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Decided on : 11.05.2017
Duration : 4Y, 9M,1D

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

Complaint (ULP) No.71/2012

Exh.O-5.

Devidas Domaji Ghume,
Aged about 30 years, Occ : Labour,
R/o. Sathgaon, Tah. Chimur,
Dist. Chandrapur.

... Complainant.

-:- VERSUS -:-

1. Maya Sarjerao Ghume,
Aged about 50 Years, Occ : President,
Krushi Vikas Shikshan Mandal
Bhuyar, Tah. Chimur, Dist. Chandrapur.
2. Sarjerao Tulsiram Ghume,
Aged about 65 Years, Occ : Secretary,
Krushi Vikas Shikshan Mandal
Bhuyar, Tah. Chimur, Dist. Chandrapur.
3. Savitrabai Phule Schedule Caste Girls,
Hostel Chimur which is run administerial
& Managad by the "Krushi Vikas Shikshan
Mandal, Bhuyar, Regd. No.-F-150,
Tah. Pauni, Dist. Bhandara.

4. Special District Social Welfare Officer,
Zilla Parishad, Chandrapur. ... Respondents.

CORAM :- R.N. Mehare, Judge.

Appearance :

Shri. Rakesh Borikar, Ld. Counsel for complainant.

Shri. Anand kumar Ghutke for respondent no.1 & 2.

Ex-parte : Respondent no.3.

Shri. M. V. Lohkare, Ld. Counsel for respondent no.4.

**In complaint U/Sec.28 read with Item-I of Schedule-IV -
of Maharashtra Recognition of Trade Unions and
Prevention of Unfair Labour Practices Act (for short "MRTU
& PULP Act")**

J U D G M E N T

(Delivered on this 11th May, 2017)

In the nutshell, case of complainant is described as
under :-

01. One "Krushi Vikas Shikshan Mandal" (for short "KVS Mandal"), Dist. Bhandara is registered society. It runs respondent no.3 "Savitribai Phule Schedule Caste Girls Hostel" (for short "SPSCG Hostel) at Chimur, Tah. Chimur, Dist. Chandrapur. Respondent no.1 is President of KVS Mandal and respondent no.2 is Secretary of such Mandal. Respondent no.4 is Special District Social Welfare Officer, Zilla Parishad, Chandrapur.

02. Complainant had been working as watchman in SPSCG-Hostel since 13.10.2005. Prior to this also, he had been working in such Hostel by way of oral order dated 1st July, 2005. Prior to joining service, he had given donation of Rs.50,000/- (Rs. Fifty Thousand only) to those respondents. He was getting honorarium of Rs.2000/- (Rs. Two Thousand only) per month. He used to work from 08:00 a. m. to 08:00 p. m. His appointment order was sanctioned by respondent no.4 vide its order dated 13.10.2005. He was confirmed in service.

03. Respondent no.1 and 2 are the relatives of complainant. Complainant had refused proposal of marriage of a girl who was relative of such respondents. On such account of fact, these respondents started harassment to the complainant. They were not allowing him to sign muster roll. In the month of July 2007, he was orally terminated from service and termination letter dated 18.01.2008 was issued to him by these respondents by making false allegations against him. Prior to terminating his service, these respondents did not follow mandatory provisions of law. Complainant had made complaint to respondent no.4 vide its complaint dated 19.06.2008. Respondent no.4 issued order about rejoining service of complainant. Notices were also issued to the respondent no.1 and 2, through advocate of complainant. Despite of it, complainant was not allowed to rejoin service. According to complainant, impugned termination order is illegal one. In this way, respondents have committed unfair

labour practice.

04. On the basis of above grounds, lastly complainant has sought for being granted the relief regarding declaration that respondent no.1 and 2 have committed unfair labour practice and regarding declaration that impugned termination order is illegal one. It is also prayed for being granted relief that impugned termination order should be quashed and set aside and complainant shall be reinstated with continuity of service with full back wages.

05. Notices were issued to the respondents. In response to the service of notice, respondent no.1 and 2 appeared in the case through their learned Counsel Shri Ghutke advocate and Shri Khobragade advocate by filing vakalatnama Exh.C-1. But, they failed to file written statement. Therefore, my learned predecessor has passed the order to proceed the case against them without written statement.

06. So far as respondent no.3 is concerned, despite service of notice vide Exh.O-3, it did not appear. Consequently, case is proceeded ex parte against it.

07. Respondent no.4 appeared in the case and filed written statement vide Exh.C-7. Said respondent has admitted following facts :-

(a) The respondent is registered Sanstha (Institution as

named Krushi Vikas Shikshan Mandal, Bhuyar, Ta. Pauni, Dist. Bhandara Regd. No.F-158), who runs Savitribai Fule Schedule Caste Girls Hostel at Chimur, Tq. Chimur, Dist. Chandrapur.

(b) Complainant is watchman at the "SPSCG Hostel".

(c) Services of complainant is duly approved by respondent no.4 vide order dated 13.10.2003.

(d) Complainant wrote the letter to respondent no.4 on 19.06.2008.

(e) Samaj Kalyan Officer wrote the letter about fact that complainant is ready to rejoin his duty.

(f) Complainant was recruited by respondent no.4 on 13.10.2007 and he used to get honorarium of Rs.2000/- per month.

08. Respondent no.4 is not knowing about remaining averments made by complainant in his complaint.

09. Respondent no.4 in his special pleading has stated that the complainant was a watchman in SPSCG Hostel, Chimur and the service of the complainant was approved by this respondent by the order dated 13.10.2005. The other respondents had given show cause notice to the complainant on 31.08.2007 and 10.12.2007 and one copy was sent to the respondent no.4 on 06.09.2007 and 14.12.2007. The complainant replied said show cause notice on 18.09.2007 and 20.12.2007 and sent them to this respondent and the copy was also sent to concern President, Secretary and the Superintendent.

According to respondent no.4, reply of complainant shows that he was having wish to do the work with “Sanstha”, but the respondent no.1 and 2 had not allowed him to serve in their employment and they drove him away from his duty. Therefore, this respondent had directed to the respondent no.2 to give last chance him to serve in the employment and convey to him to join the service immediately and the proposal about appointment of new watchman was rejected. Lastly, such respondent no.4 has denied prayer clause of complainant as it was not related with them.

10. Issues came to be framed by me vide Exh.O-4. Those issues are answered with my findings thereon for the reasons given below :-

ISSUES

FINDINGS.

- 1) Whether complainant was : In the affirmative.
illegally terminated from service orally on in month of July 2007 and by way of written order on dated 18.01.2008 as alleged ?
- 2) Whether respondents have : In the affirmative.
engaged in unfair labour practice as alleged ?
- 3) To what reliefs, complainant is : As per final order.
entitled to ?

4) What order ? : As per final order.

REASONS

11. I have considered notes of argument filed by learned Counsel of complainant. Learned Counsel of respondents did not remain present to argue the case. However, pleading and evidence available on record are taken into consideration while determining issues.

12. At this juncture, it is necessary to mention here that my learned predecessor has condoned delay in respect of filing complaint case by passing order on 24th July 2012 in the proceeding Misc Complaint ULP 04/2010.

AS TO ISSUE NO.1. :-

13. Question falls for my determination is that whether impugned termination order is illegal one. In order to substantiate the case, complainant has adduced his evidence vide Exh.U-16, wherein he deposed the facts in terms of his pleading. His pleading and evidence are relating to his appointment as watchman, about his dispute with respondent no.1, 2 and 3 and relating to terminating him illegally from service. This much pleading and evidence are not challenged by respondent no.1, 2 and 3. Respondent no.4 has admitted material facts that complainant was appointed as watchman and his service was approved by way of their letter. Respondent no.4 also did not choose to cross-examine complainant. Evidence of complainant further reveals that

without following mandatory provisions of the law as per Section 25-F of Industrial Disputes Act, he was terminated from service. Such evidence is also not challenged from the side of all respondents. Therefore, unchallenged testimony of complainant on the point in issue is liable to be accepted, inasmuch as there is no reason available on record to discard his testimony.

14. Besides above aspects, complainant has placed his reliance on following documents which are duly proved by him in his evidence. Admittedly, those documents are not challenged from the side of respondents. They are supportable to the case of complainant. Those documents are -

- (a) Letter issued by Social Welfare Officer to Krushi Vikas Shikshan Mandal dated 19.06.2008 – (Exh.U-28). Said letter discloses that Social Welfare Officer informed to the Secretary of Krushi Vikas Shikshan Mandal, Bhuyar that opportunity should be given to the complainant in the employment to work as a watchman. Such letter also discloses that said Social Welfare Officer had rejected the permission to appoint new watchman.
- (b) Letter issued by Secretary of SPSCG Hostel to complainant - Devidas dated 18.01.2008 – (Exh.U-29). It is about terminating service of complainant.
- (c) Envelope – (Exh.U-30)
- (d) Letter issued by complainant to Social Welfare Officer dated 07.09.2007 – (Exh.U-31). Said letter discloses that complainant furnished his explanation to the letter dated 31.08.2007.
- (e) Letter issued by Divisional Social Welfare Officer, Division Nagpur to complainant dated 01/03.04.2010 – (Exh.U-32). By way of this letter informed that appeal of complainant was returned to him for filing it to proper

forum.

- (f) Letter issued by Secretary of Krushi Vikas Shikshan Mandal to complainant dated 27.06.2008 – (Exh.U-33). It discloses that said secretary informed complainant to join duty as a watchman on 01.07.2008.
- (g) Letter issued by complainant to President of Krushi Vikas Shikshan Mandal dated 02.07.2008 – (ExhU-34). It is joining letter of complainant.
- (h) Letter issued by complainant to President of Krushi Vikas Shikshan Mandal dated 05.07.2008 – (Exh.U-35). This is the complaint about facing difficulty while performing duty.
- (i) Letter issued by complainant to Social Welfare Officer dated 11.07.2008 – (Exh.U-36). In such letter, complainant made complaint about harassment caused by officers of President of Krushi Vikas Shikshan Mandal
- (j) letter issued by President of Krushi Vikas Shikshan Mandal) to complainant dated 26.07.2016 – (Exh.U-40). It is about depositing amount of honorarium in the Bank account of complainant.
- (k) Attendance registers in respect of complainant (Exh.U-41 to Exh.U-80).

15. Respondent no.4 has supported to the case of complainant on material points. In view of this and in the light of abovemade discussion, it can be gathered that respondent no.1, 2 and 3 had not followed mandatory provisions of law i. e. Section 25-F of Industrial Disputes Act while terminating service of complainant by way of impugned termination order. Nowhere it is shown that complainant had committed serious misconduct so that there was no alternative available with respondents except terminating his service. In such circumstance, and in view of abovemade discussion,

consequently, I have no hesitation to hold that complainant was illegally terminated from service. Accordingly, issue no.1 is proved. Hence, it is answered in the affirmative.

AS TO ISSUE NO.2 :-

16. Principal contention raised by learned Counsel of complainant is that respondent no.1, 2 and 3 have committed unfair labour practice by terminating service of complainant without following due procedure of law. While deciding issue no.1, it is already observed that respondent no.1,2 and 3 have illegally terminated service of complainant. These respondents did not follow mandatory provision of law while terminating service of complainant. Therefore, it is clear that they have not exercised their power within four corners of the law. Consequently, it made clear that they have not acted in good faith while terminating service of complainant. As such, in view of this, I hold that they have committed unfair labour practice. Consequently, issue no.2 is proved. Accordingly it is answered in the affirmative.

AS TO ISSUE NO.3 :-

17. This issue is relating to for which reliefs, complainant is entitled to. It is already held that complainant is illegally terminated from service by respondent no.1, 2 and 3. Consequently, he is entitled to the relief of reinstatement on his previous post with continuity of service.

18. Complainant has specifically made averments in his

complaint that he is out of employment after termination of his service. Such pleading is not challenged by any of the respondents. Therefore, under such circumstances, such unchallenged averment of complainant is liable to be accepted. Besides it, respondents failed to establish that after termination of complainant from his service, he was engaged in any other employment in order to have a benefit of financial gain. Respondents did not produce any satisfactory evidence showing that he was having any financial gain from other job during the period of terminating him from service till today.

In the context of point in issue, the judgment reported in – *Bhuvnesh Kumar Dwiwedi -vs- Hindalco Industries Ltd., 2015 (1) Bombay L.C. 139* is material and important one. In said judgment, it was found that retrenchment was not in accordance with law and order of Labour Court about reinstatement was found to be correct. In such circumstances, it was further held that burden of proof that appellant was gainfully employed post termination of his service is on respondents (i. e. on employer). Employer failed to prove the same. In view of this, it was held that appellant employee was entitled to full back wages. Such ratio laid down in said judgment is squarely applicable to the case of present complainant and it is supportable to him.

19. As such, in view of abovemade discussion, in present case in hand, I hold that complainant is also entitled to relief of full back wages for the period i. e. from the date of termination till the date of reinstatement.

20. Having appreciated entire evidence available on record in the light of legal principles, I have no hesitation in holding that complainant is entitled to the relief in the terms reflected above. Accordingly issue no.3 is answered in the affirmative in above terms. As a result, complaint is liable to be allowed. As such, following order is passed.

ORDER

- 1) Complaint is allowed in following terms :-
 - A) It is hereby declared that respondent no.1, 2 and 3 have engaged in unfair labour practices and they are directed to desist from continuing such practice.
 - B) Impugned oral termination order and written termination order dated 18.01.2008 is hereby quashed and set aside.
 - C) Respondents are directed to reinstate the complainant on his previous post with continuity of service within one month from the date of receipt of copy of this judgment.
 - D) Respondents are further directed to pay full back wages for the period of terminating him from service till the date of his reinstatement within one month from the date of receipt of copy of this judgment.

- 2) Parties shall bear their own costs.

- 3) Judgment is dictated and pronounced in open Court.

Sd/-

(R. N. Mehare)

Judge

Labour Court, Chandrapur.

CHANDRAPUR.

Date :- 11.05.2017.