

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 448 of 2018 (D.B.)

Shri Sudhakar S/o Dharmaji Haste,
Aged about 51 years, Occ. Service,
R/o Naginabag, Chandrapur, Tah. & Distt. Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra through the
Principal Secretary, Technical and Higher
Education, Mantralaya, Mumbai-01.
- 2) Desk/ Section Officer,
Technical and Higher Education,
Mantralaya, Mumbai-01.
- 3) The Director Technical and Higher Education,
Dhobi Talao, Mahyalika Mark, Mumbai-01.
- 4) The Joint Director,
Technical Education, Sadar, Nagpur
Tah. and Distt. Nagpur.
- 5) The Government College of Engineering,
through its Principal, Chandrapur, Tah. & Distt. Chandrapur.
- 6) Shri M.M. Joshi,
Aged Major, Occ. Service,
Administrative Officer in Technical Education
Department, Sadar, Nagpur, Tah. and Distt. Nagpur.
- 7) Ku. Neha Omprakash Kamble,
Aged Major, Occ. Service,
In Government College of Engineering,
through its Principal, Chandrapur,
Tah. and District Chandrapur.

Respondents.

N.N. Thengre, S.K. Thengre, R.D. Hajare, Advs. for applicant.
Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 5.
None for respondent nos. 6 and 7.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 14th February, 2023.

Date of Pronouncement of Judgment : 13th March, 2023.

JUDGMENT

(Delivered on this 13th day of March, 2023)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri R.D. Hajare, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondent nos.1 to 5. None for respondent nos.6 and 7.

2. The applicant was engaged on daily wages as a Laboratory Assistant on 01/07/1999 by respondent no.5. The services of the applicant were terminated on 30/04/2000. The applicant had filed Complaint ULP Case No.77/2000 before the Labour Court, Chandrapur. The Labour Court, Chandrapur allowed the said Complaint on 25/02/2004 directing the respondent no.5 to reinstate the complainant on his former post or work with continuity of service without backwages. The said order was challenged by the respondent nos.1 to 5 before the Industrial Court, Chandrapur. The said Revision was dismissed on 15/10/2004. The respondent nos.1 to 5 have filed Writ Petition No.4413/2005 before the Hon'ble High Court, Bench at

Nagpur. The said Writ Petition was allowed and orders of Labour Court and Industrial Court were quashed and set aside. The said order of Hon'ble High Court in Writ Petition No. 4413/2005, dated 26/09/2012 was challenged in LPA No.104/2013. As per the Judgment dated 20/06/2013, the order passed by Single Bench was quashed and set aside and order passed by Labour Court and Industrial Court were restored. The Judgment of Division Bench in LPA was challenged before the Hon'ble Supreme Court in SLP No.4799/2014. The said SLP was dismissed on 06/05/2016.

3. After passing the order of Hon'ble Supreme Court, the respondent no.5 informed the applicant as per letter dated 10/05/2016 to join his duty. Thereafter, on 23/05/2016 the applicant joined his duty. The respondent nos.1 to 5 have advertised some posts on clear vacancies as per advertisement dated 19/08/2009. The applicant made representation, but it was not considered. Therefore, the applicant filed Complaint ULP No.80/2009 for direction to the respondent nos.1 to 5 to consider the case for the post of Laboratory Assistant which was vacant as per advertisement dated 19/08/2009. He had also prayed for direction to the respondent nos.1 to 5 to keep one post vacant of Laboratory Assistant till the decision in Writ Petition No. 4413/2005. The Writ Petition No. 4413/2005 was decided on

26/09/2012. That was challenged in LPA and the Judgment in LPA was confirmed by the Hon'ble Supreme Court.

4. The Complaint ULP No.80/2009 was decided by the Industrial Court, Chandrapur on 07/08/2013 holding that the applicant was working as a unskilled labour on daily wages. Therefore, he cannot claim for permanency on the post of Laboratory Assistant.

5. The respondent no.5, i.e., the Principal, Government Engineering College, Chandrapur by order dated 31/05/2018 terminated the services of the applicant who was working on daily wages, by paying one month pay of Rs.8910/- and gratuity amount etc. of Rs.93,555/-.

6. The applicant has challenged the order of termination dated 31/05/2018 before this Tribunal. The applicant has amended the O.A. and prayed for the following reliefs –

(viii) Interim relief -

That this Hon'ble Tribunal grant of stay for the effect and operation of the order dated 31/05/2018 issued by non-applicant. Issue direction to non-applicant nos.1 to 5 against the termination order dated 31/05/2018 issued by non-applicant no.5 to the applicant and failed to give the continuity of service by non-applicant no.5.

“(i) Quash and set aside the order dated 31/05/2018.

(ii) *Issue direction to the non-applicant nos.1 to 4 to issue direction to the non-applicant no.5 to regularise to the applicant.*

(iii) *Issue direction to the non-applicant nos.1 to 5 to absorb to the applicant in any Government Engineering College in Maharashtra.*

(iv) *Issue direction to the non-applicant nos.1 to 5 to grant consequential benefits to the applicant like back wages.*

(v) *quash and set aside the appointment order issued by the non-applicant no.5 in favour of non-applicant no.7 i.e. Ku. Neha Omprakash Kamble.*

(vi) *hold the inquiry against the non-applicant no.6,i.e., Mr. M.M. Joshi, the Administrative Officer of non-applicant no.4.”*

7. This Tribunal has passed the order on 22/01/2019 as under—

“C.A.Nos.153, 224 & 273/2018:-

Heard Shri S.K.Thengre, the Id. counsel for the applicant and Shri A.M.Ghogre, the Id. P.O. for the respondent nos. 1 to 5. None for the respondent nos. 6 & 7.

2. *From the record, it seems that as per the Annexure-A-2, P.B., Pg. No. 37, matter has been decided by the Industrial Court, Chandrapur on 07/08/2013. The Id. counsel for the applicant has not preferred an appeal before Hon’ble High Court against the said order.*

3. *In view of this, the present O.A. is dismissed. The Id. counsel for the applicant is at liberty to file an appeal against the Industrial Court order dated 07/08/2013 before the Hon’ble High Court. Hence, O.A. along with all the C.As. are dismissed with no order as to costs.”*

8. The said order was challenged before the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.5454/2019. The said Writ Petition was allowed with direction to this Tribunal to decide as to whether termination order dated 31/05/2018 is correct or not.

9. The O.A. is strongly opposed by respondent no.5 by filing reply on affidavit. It is submitted that the applicant was engaged purely on temporary basis that too on his own request vide his application dated 03/08/1999. Due to exigency of work, labour was required to assist the Technician in the Chemistry, Laboratory of the College. The applicant was initially engaged purely on temporary basis. There was no work available with respondent no.5 after 01/04/2000 and therefore work was not given to the applicant. There is no question of termination of service of the applicant. The filing of litigation by applicant and challenging before the Hon'ble Apex Court by the respondent nos.1 to 5 are not disputed. It is submitted that the applicant had filed several proceedings against the respondent nos.1 to 5 after the order passed by the Labour Court in Complaint ULP 09/2017. The applicant had filed criminal contempt for claiming backwages. Infact, the Labour Court not granted any backwages and therefore Criminal Complaint was dismissed.

10. It is submitted that the applicant is not entitled to claim any interim relief as per prayer clause, since the applicant being unskilled

labour, has no right to approach to this Tribunal. The applicant has chosen a wrong forum to file this O.A. The Administrative Tribunal is only meant to decide the service matters of permanent full salaried employees who are appointed by established selection procedure. In this matter, the applicant was engaged previously by respondent no.5 purely on daily wages basis as unskilled labour. Thus the applicant has no right to approach before this Tribunal. The applicant is claiming the benefit of G.R. by which some Lecturers were regularized. It is submitted that as per the order of Hon'ble High Court, ad-hoc Lecturers were regularized. Therefore, he cannot be equated with the Lecturers working in the Engineering / Medical Colleges. The applicant is making pressure through political leaders to regularize his services. In fact, the applicant was working as a Labour on daily wages. After complying the provisions of relevant Act, the respondent no.5 paid one month's pay instead of one month notice and also paid amount of gratuity etc. After complying the procedure, services of the applicant were terminated as per order dated 31/05/2018. The O.A. is devoid of merit. Hence, it is liable to be dismissed.

11. Heard Shri R.D. Hajare, learned counsel for applicant. He has filed written notes of argument on 03/10/2022. In support of his

submission, pointed out the Judgment filed along with written notes of arguments.

12. The Id. P.O. for respondent nos. 1 to 5 Shri A.M. Ghogre has filed written notes of argument along with a copy of Judgment of Industrial Court in Complaint ULP No.80/2009, decided on 07/08/2013.

13. After perusal of the submission in the O.A. and reply, the following material points arise for determination –

- (i) *Whether this Tribunal has jurisdiction to entertain and decide the O.A. ?*
- (ii) *Whether the termination order passed by respondent no.5, dated 31/05/2018 is legal and proper ?*
- (iii) *Whether the applicant is entitled for absorption in the Government Engineering College by regularizing his service ?*
- (iv) *Whether the applicant is entitled for back wages ?*
- (v) *Whether the appointment of respondent no.7 is legal and proper?*
- (vi) *Whether any inquiry against respondent no.6 is required ?*

14. The learned counsel for the applicant has pointed out the decision and submitted that the applicant is entitled to regularize his service from the date of his initial appointment in the establishment of respondent no.5. The claim of the applicant was upheld upto the Hon'ble Supreme Court. The respondent nos.1 to 5 were directed by

the labour Court to reinstate the applicant on his former post. The said order was confirmed upto the Hon'ble Supreme Court. The learned counsel for the applicant has submitted that the applicant is entitled to get benefit of G.R. issued from time to time. He has pointed out the G.R. dated 24/04/2001. He has pointed out the G.Rs. issued by the Government regularizing the services of daily wagers who were working as per the G.R. dated 11/09/2012 by which daily wagers were absorbed on the post of Clerk / Peon etc. in the Government Science College, Gadchiroli.

15. The learned counsel for the applicant has pointed out the Judgments cited along with the written notes of arguments. At last submitted that the termination order dated 31/05/2018 is illegal and liable to be quashed and set aside.

16. Heard learned P.O. for the respondent nos. 1 to 5 Shri A.M. Ghogre. As per his submission, this Tribunal has no jurisdiction to entertain and decide the O.A. First termination order w.e.f. 30/04/2000 was challenged before the Labour Court, Chandrapur in ULP Complaint No. 77/2000. The said order was confirmed by the Industrial Court, Chandrapur. The said order was challenged in Writ Petition No.4413/2005 before the Hon'ble Bombay High Court, Bench at Nagpur. The Writ Petition No.4413/2005 was allowed. Thereafter, the LPA was filed by the applicant. That was allowed and the orders of

Labour court and Industrial court were restored. The said Judgment in LPA was challenged in SLP 4779/2014. It was dismissed on 6/5/2016.

17. After the decision of Hon'ble Supreme Court, the applicant was taken on his former post on daily wages. After complying the legal procedure, the respondent no.5 terminated the applicant from the post of daily wages as per the order dated 31/05/2018. The applicant should have challenged this termination order before the Labour court and not before this Tribunal.

18. The learned P.O. for respondent nos.1 to 5 Shri A.M. Ghogre has submitted that the applicant cannot claim the benefit of the G.R. pointed out by the side of applicant. The termination order is perfectly legal and correct.

19. There is no dispute that the applicant was engaged on daily wages. His services were terminated w.e.f. 30/04/2000. The applicant challenged the said termination before the Labour court in ULP Complaint No.77/2000. The said Complaint was decided on 25/02/2004. The operative part of the order is reproduced as under –

“ORDER

1. The complaint is hereby partly allowed.

2. It is declared that respondents have engaged in an unfair labour practice while terminating the services of complainant w.e.f. 30-4-2000. Consequently the termination of complainant is set aside and quashed.

3. The respondents are further directed to cease and desist from admitting unfair labour practice.

4. The respondents are further directed to reinstate the complainant on his former post or work with continuity of 'service without back wages.

5. The respondents shall implement this order within the period of one month from the date of this order.

6. No Order as to costs."

20. The said order was challenged by the respondent nos.1 to 5 before the industrial Court, Chandrapur in Revision Application (ULP) No.17/2004. The said Revision was dismissed on 15/10/2004. Both the orders were challenged before the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4413/2005. That Writ Petition was allowed and orders passed by the Labour Court and Industrial Court were quashed and set aside. The Judgment in Writ Petition No.4413/2005 was challenged in LPA No.104/2013. The LPA was allowed and the orders of Labour Court and Industrial Court were restored. The said Judgment in LPA was challenged in SLP 4779/2014 before the Hon'ble Supreme Court. It was dismissed on 06/05/2016.

21. After the decision of Hon'ble Supreme Court, the respondent no.5 informed the applicant to join his duty. The applicant had joined his duty as per letter dated 10/05/2016. The applicant has joined his duty on 23/05/2016. Thereafter on 31/05/2018, the service of applicant is terminated by paying one month pay and gratuity amount of Rs.93,555/-. It is mentioned in the termination order that as per Section 25 (F) of the Industrial Disputes Act,1947, they have paid the amount of gratuity and also one month pay as observed by the Industrial Court in the Judgment dated 15/10/2004.

22. It is held by the Labour Court and Industrial Court that the applicant is a Workman / Labour and therefore the Labour Court and Industrial Court has entertained and decided the matter. In the Judgment of Industrial Court, Chandrapur dated 07/08/2013 in Complaint (ULP) No.80/2009 issues were framed as to whether the Industrial Court has jurisdiction, because the applicant was working on a daily wages. Industrial Court recorded findings that, applicant is a Labour. Hence, Industrial Court has jurisdiction to decide the matter.

23. The applicant is claiming benefit of G.R. dated 24/04/2001. It is pertinent to note that Kalelkar Committee was appointed for the problems of daily wages employees working in PWD, Irrigation Department, Rural Development Department and Water Conservation Department. Kalelkar Committee had given report and as per the

report of Kalelkar Committee, daily wagers who were working continuously for five years after completing 240 days in each year, were to be brought on CRTE and the post held by those employees shall be abolished after their retirement. The applicant cannot claim the benefit of this G.R., because he is working in Education Department. This G.R. is not applicable to the Education Department. The applicant has also relied on the G.R. by which some of the daily wagers working in the Science College, Gadchiroli were regularized. It appears that the posts were vacant and that G.R. was specific, it is not applicable to the Government Engineering College. Hence, both the G.Rs. are not applicable to the applicant. The applicant should have challenged the termination order before the Labour Court. He had already challenged his first termination order before the Labour Court. Hence, this Tribunal has no jurisdiction to entertain and decide the matter.

24. In respect of legality of termination order dated 31/05/2018, it is perfectly legal and correct as per provisions of Section 25 of the Industrial Disputes Act, 1947 and the respondent no.5 paid one month pay instead of one month notice and also the amount of gratuity of Rs.93,555/- and after complying the legal provisions, the services of the applicant came to be terminated.

25. The learned counsel for the applicant has pointed out the decision in the case of ***Cimco Birla Ltd. Vs. Rowena Lewis, 2015 (1) ALL MR 946 (SC)***. It is the case of challenge of the orders of Labour Court and Industrial Court. Therefore, it is not applicable to the case in hand. On the other hand, it appears that the applicant should have approached to the Labour Court or Industrial Court, instead of approaching this Tribunal. Hence, the cited Judgment is not applicable.

26. The learned counsel for applicant has also pointed out decision in the case of ***Dashrath Rajaram Solanke and ors. Vs. Executive Engineer, Chief Gate Erection Unit, Nagpur and Ano.,2013 (4) Mh.L.J.,223***. In para nos.29 and 30 it is held that -

“29. Looking to this scheme of Clause 28 of the Kalelkar Settlement, it is clear that mere violation of section 25F of the Industrial Disputes Act, will not entitle any workman to a relief of reinstatement either with continuity or with back wages. The aspirant workman has in addition is required to prove that though he was terminated, work continued and by his termination, his right to come on CRTE at the end of 5 years has been taken away. There is no such evidence before us in the present matter. There are no such arguments also at this juncture. The finding that each of the appellant has put in 240 days is not in dispute. Their length of tenure as daily wager is little over one year. When there is nothing before us to gather that by

breaching the provisions of section 25 of the Industrial Disputes Act, the appellants have been victimized and their termination is otherwise mala fide with some oblique motive, a direction to grant appellants retrenchment compensation in accordance with the provisions of law/ cannot be said to be unsustainable. The appellants were always aware that unless and until they put in 5 years of service no post is created for them, and their employment on daily wages therefore, remains contingent. The parties have agreed that if the work lasts for 5 years, then only a daily wager who continues during said period can be brought on CRTE. In view of this understanding and settlement, relief of grant of retrenchment compensation only in accordance with the provisions of section 25F, cannot be said to be perverse.

30. A workman being retrenched becomes eligible to retrenchment compensation as also notice pay. Here notice pay has not been awarded to the appellants by the learned Single Judge, hence, we direct that they shall also be paid wages for one month in lieu of notice in addition to retrenchment compensation. The impugned judgment delivered by the learned Single Judge is modified to that extent only. Rest of the judgment of learned Single Judge is maintained as it is."

27. The workman being retrenched becomes eligible to retrenchment compensation as also notice pay. Hence, notice pay has not been awarded to the appellants. Hence it was directed that they

shall also be paid wages for one month in lieu of notice in addition to retrenchment compensation.

28. The respondent no.5 has paid one month wages instead of one month notice and also paid the retrenchment compensation. Therefore, this Judgment is not helpful to the applicant.

29. The learned counsel for applicant has pointed out the Judgment in O.A. 944/2016 decided by the M.A.T., Bench at Aurangabad, dated 11/08/2022. The case in the Judgment is very much different. The Co-employees who were working with the applicant were regularized as per the Kalelkar Award. The case of the applicant is not covered as per the Kalelkar Award and therefore cited Judgment is not applicable to the case in hand.

30. The learned counsel for applicant has pointed out the G.R. dated 24/04/2001. This G.R. was issued by the Government of Maharashtra, Public Works Department after the report of Kalelkar Committee. This G.R. was applicable to the PWD, Irrigation Department, Rural Development. This G.R. is not applicable to the Education Department. Hence, the applicant cannot claim the benefit of this G.R.

31. The learned counsel for applicant has pointed out the Judgment of Hon'ble Supreme Court in the case of **Narendra Kumar**

Tiwari and ors. Vs. State of Jharkhand and ors. (2018) 8 SCC,238.

The Judgment shows that the State of Jharkhand had irregularly appointed the employees. In the present matter, the applicant was not appointed by the State of Maharashtra by following due procedure. He was appointed by respondent no.5 because of the exigency of work purely on daily wages and therefore cited Judgment is not applicable in the present case.

32. The learned counsel for applicant has pointed out the order of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No. 5454/2019, dated 02/08/2019. This was the order at the time of issuing notice. This Writ Petition No. 5454/2019 is now decided and the matter is remanded back to this Tribunal. Therefore, this particular order cannot be said to be final order of the Hon'ble Bombay High Court. Hence, it is not applicable.

33. The respondent no.5 has complied the provisions of Section 25 (F) of the Industrial Disputes Act and after paying one month pay instead of one month notice and after paying gratuity amount of Rs.93,555/-, legally terminated the services of the applicant. Hence, termination order issued by respondent no.5 is perfectly legal and correct. The applicant is not entitled for absorption in the Government service in the establishment of respondent no.5. He is legally terminated. He cannot claim the benefit of G.Rs. issued

by the State Government. Those G.Rs. are not applicable to the applicant. Some of the Lecturers were working in the Engineering / Medical Colleges, were regularized as per the order of Hon'ble Bombay High Court. There is no such order in favour of the applicant to regularize his services.

34. The respondent /non-applicant no.7 was appointed by the respondent nos.1 to 5 by issuing advertisement and after complying the relevant procedure for appointment, she is appointed on regular basis and therefore it cannot be quashed and set aside. Nothing is pointed out to show that any mischief was made by respondent no.6. Hence, no any inquiry is necessary against respondent no.6.

35. The Judgment of Industrial Court, Chandrapur in Complaint (ULP) No. 80/2009 is very clear. The applicant was engaged as a daily wager. The applicant was over aged and therefore his request for regular appointment on the post of Laboratory Assistant was rejected. He was engaged as a daily wager, therefore, he could not be regularized. The post of Laboratory Assistant was required to be filled by following due procedure. The respondent no.7 was appointed after following the due procedure. In para-20 of the Judgment, it is observed that the applicant himself admitted that since 2007 to February,2012 the post of Laboratory Assistant was not lying vacant. Therefore, his case could not be considered for permanency.

In the evidence before the Labour Court, applicant has stated that he was working as an unskilled labour. The Vouchers etc. were proved before the Labour Court. Those show that he was a daily wager. The applicant is not entitled for regularization of his service. The order of Industrial Court in Complaint (ULP) No.80/2009 is not challenged till date. It is binding on the Complainant. The same reliefs which were prayed in Complaint (ULP) No.80/2009, are prayed in this O.A. also.

36. The applicant cannot file several cases in respect of the same cause of action which was rejected by the Industrial Court in Complaint (ULP) No.80/2009, as per the order dated 07/08/2013. Hence, the applicant is not entitled for any relief.

37. After hearing the arguments by both the sides and after going through the documents filed on record, we have recorded our findings as below –

Sr.No.	Issues	Findings
1.	Whether this Tribunal has jurisdiction to entertain and decide the O.A. ?	No
2.	Whether the termination order passed by respondent no.5, dated 31/05/2018 is legal and proper ?	Yes

3.	Whether the applicant is entitled for absorption in the Government Engineering College by regularizing his service ?	No
4.	Whether the applicant is entitled for back wages ?	No
5.	Whether the appointment of respondent no.7 is legal and proper?	Yes
6.	Whether any inquiry against respondent no.6 is required ?	Not necessary

38. After recording our findings as above, we proceed to pass the following order –

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 13/03/2023.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 13/03/2023.

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