

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**Complaint (ULP) No. 23/2022**

(CNR NO.MHLC340000562022)

Mrs. Nirmala W/o. Shrikrushna Zade,
Age- 43 years, Occu- Cook.
R/o. Majari, Tah : Bhadrawati,
Distt : Chandrapur.

.... Complainant.**-:- VERSUS -:-**

1. The Head Master,
Zilla Parishad Primary School, Majari.
Tah : Bhadrawati. Distt : Chandrapur.
2. The President,
School Management Committee,
Zilla Parishad Primary School, Majari.
Tah : Bhadrawati. Distt : Chandrapur.
- 3] The Block Education Officer,
Panchayat Samitee, Bhadrawati.
Tah : Bhadrawati. Distt : Chandrapur.
- 4] The Education Officer (Primary),
Zillha Parishad, Chandrapur.
Tah. & Distt : Chandrapur.
- 5] The Chief Executive Officer,
Zilla Parishad, Chandrapur.
Tah. & Distt : Chandrapur.
- 6] Mrs. Suman W/o. Bhimrao Jumade,
Age- 50 years, Occu- Household.
- 7] Mrs. Shital W/o. Vishant Kinnake,
Age- 30 years, Occu- Household.
Respondents no. 6 & 7 R/o. Majari.
Tah : Bhadrawati. Distt : Chandrapur.

..... Respondents.

CORAM :- Smt. R. V. Mete, Judge.

Appearance :-

Shri. R. R. Rangari, Ld. Adv. for Complainant.

Shri. R. A. Sanghavi, Ld. Adv. for Respondents No. 1, 3, 4.

Respondents no. 2, 5, 6 and 07 ex-party.

(ORDER BELOW EXH.U-2)

(Passed on 25th February, 2025)

The present application has been filed by the complainant under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for Short "MRTU & PULP Act") for quashing and setting aside impugned termination order dated 02.09.2015 of respondent no.4 w.e.f. 26.09.2015 and for quashing and setting aside resolution dated 24.06.2017 of respondents no. 1 & 2 till decision of main complaint.

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

The complainant is challenging the legality and validity termination order dated 02.09.2015 issued by the respondent no. 4 whereby her services came to be terminated with effect from 26.09.2015. Complainant is a permanent residence of village Majari, Tah : Bhadrawati, Distt : Chandrapur and she has been residing with her family including her husband and two daughters. She is educated up to 9th standard. She belongs to Kunbi caste (Other Backward Class). She has been doing her work as a Cook.

03. Respondent no. 1 is the Head Master of Zilla Parishad Primary School, Majari, Tah : Bhadrawati, Distt : Chandrapur,

which runs by the respondents no. 3 to 5 as per Rules and Regulations of the School Code and Zilha Parishad and Panchayat Samittee Act. The respondent no.2 is the President of respondent no. 1 school as per notifications of the government. The respondents no. 1 to 5 have to proper implement the various schemes for the welfare of the students in the schools of the villages in the Chandrapur district, as per the notifications of government and rules made thereunder.

04. It is further submitted by the complainant that, as per the Academic Nutrition Diet Scheme (Shaleya Poshan Aahar Yojana) of the Central and State Government of Maharashtra, the Government of Maharashtra had issued notification in the year 2009 to the respondents no. 4 & 5 for its proper implementation and appointment of employees. The respondent no.4 had issued letter to the respondent no.1 for appointment of Mahila Bachat Gat in the village of Majari, Tah : Bhadrawati, Distt : Chandrapur for implementation of the Academic Nutrition Diet Scheme in the school in the year 2011.

05. It is further submitted by the complainant that, the respondent no.1 with consultation of respondent no.2 had appointed the complainant as a Cook to the Shaleya Swayamsiddha Mahila Bachat Gat, Majari, Tah : Bhadrawati, Distt : Chandrapur under the Academic Nutrition Diet Scheme from the year 2011 and made an agreement with the President Mrs. Nirmala Mandhare and Secretary Mrs. Indira Bothale on 26.06.2011. The complainant was working as a Cook as per the said agreement in the school of respondents no. 1 to 5 w.e.f. 26.06.2011. She was getting monthly salary of Rs. 1000/- p.m. from the respondent no.4 till the end of said agreement and

thereafter continued without agreement. The complainant worked with the respondents with clean and unblemished service record, without any complaint till 31.07.2012. The respondents no. 1 & 2 and their members had passed resolution unanimously on 27.07.2013 that the complainant is continued as a Cook in the said school. However, the respondents no. 1 & 2 have orally terminated the services of complainant as a Cook from 01.08.2013.

06. It is further submitted by the complainant that she had lodged complaint against them to the respondent no.3 on 05.08.2013 and 02.07.2014. The respondent no.4 had issued orders dated 06.12.2014 and 20.01.2015 to the respondents no. 1 to 3 and 5 and directed them to join the complainant in the said school but they did not join her as a Cook. Thereafter, President of AITUC Shaleya Poshan Aahar Karmachari Union, Chandrapur had sent memorandum on behalf of complainant to the respondent no.4 on 28.05.2015. The respondent no.4 had issued order dated 08.06.2015 to the respondents no. 1 to 3 and 5 and the complainant for reinstatement on the post of Cook in the said school. Therefore, the complainant had joined in the said school on the same date and she had worked till 25.09.2015. The complainant is a 'workman' u/s 2(s) of the Industrial Disputes Act, 1947 and the respondents no. 1 to 5 is an 'industry' u/s 2(j) of the Industrial Disputes Act, 1947.

07. It is further submitted by the complainant that the President of AITUC, S.P.A.K.U. Chandrapur had sent memorandum on behalf of 62 Cooks and Helpers including the complainant in 37 schools in the Chandrapur district on

13.07.2015 to the respondents no. 4 & 5. The respondent no.4 had issued order dated 02.09.2015 to terminate jointly 37 Cooks/ Helpers including the complainant without issue of notice or any complaint against her. As per the said order the respondents no. 1 & 2 terminated the services of complainant w.e.f. 26.09.2015. The respondent no.1 had issued certificate of works for the period of 3 months on 06.04.2016 to her.

08. It is further submitted by the complainant that she learn on 27.06.2017 that the respondents no.1 & 2 had appointed as a Cook and Helper to the respondents no. 6 and 7 in the said school under the said scheme as per resolution dated 24.06.2017. Therefore, their appointments are illegal. The complainant had received the copy of said resolution dated 24.06.2017 from the respondent no. 1 on 07.07.2017 under the the Right to Information Act.

09. It is further submitted by the complainant that she had worked with the respondents no. 1 to 5 without any complaint. She had worked for more than 240 days during the said period. The complainant has a status of employee of the respondents no. 1 to 5 as per order of respondent no. 4 and as per the notification issued by the government. The respondent no.4 has issued impugned order dated 02.09.2015 for appointment of new employees as a Cook and Helper under the Academic Nutrition Diet Scheme for the period of 2017-18 in the said school without issuance of any show cause against her or notice of one month and compensation to the complainant. The complainant was dismissed by way of victimization, not in good faith but in colourable exercise of employer's right and for patently false reasons as set out. The respondents no. 1 to 5 have not followed

the provisions of section 25-F of the Industrial Disputes Act while terminating the services of complainant. Impugned order is illegal and vexatious hence, it is liable to be quashed and set aside. After dismissal of complainant she has no where engaged in gainful employment. The complaint filed by the complainant is within limitation. The respondents have terminated the services of complainant illegally and without following mandatory provisions of law.

10. The complainant has submitted that he has a prima facie case and balance of convenience lies in his favour. If impugned termination order dated 02.09.2015 of respondent no.4 is not stayed she will suffer irreparable loss in the event of non grant of interim relief, till decision of main complaint. On these grounds, the complainant has prayed to allow the application for interim relief.

11. Respondents no. 1, 3 & 4 have filed their written statement vide (Exh. C-06) and denied all adverse allegations levelled against them. It is submitted that the complainant is not an employee of the respondents. Complainant's work is of temporary nature i.e. for 10 months only. After completion of 10 months, fresh appointment of group of workers is made. The group of workers has to execute an agreement for preparing meals. No any unfair labour practice has been committed by the respondents. It is further submitted that the respondents have acted as per the guidelines issued by the Central Government and also by the State Government. As per Government Resolution of 2009, the village education committee has to look after the mid-days meal scheme of the students and has to appoint the Bachat Gat or any other needy lady as a Cook for

implementation of the scheme. As per Government Resolution dated 17.06.2010 the place of Village Education Committee is took over by the School Management Committee established under the Right of Children for Compulsory Education Act, 2009. As per Government Resolution dated 02.02.2011, the cook/ helper is to be appointed for 10 months in the year.

12. It is submitted by the respondents that the complainant was working as a Cook in the year 2012-13 at Zilla Parishad Primary School, Majari, Tah : Bhadrawati, Distt : Chandrapur as a representative of The Saheli Bachat Gat. Thereafter, as per the letter of Saheli Bachat Gat, Nirmala Mandhre and Maya Jivtode were appointed for work in place of complainant. But, it was strongly opposed by the complainant. Hence, Saheli Bachat Gat has refused the work of Cook vide letter dated 01.07.2013. Thereafter, Smt. Chanda Arun Kuttarmare and Smt. Mangla Balaji Chawale were appointed as a Cook for the year 2013-14. Thereafter, in the year 2014-15 School Management Committee has taken resolution for giving work to new Bachat Gat for every year and accordingly, the work was carried out. The complainant was working as a Cook. As a representative of Saheli Mahila Bachat Gat and due to dispute between them the Bachat Gat itself given letter for not continuing the work of Cook and thus, the committee has given work to another needy ladies. Thereafter, a resolution was passed regarding the new Bachat Gat for every year as Cook/Helper. Every year the respondents have appointed new persons as a Cook/ Helper for 10 months.

13. It is further submitted that as per Government Resolution respondents no. 1 to 3 are duty bound to appoint

fresh Cook for next education session. But, as per guidelines, a group of cook who worked on previous year is to be continued and hence appointment of respondents no. 6 to 9 were given by letter dated 02.09.2015. The applicant has not worked for previous year. Hence, it is not possible to allow the complainant to work in the year 2015-16.

14. It is further submitted that the respondents no. 1 to 5 have no any grudge towards the complainant or that the work was allotted to other group with an ulterior motive. The allegations of victimization in not giving work to the complainant is baseless. The termination of complainant is as per resolution and the respondents 1 to 5 have to work as per the resolution and for the benefits of students. The respondents have given the work to the group of respondents no. 6 & 7 and they joined their job work. Hence, the relief claimed by the complainant becomes infructuous and hence, there is no prima facie case to direct the respondents to continue the complainant. There is no any unfair labour practice on the part of respondents no. 1 to 5. The work of complainant is of temporary nature that is for 10 months and thus, the question of continuing the complainant in service does not arise. The complainant cannot be said to have caused irreparable loss because the complainant has not invested anything for this job work. On the other hand, if interim relief is granted as sought by the complainant in their favour great prejudice would be caused to the respondents.

15. The respondents have further submitted that the complainant has not made out a prima facie case, balance of

convenience does not lie in her favour. Irreparable loss or injury would be caused to the respondents in the event of grant of interim relief, till decision of the complaint. On these grounds, the respondents have prayed for rejection of the application.

16. The respondent no. 5 though served notice vide Exh. O-04 but failed to appear before the court and hence, the matter was proceeded ex parte against the respondents no. 4 & 5.

17. The respondents no. 2, 6 & 7 though served notice vide Exh. O-06, Exh. O-08 and Exh. O-09 but failed to appear before the court and hence, the matter was proceeded ex parte against the respondents no. 2, 6 & 7.

18. Following points arise for my determination. They are answered with my findings thereon for the reasons given 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-2 is not allowed ?	No
4) What order ?	: Application rejected.

REASONS

19. I have heard Shri R. R. Rangare, learned Counsel of the complainant and Shri R. A. Sanghavi, learned counsel for respondents no. 1, 3 & 4.

20. The complainant relied upon following documents:-

- 1] Copy Government Resolution dated 18.12.2023.
- 2] Copy of letter dated 20.06.2024 issued by the Block Education Officer, Panchayat Samittee, Bhadrawati.
- 3] Copy of letter dated 21.06.2024 issued by the Block Education Officer, Panchayat Samittee, Bhadrawati.

21. The respondents have relied upon following document :-

- 1] Copy of Government Resolution dated 18th June, 2009.
- 2] Copy of Government Resolution dated 17th June, 2010.
- 3] Copy of Government Resolution dated 2nd February, 2011.
- 4] Copy of letter dated issued by the complainant to the Head Master, Zillha Parishad School, Majari,
- 5] Copy of letter dated 09/07/2013 issued by the complainant to the Head Master/ Education Committee, Primary School, Majari.
- 6] Copy agreement dated 19.09.2013 executed in between Smt. Chanda Arun Kuttarmare, Smt. Mangla Balaji Chawle and Zillha Parishad Primary School, Majarigaon.
- 7] Copy of letter dated 30.07.2014 issued by the Head Master, Zillha Parishad Primary School, Majarigaon to the Block Education Officer, Panchayat Samitee, Bhadrawati.
- 8] Copy of letter dated 02.09.2015 issued by Education Officer (Primary), Zillha Parishad, Chandrapur to District President, आयटक, म.रा. शापोआ कर्मचारी युनियन.
- 9] Copy of inspection report dated 22.07.2015 of Deputy Education Officer (Primary), Zillha Parishad, Chandrapur and Education Officer (Primary), Zillha Parishad, Chandrapur.

As to Point no. 1:-

22. While deciding the application under section 30(2) of the Act, the Court has to see the existence of prima facie case in favour of the complainant, on the basis of record in state of material of enquiry since there is no enquiry in matter. After all what is prima facie case ? It is the case which reasonably arguable, which raises debatable and serious issues, which enables the Court to say something in favour and which therefore, necessitates the matter to be proceeded to trial.

23. Complainant has filed present application for grant of relief by way of stay to the effect and operation of termination order dated 02-09-2015 with effect from 26.09.2015 till the decision of the main complaint with further direction to the respondent to reinstate the complainant on her original post till the decision of the main complaint. It is the case of the complainant that she was appointed as a Cook as per agreement in the school of respondents no. 1 to 5 from 26.06.2011. The complainant had worked as a Cook in the school of respondents no. 1 to 5 without any complaint and unblemished service record till 31.07.2013. The respondents no. 1 & 2 and their members have passed resolution unanimously on 27.07.2013 that the complainant is continued as a Cook in the school. However, respondents no. 1 & 2 orally terminated the complainant from service from 01.08.2013. Thereafter, as per the order of respondent no. 4 dated 08.06.2015 to the respondents no. 1, 2, 3 & 5 the respondent no.1 issued letter dated 25.06.2015 to the complainant for joining on the post of Cook in the said school. Therefore, complainant had joined the school on the same date and she

had worked till 25.09.2015. Thereafter, respondent no.4 issued order dated 02.09.2015 to terminate jointly 37 Cooks/ Helpers including the complainant without issuing of notice or any complaint against her. As per the said order respondents no. 1 & 2 terminated the complainant w.e.f. 26.09.2015. The complainant had been working as a Cook in the school of respondents no. 1 to 5 with clean and unblemished record and she has completed more than 240 days during the said period. The respondent no.4 had issued impugned order dated 02.09.2015 for appointment of new employees as a Cook and Helper under the scheme for the period 2017-18. In the said school without any show cause notice or notice of one month paid and compensation to the complainant. Therefore, respondents terminated the services of complainant from the said school by way of victimization, not in good faith but in colourable exercise of employer's right and patently false reasons. At the time of termination of complainant respondents no. 1 to 5 did not follow the provisions of Section 25-F of the I. D. Act. Thus, the respondents no. 1 to 5 engaged in unfair labour practice against the complainant under Item-1 of Schedule-IV of the MRTU & PULP Act.

24. It is submitted that no reason was given to the complainant at the time of her termination. No charge sheet, no show cause notice was even issued to complainant before her termination and no opportunity of hearing was given to complainant before termination. And no enquiry was conducted against the complainant before termination. It is submitted that the respondents terminated the service of complainant against the circular and government resolution and in breach of natural

justice. Therefore, committed unfair labour practice. It is settled principle that for grant of interim relief, complainant has to prove strong prima facie case in favour of the complainant. In the present matter complainant is claiming that since she has completed 240 days of service in each year from the date of his appointment till her termination from service. Also it is the contention of the complainant that respondents appointed new employee, the work is still available with the respondent. Therefore, it was mandatory for the respondent to follow the provisions of S. 25-F before termination of service of the complainant. To prove this fact complainant is relying on certain documents. But prima facie none of the document as filed by the complainant disclosed that 240 days of service in each year more particularly in preceding 12 months from the date of the termination of service. Those document prima facie not disclose the continuous employment of the complainant with the respondents and the fact of performing duty for 240 days or more in each year is question of fact which cannot be decided or considered on the basis of ambiguous document unless evidence are adduced by the parties, the question of deciding the number of days of work of complainant has completed in each year cannot be decided at this stage. And therefore, at this stage prima-facie it cannot be said that respondent have terminated the service of the complainant in breach of provisions of S. 25-F.

25. Similarly, submission of the complainant that since the respondent want to appoint the person of their choice terminate her service. It is submitted that she had completed more than 240 days continuously in preceding year of her termination and

respondent had not complied the provisions of S. 25-F of the Act while terminating the service of the complainant. But prima facie it cannot be considered while deciding at this stage and therefore, at this stage it cannot be said that respondent have terminated the service of complainant in breach of the provisions of S. 25-F, of the I.D. Act.

26. By way of this interim relief application complainant is claiming stay to the termination order dated 02.09.2015 w.e.f 26.09.2015 and for direction to the respondents for reinstatement in service to his original post. Granting stay and giving direction of reinstatement will have same relief as it would have after setting aside the termination order as claimed by the complainant in the main complaint. Therefore, grant of interim relief to the complainant at this stage will have virtually the same effect as if allowing the complaint on merits. Therefore, complainant is claiming final relief by way of this interim application which cannot be granted as per the settled provisions of law and in view of my findings given about the complainant has failed prima facie to prove that respondents have committed unfair labour practice. Complainant can be compensated by way of monetary relief if she succeeds on merit in the complaint. Therefore, I answer to point no. 1 in negative.

As to Point no. 2 & 3 :-

27. In view of my above discussion since complainant has failed to demonstrate that prima facie respondents have committed unfair labour practice. Therefore, it can not be said that balance of convenience lies in favour of complainant. On the contrary, the balance of convenience tilts in favour of

respondents. Therefore, respondent will suffer irreparable loss, if they are directed to reinstate the complainant in service. Therefore, I answer to point no. 2 and 3 in negative.

As to Point no. 4 :-

28. In this view of this fact and circumstances of the case and settled position of law with regard to grant of interim relief and my findings as above, to point no. 1 to 3, I proceed to pass the following order. Hence the order.

O r d e r

- 1] The application Exh. U-2 for grant of interim relief is hereby rejected.
- 2] Matter to proceed further on merits.
- 3] No order as to cost.

Sd/-

(Smt. R. V. Mete)

Judge

Labour Court, Chandrapur.

C H A N D R A P U R.

Date :- 25.02.2025.