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Court : Mumbai Nagpur

Decided On : Jul-17-2014

Judge : A.P. Bhangale

Appeal No. : Writ Petition Nos. 4928 of 2004 & 4931 of 2004

Appellant : Ram and Another

Respondent : Municipal Council, Ramtek, District Nagpur, through its Chief Officer and Another

Judgement :

Common Judgment:

1. The petitioners have questioned their termination order dated 31st March, 1995 served on them on 3.4.1995 by the respondent/Municipal Council, Ramtek. According to the petitioners it was in breach of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act 1946.

2. Three complaints bearing Complaints (ULPA) Nos. 431 of 1995, 432 of 1995 and 433 of 1995 were lodged under Section 28 of the Maharashtra Recognition of the Trade unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU and PULP Act) before the Industrial Court, Nagpur Bench which were disposed of by common order dated 29th June, 2004. It was alleged

that the respondent/employer were engaged in unfair labour practice within the meaning of Item Nos. 5 and 9 of Schedule IV of the MRTU and PULP Act and complainants prayed for setting aside their termination of service and reinstatement with continuity of service and full back wages.

3. The facts, briefly stated, are thus:-

Complainant Sunita in Complaint (ULPA) No. 431 of 1995 was appointed as a Sweeper on 1.9.1994. Complainant Geeta in Complaint (ULPA) No.432 of 1995 and Complainant Ram in Complaint (ULPA) No.433 of 1995 were appointed as Sweepers on 8.12.1994 in clear vacancy. It is contended that having rendered continuous service of three months, the complainants became permanent employees, but the respondent, without giving them an opportunity to show cause and without any domestic inquiry, in violation of principles of natural justice and contrary to the Standing Orders, terminated their service.

4. The contention is that termination of services amounted to retrenchment, but no compliance was made of Section 25F, G and H of the Industrial Disputes Act, 1947. The complaints were dismissed by the Industrial Court on the ground that the Labour Court and not the industrial Court has jurisdiction to hear and decide the complaints as they are maintainable before the Labour Court and not the Industrial Court.

5. Reference is made to the rulings in:

1) Employees union vs. S.G. Chemicals reported in 1986 (1) LLJ 490(SC) 2).

2) Dattatray Kharday vs. Executtive Engineer - 1994 (1) LLJ 395 (Bom HC).

6. Referring to the above rulings, it is argued that the terms and conditions of service regulated by Section 25-F and 25G of the Industrial Disputes Act form implied terms of the individual contract of employment of each workman to whom the said provisions are applicable. The issue is stated as no more res Integra that the Industrial Court and not the Labour Court has jurisdiction to decide unfair labour practice.

7. Object of the MRTU and PULP Act is to prevent occurrence of unfair labour practices. Refusal by the Industrial Court to exercise jurisdiction in relation to hear the complaints on merits in respect of the unfair labour practice violated the fundamental right, when the Industrial Court heard and dismissed the complaint as not maintainable.

8. The submission is that the Industrial Courts order refusing to entertain the complaints is invalid and unjust and needs to be recalled and the Industrial Court shall hear the matter and decide it on merits in accordance with the law.

9. For the aforesaid reasons, I feel that the impugned order refusing to hear the complaints bearing Complaint (ULPA) Nos. 431 of 1995 and 433 of 1995 on merits is unsustainable. Hence, it is set aside with a direction to the Industrial Court to hear the said complaints afresh in accordance with law and on its own merits.

Rule is made absolute accordingly. No order as to costs.

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