

Revision filed on : 12.07.2018.
 Registered on : 12.07.2018.
 Decided on : 21.09.2019.
 Duration : 1 Y 2 M 09 D.
 Exh. _____

IN THE INDUSTRIAL COURT (MAHARASHTRA)
NAGPUR BENCH, NAGPUR.

REVISION APPLICATION (ULP) NO.124 OF 2018
IN
COMPLAINT (ULP) NO.14 OF 2016
(CNR NO.MHIC31-000351-2018)

Secretary,
 Gram Panchayat, Sindhi (M),
 Tahsil, Wardha, Distt.-Wardha.

... Revision
Petitioner

: Versus :

Pramod S/o Umaji Gaikwad,
 R/o Sindhi (M), Ward No.3,
 Tah. & Distt.-Nagpur.

... Revision
Opponent

Coram :- SHRIKANT K. DESHPANDE, Member,
 Industrial Court, Nagpur.

Appearances :-

Mr. A.J. Salway, Advocate for the Revision Petitioner.

Mr. P.M. Rajgure, Advocate for the Revision Opponents.

JUDGMENT

(Delivered on 23rd September, 2019)

1] The present revision u/s 44 of the Maharashtra
 Recognition of Trade Union and Prevention of Unfair Labour
 Practices Act, 1971(hereinafter referred to as the ULP Act) is

directed against the Judgment and order dated 24/04/2018, passed by the Ld. Judge, Labour Court, Wardha (Trial Court) in Comp.(ULP) No.14/2016, whereby the complaint filed by the Pramod Umaji Gaikwad-original complainant/employee came to be allowed partly and the court directed the Gram Panchayat Sindhi-original respondent/employer to reinstate the employee with continuity of service but without backwages.

2] The facts giving rise to the present Revision can be narrated as under that, employee was working as Sweeper with the employer and his services were terminated w.e.f. 1/12/2015. The employee challenged the said termination dated 1/12/2015 in Comp. (ULP) No.14/2016 before the Trial court, alleging the violation of the provisions of Section 25-F, 25-G and 9-A of Industrial Disputes Act and thereby unfair labour practice on the part of the employer. The original respondent/employer resisted the complaint by reply before Trial court, denied all the contentions of the employee including violation of the provisions of law as well as unfair labour practice.

It seems that, on the basis of rival pleadings of the parties the Trial court framed the issues and after recording the evidence and hearing the parties the Trial court vide its Judgment and order dated 24/04/2018 allowed the complaint partly. That Judgment and order dated 24/04/2018 passed by the Trial court in Comp.(ULP) No.14/2016 is the subject matter of the present revision.

3] According to the Revision petitioner-employer, the Trial court erred in not framing the issue of industry and not appreciated that, the employee failed to prove that, he has completed

240 days of continuous service. The Trial court failed to evaluate the pleadings of the employees that, he was out of employment for the period from 13/08/2014 to 15/11/2015. This itself was sufficient to prove that, the employee was not completed 240 days. The Revision petitioner-employer contended that, the Trial court ought to have consider that, the initial appointment of the employee is back door entry and not entitled for permanency. The Trial court failed to consider that, the onus of proving the continuous service was on employee as such the Judgment and order under revision suffers from perversity and error apparent on the face of record, thus the Revision petitioner-employer prays for setting aside the Judgment and order under revision with equitable relief.

4] In response to the notice, Mr. Rajgure Advocate put his appearance for the Revision opponent-employee. The Record and Proceeding has been called from the trial court.

5] Both the parties shown their willingness to argue the revision on merit, instead of arguing on application for stay. Accordingly I have heard Mr. Salway Advocate for the Revision petitioner-employer. Perused the written notes of argument submitted on behalf of the Revision opponent-employee. The following points arises for my determination. My findings and reasons to them are as below.

POINTS

FINDINGS

- 1] Whether the Judgment and order under revision suffers from perversity or error apparent on the face of record ?
- 3] Whether the revision petitioner-employer is

...No.

entitled for relief as prayed ?

...No.

REASONS

6] **POINT NO. 1** :- As regards the powers of this Court, I am well aware that, the Industrial Court has power of superintendence over the Labour Court, which includes judicial superintendence also. Under that, this Court can entertain the revision against the order of the Labour Court u/s 44 of the ULP Act. As per the settled position of law, the Industrial Court cannot re-appreciate the evidence and over turn the findings of facts in revisional jurisdiction as it amounts to exceeding the jurisdiction. It has been laid down that, while deciding the revision u/s 44 of the ULP Act, this Court cannot act like appellate authority and take upon itself task of re-appreciating the entire evidence to find out whether the decision of the Labour Court was correct or not and if on re-appreciating the evidence such authority comes to the conclusion which is different one than arrived by the Labour Court, still this Court cannot disturb the findings of the Labour Court.

However, this Court can set aside the Order of the Labour Court if the evidence would never justify the conclusion drawn by the Labour Court. Furthermore, Section 44 of the ULP Act, empowers this Court so-far-as the evidence is concerned to set aside the order under revision, when the evidence on record is reasonably incapable of supporting the order. It means if the order is perverse. In the light of the above discussed legal position, let us appreciate whether there is any error apparent on the face of record in the order under revision or the same is perverse.

7] After carefully scanning the Judgment and order under revision it reveals that, while allowing the complaint partly, the Trial court appreciated that, there is no rebuttal to the oral evidence of the employee about his continuous service, inspite of direction from court, the employer failed to produce documentary evidence of employment of employee as such the Trial court inferred about the continuous service of the employee. The Trial court further appreciated that, before termination of service, no opportunity of hearing as per the principles of natural justice was given, charges are not proved and prior notice of termination nor compensation was paid to the employee, hence the termination of the employee is illegal and in absence of any evidence about attempts made by the employee for job during unemployment period, the Trial court granted relief of reinstatement with continuity of service but without backwages.

8] I have given anxious consideration to the oral submissions advanced on behalf of the Revision petitioner-employer and written notes of argument submitted on behalf of the Revision opponent-employee, in the light of their respective pleadings before the Trial court. There appears no dispute about the employment of the employee with the employer. The employee claimed to be appointed as Sweeper, whereas according to the employer the appointment of the employee was purely temporary on daily wages basis and not against the sanctioned vacant post, however, the appointment was totally illegal and without following due process of recruitment.

In fact if the appointment of the employee is not

against the sanctioned vacant post, then there was no necessity for following recruitment process at the time of recruitment of such employee. Not only this but, considering the nature of post i.e. Safai Kamgar or temporary employee on daily wages, I do not think that, there is any recruitment process for the appointment of Safai Kamgar or temporary employee on daily wages nor the employer placed the recruitment rules of Safai kamgar or temporary employees on daily wages before Trial court or this court. Moreover, the Trial court rightly appreciated that, as per Section 61(1) of Gram Panchayat Act, 1958, the employer can engage temporary employee as such the appointment of the employee cannot be said to be back door entry and illegal.

9] Though it is contended on behalf of the Revision petitioner-employer that, the Trial court has not framed issue about industry, however, normally the issue is framed but on the basis of the pleadings of the parties. In the case in hand, the employee not pleaded in the complaint about respondent is an industry nor there is any whisper in the reply filed by the employer before the Trial court that, the respondent is not an industry and in absence of any specific pleadings to that effect there was no question of framing the issue of industry.

Furthermore, if the issue of 'industry' was so important and the Trial court failed to frame the same, in such circumstances it was obligatory on the part of the original respondent-employer to brought this fact to the notice of the Trial court so that, that issue could have been framed but no such attempts were made on behalf

of the original respondent-employer as such it will be unsafe to say that there is any error in not framing the issue of industry in the Judgment and order under revision.

10] Mr. Rajgure Ld. Counsel appearing on behalf of the Revision opponent-employee, invited my attention to the copy of Judgment and order passed in Revision (ULP) No.96/2006 by Industrial Court. It is in respect of Gram Panchayat Karanja, in which my Ld. Brother Member appreciated the various decisions of superior court and thereby concluded that, Gram Panchayat is an 'industry'. In view of this, the establishment of the employer being a Gram Panchayat same is an 'industry' under ULP Act.

11] It will not be out of place to mention here that, the employee came up with the specific case before the court that, he was working with the employer since more than 5 years worked continuously with the employer as such he was in continuous service of the employer. To substantiate the same the employee has submitted his oral evidence before Trial court and he was fully cross-examined by the counsel for the employer, however, the cross-examination of the employee could not shattered the evidence of the employee in respect of his continuous service. Not only this but, in absence of any oral evidence by the employer, there was no denial to the contention of the employee regarding the continuous service made on oath.

Similarly during proceeding the employee moved an application for notice to produce document and the Trial court by its order directed the employer to produce the documents before the

court, however, inspite of order the document regarding the employment of the employee with the employer have not been produced before the Trial court and in absence of that, the Trial court has rightly inferred adversely against the employer and thereby concluded that, the employee was in continuous service, therefore, the observations of the Trial court to that effect are based on material available on record.

12] Undisputedly the services of the employee were terminated by letter dated 1/12/2015 and on perusal of the termination letter it seems that, the services of the employee are terminated w.e.f. 1/12/2015 as per resolution passed in Gram Panchayat and there is no whisper in the termination letter about the compliance of the provisions of law before terminating the services of the employee. The Trial court has rightly appreciated that, the employee was in continuous service of the employer and his services are terminated by letter dated 1/12/2015 w.e.f. 1/12/2015 as such there is no prior notice of termination nor the employee was paid the compensation as required to be paid under law as such the termination of the employee is in violation of the provisions of Section 25 F of the I.D. Act and for want of compliance of the provisions of Rule 81 of Bombay Industrial Rules, the termination of the employee is in violation of the provisions of Section 25 G of the I.D. Act, therefore, rightly observed that, the termination of the employee is in violation of the provisions of law, therefore, illegal and rightly set-aside the illegal termination and also granted relief that too after considering the recent position of law about the efforts made by the

employee for job during unemployment period and in absence of any sufficient evidence to that effect the Trial court granted the relief of reinstatement with continuity of service but without backwages.

13] The Revision petitioner-employer miserably failed to demonstrate before the court that, the Judgment and order under revision suffers from perversity or error apparent on the face of record, hence I answer this point in the negative.

14] **Point No.2** :- I have observed earlier that, the Judgment and Order under revision does not suffers from perversity nor error apparent on the face of record, then the order under Revision needs no interference at the hands of this court having limited revisional jurisdiction as such the Revision petitioner-employer is not entitled for relief as prayed, hence I answered this point in the negative.

In the result I proceed to pass the following order.

Order

- I] The Revision is dismissed.
- II] No order as to costs.
- III] R and P be send back to the trial court immediately.

Place : Nagpur.

Dated : 23rd September, 2019.

(Shrikant K. Deshpande)

Member,

Industrial Court No.1, Nagpur.

Argued on : 23.09.2019.

Judgment dictated on : 23.09.2019.

Judgment transcribed on : 23.09.2019.

Judgment checked & signed on : 23.09.2019.

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