


A.S.O/EIC

MAHARASHTRA POLLUTION CONTROL BOARD

24010437/24020781 24037124 /24014701 Fax 24024068/24044531 Visit us <a href="http://www.mpcb@gov.in">www.mpcb@gov.in</a>		Kalpataru Point, 2 <sup>nd</sup> , 3 <sup>rd</sup> & 4 <sup>th</sup> Floor, Opp Cine Planet Cinema, Near Sion Circle, Sion (East), Sion Matunga Scheme Road No 8 Mumbai - 400 022
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No BO/ P & L Division/B- 105  
To

Date - 04/01/2013

The Regional Officer  
Maharashtra Pollution Control Board  
Mumbai/ Navi Mumbai/Raigad/ Kolhapur/  
Amravati/ Kalyan/Thane/ Aurangabad/Nashik  
Chandrapur/ Nagpur/Pune

Sub - Hon'ble Industrial Court Order dated 07/12/2012  
Firoz Khan V/s MPCB and Others  
ULP No 85 of 2012

Ref - Hon'ble Industrial Court order dated 7/12/2012

Shri Firoz Khan, who was working at Regional Laboratory, at Aurangabad on daily basis had filed ULP NO 85 of 2012 before the Hon'ble Industrial Court, Aurangabad and also filed Application for interim relief under section 30 of the MRTU and Pulp Act, 1971 praying for not to change service conditions without issuing notice under section 9A of the Industrial Dispute Act, 1947.

The Hon'ble Industrial Court Aurangabad has rejected the matter on the ground that the complainant cannot prove that he was appointed lawfully and also failed to prove that the Respondent Board have indulged in any of the Unfair Labour Practices as alleged. Therefore Firoz Khan, applicant cannot be entitled for interim relief. A copy of the Hon'ble industrial Court Order Aurangabad dated 7/2/2012 is enclosed for your ready reference and record.

  
( D.T. Devale )  
Sr Law Officer

Encl- As above

Copy f.w.cs to -

- 1) Accounts Officer (EB), MPCB, Mumbai- for information.
- 2) Asstt System Officer, EIC, MPCB, Mumbai - for information. He is requested to host the Hon'ble Industrial Court order dated 7/12/2012 on the website of the Board by giving link as Industrial Court Orders.

ORDER BELOW EXH.U-2  
IN COMPLAINT ULP NO.85/2012

1. In a complaint under Section 28 r/w Item Nos.5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971, the complainant has filed this application for interim relief under Section 30 of the MRTU & PULP Act, 1971.

2. It is the case of the applicant that initially he was serving as Peon with respondent No.4 on contract basis from 10-09-2004. Thereafter, he has worked with respondent No.4 as Peon from 01-07-2008 to 15-04-2009. Thereafter, as per office order dated 15-04-2009, he is continuously working with respondent No.4 as Peon on daily wages. He has completed 240 days continuous service in the year next preceding to filing of the complaint.

3. According to the applicant, as per office order dated 24-05-2012, the respondents are trying to change the service conditions of the applicant adversely affecting his interest without issuing notice under Section 9-A of the Industrial Disputes Act, 1947. Letter dated 24-05-2012 is termed as illegal and a instance of unfair labour practice. On such grounds, the applicant has requested to direct the respondents not to pass any order adversely affecting his service conditions and not to change the service conditions in furtherance of letter dated 24-05-2012.

4. The respondents by filing elaborate 'say' and written statement



at Exh.C-4 denied all the adverse allegations. It is contended that initially from 13-09-2004 to 16-09-2005 applicant was appointed on contract basis for specified period as Peon. For about 16 months from 17-09-2005 to 10-01-2007 work was not provided to him and he was not on duty. From 11-01-2007 to 30-06-2008 applicant was appointed as Junior Laboratory Attendant on contract basis for specified period by giving breaks. Respondent No.1 through its administrative officer had permitted the respondent No.4 by letter dated 15-04-2009 to appoint two Peons on daily wages basis on 'no work no pay basis'. In pursuance of such orders, appointment orders were not issued in favour of either the applicant or any other persons. It is denied that the applicant has rendered continuous 240 days service prior to filing of the complaint. It is denied that from 15-04-2009 the applicant is in the employment of the respondents.

5. It is further contended that applicant was initially not appointed by following service rules. He is attempting to take back-door entry and as such he is not entitled for interim relief. It is further contended that as Board is not a industry and as such the provisions of the Industrial Disputes Act, 1947 or the MRTU & PULP Act, 1971 are not applicable. On such grounds, request is made to reject the application for interim relief.

6. I have heard learned Advocate Mr.P.L.Shahane for the applicant. Learned Advocate for the respondents submitted written notes of arguments at Exh.C-5. I have perused the same. Points which arise for my consideration along with answers are as under for

the reasons stated below;

<u>Sr.No.</u>	<u>Points</u>	<u>Answers</u>
1	Whether the applicant has prima facie proved his case ?	In the negative.
2	Whether the applicant prima-facie proved any of the unfair labour practice as alleged ?	In the negative.
3	Whether balance of convenience lies in favour of the applicant ?	In the negative.
4	What order ?	Application is rejected as per final order.

### REASONS

#### **Point Nos. 1 to 4:**

7. Learned Advocate for the applicant has produced along with list Exh.U-7 various documents. The documents at page Nos.1 to 3 are in respect of appointment of the applicant on contract basis for specified period by giving breaks up to 16-09-2005. Copy of the order produced at page No.4 along with list Exh.U-7 is in respect of appointment of applicant on contract basis as Junior Laboratory Attendant for the period from 11-01-2007 to 10-04-2007. Thus, prima-facie there appears much force in the contention of the respondents that during the period from 17-09-2005 to 10-01-2007 the applicant was not appointed on any post by the respondents.

8. Copies of the appointment orders for specified period of the applicant are at Page Nos.5 to 11 are for the period from 08-05-2007 to 30-06-2008. It is the contention of the applicant that by order dated 15-04-2009, he is appointed on daily wages as Peon and since then he is working with respondent No.4 till the date of filing of the



complaint. However, on perusal of the order dated 15-04-2009, copy of which is produced at page No.12 along with list Exh.U-7, it reveals that the senior administrative officer of respondent Nos.1 and 2 authorized by this letter the respondent No.4 to deploy two persons as Peons on daily wages on 'no work no pay' basis. By this letter, applicant or any other person is not at all appointed as Peon. It is specific contention of the respondent that as per this order dated 15-04-2009, appointment orders were not issued either in favour of the applicant or in favour of any other person.

9. Learned Advocate for the applicant has placed reliance on the letters dated 02-02-2010 and 13-01-2011 written by the respondent No.4 to senior administrative officer of the Board. By such letters, it is recommended by the respondent No.4 to provide two Peons and to regularize the services of the applicant considering his past experience. At the most, it can be said that the respondent No.4 recommended to senior administrative officer for conferring permanency to the applicant. However, these letters by way of recommendations cannot be treated to be appointment letters issued in favour of the applicant. If infact applicant is working with respondent No.4 on the basis of letter dated 15-04-2009, copy of which is produced at page No.12 along with list Exh.U-7, at the most it can be prima-facie said that in view of such letter, the respondent No.4 without issuing any appointment letter, must have deployed the services of the applicant on daily wages. Admittedly, the respondent No.4 is not a competent authority to appoint any person in any cadre.

10. Under Right to Information Act, one of the co-worker of the applicant had obtained certain information about the persons deployed on daily wages from 2008 to 2012. The copies of such letters are produced at page Nos.19 and 20 along with list Exh.U-7. Prima-facie it goes to show that the applicant was deployed on daily wages by respondent No.4 during 2008 to 2012 without issuing appointment letter in his favour.

11. In the light of above discussions, prima-facie it cannot be said that on the date of filing of the complaint and application, the applicant was in the employment of the respondents. There is no cogent and reliable evidence to prima-facie show that the applicant is in continuous service since the date of initial appointment till the date of filing of the complaint. There is reason to believe that the applicant is seeking back door entry. If under such circumstances interim relief prayed for is granted, he is likely to be continued in service till the disposal of the complaint.

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12. It is the case of the applicant that by issuing letter dated 24-05-2012, the respondents are attempting to change the service conditions of the applicant. The copy of the letter dated 24-05-2012 is produced by the applicant at page No.37 along with list Exh.U-7. This letter is written by respondent No.3 to respondent No.4. By this letter, the respondent no.3 i.e. the Accounts Officer has accorded sanction to the payment of wages of two Peons for the period from 05-03-2012 to 04-06-2012. It is not made clear as to how this letter is going to affect the service conditions of the applicant adversely.



13. Learned Advocate for the applicant placed reliance on the case of *Saudi Arabian Air Lines v. Ashok Margovind Panchal & Anr.*, reported in 2002 (12) LJSOFT, 48 wherein it is observed that in the case wherein permanency is claimed, it is the duty of the Industrial Court to protect the employment by ordering continuation of status-quo during the pendency of the complaint. However, it was a case arising out of private employment. The applicant is claiming permanency in a corporation established by the State Government wherein it is necessary to follow the service rules for the recruitment. In public employment, back door entry is not permitted. Moreover, applicant prima-facie failed to prove that he is in the employment of the respondent No.4 continuously since the date of his initial appointment. As such the ratio laid down in this case cannot be said to be applicable to the facts of the present case.

14. On behalf of the respondent objection is raised to the effect that the Pollution Board is not a industry and the Industrial Disputes Act or the MRTU & PUIP Act are not applicable. Learned Advocate for the applicant placed reliance on the case of *The Bangalore Water Supply & Sewerage Board v. A.Rajappa and Others*, reported in 1978 (36) FLR, 266 (SC). Following triple test laid down in this case, it cannot be said that the Board is performing the sovereign function of the State. Prima-facie it can be said that the Board is covered in the definition of the industry.

15. In the light of the above discussions, it is clear that the applicant has prima-facie failed to prove that he was appointed

lawfully and he is in continuous service of the respondent till the date of filing of the complaint. The applicant failed to prima-facie prove that the respondents or any of them have indulged in any of the unfair labour practice as alleged. Balance of convenience cannot lie in favour of the applicant on account of failure to prove prima-facie case and unfair labour practice. As such the applicant cannot be said to be entitled for interim relief.

**ORDER**

The application is rejected.  
Parties to bear their own costs.

*Handwritten signature*  
7/12/2012

(A. I. AMLEKAR)  
Member,

Industrial Court, Aurangabad

Date: 07-12-2012

Application filed on 11-12-2012  
 my ready on 13-12-2012  
 my delivered on 14-12-2012  
 Filing Fee Rs. 2/- 5/- There only  
 imposed by the Industrial Court.

CERTIFIED TRUE COPY

*Handwritten signature*  
 11-12-12  
 Industrial Court, Aurangabad

