

IN THE COURT OF JUDGE, LABOUR COURT, BHANDARA.**(Presided over by : F.K. Shaikh)****Complaint (ULPA) No. 28 of 2022****(CNR NO : MHLC 36-000309-2022)**

Sunil Khobragade .. Vs .. The Range Forest Officer and others

ORDER BELOW EXHIBIT NO. U-2**(Passed on 09-02-2023)**

This is an application filed by the complainant under section 30(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (herein after referred to as the “M.R.T.U. & P.U.L.P. Act”) for directing the respondents to re-engage the complainant on his previous work till final disposal of his main complaint. Heard Shri. Gajbhiye learned counsel for the complainant and Shri. Bade learned counsel for the respondents.

2. The case of the complainant is that the respondents have employed the complainant as a watchman since March, 2014 with the respondent no. 1 for a work of regular nature. The complainant was legally appointed by the respondents. The complainant was paid Rs. 8,500/- per month towards salary. The complainant is presently receiving salary of Rs. 11,256/-. The complainant was working with the respondents from 9.00 a.m. to 6.00 p.m. on every day including Sunday. As on today the work is available with the respondents for complainant. The complainant has worked for protection of trees, protection of illegal trees felling, discovery of illegal trees felling, prevention of theft of forest wood, protection of forest from fire, protection of tree from cattle trespassing, conservation of forest and

patrolling through the plantation along with senior officers during day and night. The complainant also used to inform senior officer about illegal tree felling and poaching of wild animals. The complainant used to perform all other incidental jobs assigned to him by the respondents.

3. The complainant has continuously worked with the respondents for more than 8 years. The complainant has rendered his services honestly. The complainant was having clean and unblemished record. The complainant has already completed more than 240 days in every calender year of his service. Despite that the respondents have not given status of permanent employee to the complainant.

4. The respondents is an industry within the meaning of Sec. 2(j) of the Industrial Disputes Act (for short hereinafter referred as I.D. Act). The complainant is a workman within the meaning of Sec. 2(s) of the I.D. Act. The Forest Department is engaged in sale of forest articles such as plants and Tendu leaves. The Forest Department is also engaged in sale of timber wood, fuel wood and bamboo etc. The Forest Department is doing business of timber, forest produce, Tendu leaves as per the provision of Maharashtra Forest Produce (Regulation of Trade) Act, 1969. The Forest Department is maintaining various gardens, holidays homes and rest houses. The public at large is allowed to occupy the rest houses, holidays homes on payment of prescribed fees and after reservation of accommodation. Thus, the Forest Department is engaged in systematic business of tourism and trade of forest produce. Therefore, the respondents is an industry as defined under the I.D. Act.

5. The respondents despite being an industry orally terminated the services of the complainant on 31-08-2022. The complainant was not paid retrenchment compensation. The respondents have violated the provision of Sec. 25-F of the I.D. Act, 1947. The action of the respondents was in total disregard to the principles of natural justice. The action of the respondents for terminating the services of the complainant is by way of victimization, not in good faith but in colourable exercise of employer's rights constitute an unfair labour practice within the meaning of Item 1(a)(b) (d) and (f) of Schedule IV of the MRTU & PULP Act. In view of this, it is prayed that the respondents be directed to immediately re-engage the complainant on his previous work till final disposal of main complaint.

6. The respondent in their say at Exh. C-3 have stated that the complainant in the interim relief is seeking of reinstatement in service which is in fact final relief. It is stated that as per settled legal proposition final relief can not be granted by way of interim relief.

7. It is denied that the complainant was employed with the respondents as a watchman since March, 2019. It is stated that the complainant has purely worked as a seasonal labour. It is stated that the complainant has never worked for 240 days during any calender year. It is stated that, the complainant has worked only for 65 days in the year 2014, 52 days in the year 2015, 52 days in the year 2017, 25 days in the year 2019, 71 days in the year 2021 and 104 days in the year 2022. It is stated that the wages of the complainant for a period

during which he was engaged on daily wages as a seasonal labour were directly credited in the bank account of the complainant.

8. It is denied that the complainant was appointed as per law and initially paid an amount of Rs. 8,500/- per month. It is denied that the complainant presently getting Rs. 11,256/- per month. It is denied that the complainant was terminated orally without following procedure of law by the respondents on 30-06-2022.

9. It is denied that the act of the respondents has rendered the complainant suddenly jobless. It is denied that the complainant is entitled for a relief of interim order against the respondents. In view of these pleadings, dismissal of the application is prayed.

10. On the basis of rival submissions of both the parties, following points arose for my determination and I have recorded the findings with reasons as under :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does the complainant prove that there is strong prima facie case in his favour ?	: In the negative.
2.	Does the complainant prove the balance of convenience lies in his favour ?	: In the negative.
3.	Does the complainant prove that he will suffer irreparable loss, if the interim relief prayed is not granted ?	: In the negative.

4. What order ?

: The application is rejected.

REASONS

AS TO POINT NO. 1, 2 AND 3 :

11. The complainant apart from his contention in the application for interim relief and affidavit has relied only on one document i.e. his bank passbook. Perusal of the said bank passbook entries Exh. U-3/1 would reflect that an amount of Rs. 7,757/- was transferred into his account on 12-08-2015 under the head of 'SALARY JULY, 2015'. There is another entry in the passbook of the complainant by which an amount of Rs. 7,757/- was transferred into the account of the complainant on 08-09-2015 under the head of 'SALARY AUGUST 2015'. Except these two entries, there is nothing on record at this stage which would suggest that the complainant was employed with the respondents as alleged.

12. The complainant has specifically stated that he has continuously worked for 240 days since March, 2014 till his oral termination i.e. 31-08-2022. But, the complainant has not filed on record a single document to show that he has worked for 240 days in each calender year during March, 2014 till 31-08-2022. In such a situation, it would be improper to conclude that the complainant is having prima facie case, balance of convenience in his favour and there would be irreparable loss if the application in hand is rejected. By now it is a settled law that while granting injunction order strong prima facie case has to be there. On the basis of mere pleadings and two

entries of bank pass book, it can not be said that the complainant has established a strong prima facie case for grant of order of injunction in his favour.

13. The learned advocate for the respondents Shri. Bade has vehemently argued that it was necessary for the complainant to establish at this prima facie stage that he has worked for 240 days in each calender year from the year 2014 till 31-08-2022 as alleged. Learned advocate has further contended that as the complainant has not established that he has worked for not less than 240 days in each year from March, 2014 till August, 2022 he would not be entitled for relief. In order to substantiate his contention, he has relied on the observation of Hon'ble Apex Court in case of **Range Forest Officer ..Vs.. S.T. Hadimani reported in 2002 CJ(SC) 875**. Wherein the Hon'ble Apex Court held in para nos. 2,3 and 4 as under ;

2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the

workman was sufficient to prove that he had worked for 240 days in a year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in [State of Gujarat v. Pratam Singh Narsinh Parmar, JT \(2001\) 3 SC 326](#). In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.

4. The appeals are disposed of in the aforesaid terms.

14. This Court has already discussed that there are no documents on record which would show that the complainant has worked for more than 240 days in the year preceding his alleged termination. Moreover, in view of the judgment of Hon'ble Apex Court in a case of Range Forest Officer (cited supra), the complainant would not be entitled for the relief. Hence, I answer point nos. 1 to 3 in negative and proceed to pass the following order.

ORDER

- 1} Application Exhibit No. U-2 is hereby rejected.
- 2} Parties to bear their own costs.

B H A N D A R A.
Date : 09-02-2023.

(F.K. Shaikh)
Judge,
Labour Court, Bhandara.