

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.904 OF 2011

- 1) Deputy Conservator of Forest,
Gadchiroli Forest Division,
Gadchiroli.
- 2) Range Forest Officer,
Forest Division, Gadchiroli.
- 3) Round Officer, Manda,
Gadchiroli Range, Gadchiroli. ... Petitioners

- Versus -

Mohan Raghuvir Chavan,
aged about 33 years, r/o
Sawela, Post Kotegaon,
Taluq and District Gadchiroli. ... Respondent

Ms. T. Khan, Assistant Government Pleader for the
petitioners.

Shri B.M. Khan, Advocate for the respondent.

CORAM : R.M. SAVANT, J.

DATED : JUNE 21, 2011

ORAL JUDGMENT :

Rule, with the consent of the learned Counsel for the parties made returnable forthwith and heard.

2) The above petition takes exception to the judgment and order dated 15/9/2009 passed by the learned Member of the Industrial Court in Complaint (ULP) No. 65/1998 filed by the respondent herein. By the said judgment and order, the said Complaint came to be allowed and it was declared that the respondents, i.e. petitioners herein, have indulged in an unfair labour practice and it was directed that the complainant is entitled to the benefit of Government Resolution dated 31/1/1996 since he has completed five years of service on or before 1/11/1994. The petitioners were directed to grant the benefit of permanency to the respondent with monetary benefits to be granted to him with effect from 1/11/1994.

3) The facts, which are necessary to be cited for adjudication of the above petition, can be stated thus :

The respondent herein was initially employed as a daily wager from 1/9/1987. The respondent having worked as such for a period of about ten years filed Complaint (ULP) No. 65/1998 alleging unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The sum and substance of the allegations of the respondent in the said complaint was that he was being wrongly denied the benefit of Government Resolution dated 31/1/1996, under which Resolution the mechanism for granting permanency to the persons, who were working as casual/daily wage basis has been provided. In the said complaint, a written statement came to be filed by the petitioners herein. The parties went to trial. The respondent herein examined himself. He also produced documents, which were marked as Exhs. 34 to 37. Exh.34 was a

letter issued to the Deputy Conservator of Forest, Gadchiroli forwarding seniority list of workers under Grades A, B and C. Exh. 35 was a letter dated 26/2/1996 by which the seniority list of the daily wagers was sent to the Civil Surgeon, Gadchiroli so as to facilitate their medical examination for being made permanent. Exh. 36 was the Government Resolution dated 31/1/1996. The respondent was extensively cross-examined by the petitioners herein.

4) The Industrial Court by the judgment and order dated 15/9/2009 allowed the said complaint and issued directions, which have been mentioned hereinabove. The Industrial Court in the absence of any evidence being produced by the petitioners herein in the form of attendance sheets, salary slips, etc., inter alia on the basis of Exh.s 34 to 36, came to a conclusion that the respondent has worked continuously for a period of five years and, therefore, was entitled to the benefit of the said Government

Resolution dated 31/1/1996.

5) Being aggrieved by the said judgment and order dated 15/9/2009, the instant petition has been filed.

6) Heard the learned Counsel for the parties. Ms. Khan, learned Assistant Government Pleader appearing for the petitioners, submitted that the respondent, who had approached the Industrial Court by way of the said Complaint (ULP), has not discharged the burden in the matter of proving that he had worked for 240 days in each calendar year preceding to the date of Government Resolution dated 31/1/1996 and that the Industrial Court by merely observing that he has worked for five years allowed the said complaint. The learned Assistant Government Pleader sought to rely upon a chart, which has been annexed at page 43 to the petition so as to contend that the said chart discloses that the respondent had

not worked for 240 days in each of the preceding calendar years. It was contended that the documents (Exhs. 34 to 36) would merely show the seniority on the basis of the date of employment and would not indicate as to whether the respondent was entitled to be made permanent in terms of the criteria mentioned in the Government Resolution dated 31/1/1996.

7) Per contra, Shri Khan, learned Counsel for the respondent, submitted that the impugned judgment and order does not call for any interference as the findings recorded have been so recorded by the Industrial Court on the basis of the material on record. Insofar as chart at page 43 on which much emphasis has been laid by the learned Assistant Government Pleader appearing for the petitioners is concerned, it is the contention of Shri Khan that the said document could not be taken into consideration in view of the fact that the same was not produced before the Industrial Court and the respondent, therefore, did not

have an opportunity to deal with it.

8) Having heard learned Counsel for the parties, I have given my anxious consideration to the rival contentions. In the instant case, as can be seen, the Industrial Court on the basis of the documents (Exhs. 34 to 36) has come to a conclusion that the respondent was in continuous service of the petitioners in the preceding five years so as to entitle him for the benefit of the said Government Resolution dated 31/1/1996. In my view, the chart on which reliance is now sought to be placed by the learned Assistant Government Pleader appearing for the petitioners, cannot be made a part of the record of this Court in view of the fact that the said document was not produced before the Industrial Court in the said complaint. The submissions advanced on behalf of the petitioners on the basis of the said document, therefore, cannot be countenanced. It was for the petitioners herein to produce the said document and

having not produced the evidence, which was available with them, the Industrial Court was right in relying upon the documents (Exhs. 34 to 36) which have been produced by the respondent in the said complaint. The said documents disclose that the respondent was subjected to medical examination. Insofar as the document purporting to be a seniority list is concerned, the said document also discloses the date from which the respondent has been employed.

9) In my view, the findings arrived at by the Industrial Court on the basis of the said documents and on the basis of oral evidence, which was led by the parties, cannot be said to be perverse or requiring interference at the hands of this Court in the extraordinary writ jurisdiction. It is also the case of the respondent that persons, who were junior to him, have been made permanent and that he has been deprived of permanency. That case of the respondent has not been effectively dealt with by the petitioners in the

Industrial Court. In that view of the matter, the impugned judgment and order dated 15/9/2009 passed by the Industrial Court does not merit any interference at the hands of this Court in the extra-ordinary writ jurisdiction. The writ petition is accordingly dismissed. Rule discharged. No order as to costs.

JUDGE

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