rejected.

16. So far as, the prayer of complainant with regard to stay to the advertisement is concerned, the present complaint is filed under Item 1 of Schedule IV of MRTU & PULP Act. Under Item 1 of Schedule-IV, this Court has jurisdiction to entertain the complaint against the discharge or dismissal on the allegation of unfair labour practice as per clause (a) to (g) of Item 1. Entertaining a complaint against the advertisement is beyond jurisdiction of this Court and when this court cannot entertained the complaint against the publication of any advertisement, there is no question of grant of interim relief in case publication of advertisement by any party. Under such circumstances, the prayer for stay to the publication of advertisement issued by employer/respondents in the present complaint cannot be entertained and this Court will not have any jurisdiction to grant any such stay. Therefore, under such circumstances, the prayer for stay to the publication of advertisement by respondents cannot be granted and needs to be rejected. Therefore, point nos.1 to 3 in negative. Hence, I proceed to pass the following order.

ORDER

- 1) Application - (Exh.U-6) is rejected.
- 2) No order as to costs.

Sd/-

(Smt. R. V. Mete)

Judge,

CHANDRAPUR.

Date :- 08.09.2022.

Labour Court, Chandrapur.