

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6288 OF 2015**

1. Municipal Corporation of	}	
Greater Mumbai.	}	
2. Deputy Chief Engineer, Municipal	}	
Corporation of Greater Mumbai	}	.. Petitioners
V/S.		
Mr. Ravindra Sahadu Sonawane	}	..Respondent

Mr. Drupad Patil a/w Mr. R.Y. Sirsikar, *for BMC-Petitioner.*

Mr. Jaiprakash Sawant a/w Mr. Kiran T. Patil, *for the Respondent.*

*Mr. Sunil Vasaikar, Head Clerk, BMC Executive Engineer, (Sewage Operation)
Western Suburban, Versova Pumping Station, Andheri (W), Mumbai – 58.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 5 APRIL 2024.

Pronounced On : 12 APRIL 2024.

JUDGMENT:

1) Municipal Corporation of Greater Mumbai (MCGM) has filed this petition challenging the Award passed by the Presiding Officer, 3rd Labour Court, Mumbai on 3 December 2014 in Reference (IDA) No. 54 of 2013. By the impugned Award, the Labour Court has answered the Reference in affirmative and has directed the Municipal Corporation to reinstate the

Respondent-Workmen in service with continuity and full backwages w.e.f 12 August 1991.

2) Facts of the case, as reflected in the Statement of Claim filed by Respondent-Workmen are that he joined the services of Municipal Corporation in the year 1986 as a Labourer and was working in the Maintenance Department in M-West Ward. Respondent worked from 1986 to 1991 and had completed 240 days of service in each calendar year. That he was working on clear and permanent post. His last drawn wages were Rs.2000/- per month. Respondent has worked upto 9 August 1991. That from 15 August 1991, he started suffering from paranoia and was under medical treatment from 15 August 1991 to 12 June 1993. He relied upon Medical Certificate of Dr. Manjit Singh Palahe dated 21 December 2000. That from the year 1994, he took treatment from Municipal Hospital, Sion and relied upon Medical Certificate dated 12 September 1994 and 17 June 2009. Respondent's services were illegally terminated w.e.f. 12 August 1991. He has also produced, what he treated as termination order issued on 18 April 1996 and branded the same as illegal. According to him, his services were terminated w.e.f. 12 August 1991 vide letter dated 18 April 1996. It was further pleaded in the Statement of Claim that on 23 April 1998, Respondent-Workmen wrote to Deputy Municipal Commissioner and requested for resumption of duties. That he physically visited the office at Versova Pumping Station and requested the Officers to allow him to report on duty. That he made a representation to the Mayor on 16 July 2001 followed by another letter dated 20 June 2004. That on 20 April 2009, the Secretary of the Municipal Mazdoor Union wrote to the Deputy Chief Engineer, MCGM

requesting for permitting the workman to report for duties. Finally, he sent a demand letter to MCGM on 16 June 2009 and requested for reinstatement with full backwages. The dispute was taken in conciliation by the Conciliation Officer by issuing notice to MCGM on 24 January 2012. On failure of the conciliation proceedings, Reference was made by the Under Secretary of Government of Maharashtra on 18 February 2013 in respect of Respondent's demand for reinstatement with full backwages. The Reference was registered as Reference (IDA) No. 54 of 2013 in the 3rd Labour Court at Mumbai. The Respondent-Workmen filed the Statement of Claim. The same was resisted by MCGM by filing written Statement in which it was contended that the Respondent-Workmen worked as Khada Badli Labourer (Leave Vacancy Worker) during the period from 7 May 1986 to 30 June 1986, 2 March 1987 to 30 June 1987, 7 March 1988 to 30 June 1988, 1 March 1989 to 30 September 1990. That he did not complete the period of 240 days of service in each of the years. That since he worked as Kadha Badli Worker, his engagement was not on clear or permanent post. It was further contended that Respondent was habitual in remaining absent unauthorisedly and he remained unauthorisedly absent from 12 August 1991. Therefore, his services were terminated w.e.f. 12 August 1991 under Rule 19E of Municipal Service Regulations. That the termination was effected w.e.f. 12 August 1991 vide Office Order dated 8 April 1992.

3) Respondent-Workmen examined himself before the Labour Court. After considering the evidence on record, the Labour Court delivered Award dated 3 December 2014 answering the Reference in affirmative. The Labour Court has directed MCGM to reinstate Respondent-Workmen in

service with continuity and full backwages w.e.f. 12 August 1991. Aggrieved by the Award dated 3 December 2014, the Municipal Corporation has filed the present petition.

4) By order dated 1 December 2015, this Court admitted the petition, *prima-facie*, holding that the direction for reinstatement or demand of full backwages from the year 1991 was not justified. This Court granted interim relief in terms of prayer clause (c) by staying the operation of the Award dated 3 December 2014 during the pendency of the petition. Respondent-Workman filed Civil Application No. 820 of 2016 for payment of wages under the provisions of Section 17B of the Industrial Disputes Act, 1947. By Order dated 26 September 2022, this Court allowed the Civil Application and directed MCGM to pay wages to the Respondent-Workman during the period from 8 June 2015 to 31 May 2021 under Section 17B of the Industrial Disputes Act. The wages were restricted to 31 May 2021 on account of the Respondent attaining the age of superannuation on that date.

5) Mr. Drupad Patil, the learned counsel appearing for the Petitioner-MCGM would submit that the Labour Court has erred in answering the Reference in affirmative. That Respondent was engaged merely as a Kadha Badli Worker and therefore he had no right to continue in service of the Municipal Corporation. That his appointment was not against sanctioned or permanent post. That he never completed 240 days of service in any of the calendar years. That there were long breaks in tenures of his engagement which shows that he was not continuously engaged by the Municipal Corporation. That he remained unauthorisedly absent from 12

August 1991 without availing any leave from 12 August 1991 or without giving any intimation to the Municipal Corporation. That Rule 19E of the Municipal Service Regulations provided for automatic ceasing of services of temporary Municipal Servant after continuous absence from duties. That the services of the Respondent were rightly terminated by the Municipal Corporation on account of his continuous absence by letter dated 8 April 1992. That though his services were terminated by Office Order dated 8 April 1992, Respondent-Workman never raised any grievance in respect of his termination for a considerable period of time and initiated proceedings by raising a demand letter for the first time on 28 July 2009. That ignoring these aspects, the Labour Court has directed not just reinstatement but payment of full backwages for the period from 12 August 1991. He would therefore pray for setting aside the impugned Award of the Labour Court.

6) *Per-contra*, Mr. Sawant the learned counsel appearing for the Respondent-Workman would submit that the Respondent worked continuously during the year 1996 till he was erroneously terminated on 12 August 1991. That he worked against regularly sanctioned posts and his services were exploited by treating them as temporary. That he completed 240 days of service in each of the calendar years. He would invite my attention to the letter dated 23 February 2012 which certifies service of the Petitioner from 1 March 1989 to 30 September 1990, which according to Mr. Sawant clearly demonstrates completion of 240 days of service.

7) Mr. Sawant would further submit that Respondent was never served with any termination letter and no evidence was produced by the

Municipal Corporation before the Labour Court to indicate that the termination letter was served on him. That he learnt about his termination for the first time on 18 April 1996 when MCGM gave reply to his letter dated 1 March 1996. Mr. Sawant would further submit that the absence of Respondent from service after 15 August 1991 is covered by relevant medical certificates. That he was suffering from paranoia and schizophrenia and was prevented from attending the duties. That he proved his illness before the Labour Court by producing Medical Certificates. That the Labour Court has therefore rightly held the termination to be unlawful.

8) Mr. Sawant would further submit that this Court has repeatedly held that termination based on Rule 19E of the Municipal Service Regulations is bad in law. Relying in judgment of this Court in *Sitaram Tukaram Walunj V/s. Municipal Corporation of Greater Mumbai*¹, he would submit that Municipal Service Regulations do not apply to municipal servants and what is applicable are the Model Standing Orders. Relying on order of this Court in *Shri Baban Kashiram Jadhav V/S. Municipal Corporation*². He would submit that mere absence cannot be a valid ground for termination of services without holding Departmental enquiry and without affording opportunity to the Workman to show cause against the allegation of unauthorised absence. Mr. Sawant would contend that mere delay in raising an industrial dispute cannot be a ground for denying backwages. He would rely upon judgment of the Apex Court in *Raghubir Singh V/s. General Manager, Haryana Roadways, Hissar*³. Mr. Sawant would submit that the Labour Court has correctly appreciated the evidence

¹ Writ Petition No. 8711 Of 2007 decided on 15 April 2008.

² Writ Petition No. 8050 of 2008 decided on 11 July 2016.

³ 2014 III CLR 522.

on record and there is no perversity in the findings recorded by it. He would therefore submit that no valid ground is made out for interference in the well-reasoned Award of the Labour Court.

9) Rival contentions of the parties now fall for my consideration.

10) The issue involved in the present petition is whether the Respondent-Workman has right to continue in the services of the Municipal Corporation. By Office Order dated 8 April 1992, services of Respondent-Workman was terminated w.e.f. 12 August 1991 on the ground that he remained unauthorisedly absent without intimation to the office from 12 August 1991. The Respondent does not dispute the position that he indeed remained absent from 12 August 1991 onwards. The Labour Court has criticised the Municipal Corporation for not producing the relevant records relating to various tranches of services rendered by the Respondent. It relied upon the Certificate issued by the Municipal Corporation on 23 February 2012 certifying the services from 1 March 1989 to 30 September 1990 to hold that the Respondent-Workman completed 240 days of service. The Labour Court went into the correctness of termination order dated 12 August 1991. It held that no opportunity was given to the Workman in respect of the allegation of absence. It further held that though the termination order was issued on 8 April 1992, effect of termination was given on 12 August 1991 and held that retrospective effect could not be given to the termination order. The Labour Court held the termination order to be stigmatic without grant of opportunity of defence to the Workman. The Labour Court further held that provisions of Section 25F of the Industrial Disputes Act was not complied

with at the time of terminating the services of the Workman. The Labour Court thereafter went into the defence of medical treatment raised by the Respondent and held that the Workman led evidence by examining the Doctor in support of his defence of medical treatment. The Labour Court therefore held that cogent and consistent evidence was produced by the Workman to prove that he was suffering from paranoia and schizophrenia till 17 June 2009. On these broad findings, the Labour Court held the termination to be bad in law and directed reinstatement with continuity and full backwages w.e.f. 12 August 1991.

11) In my view, the Labour Court has completely glossed over the aspect that the Respondent-Workman was not a regular municipal servant. He was merely a Khada Badli Worker (Leave Vacancy Worker). His services were engaged for anti-flooding activities taken by Municipal Corporation. He had no right to remain in municipal service as he was not regularly appointed either by participating in selection process and against a regularly sanctioned vacancy. His engagement as leave vacancy worker would mean that he filled in the gaps when the regular employee of the Municipal Corporation was on leave. The Certificate produced by the Municipal Corporation on 23 February 2012 would indicate that in the year 1986, he worked for less than two months. In 1987, he worked for four months and in 1988 he worked for three months. Though his services were slightly longish during 1989 to 1990 (1 March 1989 to 30 September 1990), it appears that there was again break in service after 30 September 1990 and he was engaged afresh w.e.f. 26 December 1990. This is how he apparently continued in service during which he was terminated on 12 August 1991. It therefore cannot be stated, by any

stretch of imagination that he worked continuously from the year 1986 till his termination in the year 1991.

12) Respondent has admitted that he remained absent from 12 August 1991. By office order dated 8 April 1992, his services were terminated from 12 August 1991. The first communication made by him in respect of his service was five years later on 1 March 1996. Thus for five long years from 12 August 1991 to 1 March 1996, the Respondent-Workman did not bother to make any correspondence with the Municipal Corporation. The issue is, whether the Workman who was merely working against Leave Vacancy in broken spells had any indefensible right to continue in municipal service by raising grievance after long years of his termination ? The answer to this question, to my mind appears to be obviously in the negative. The conduct of the Respondent after 18 April 1996 assumes importance. After he was given reply on 18 April 1996 that his services were terminated w.e.f. 12 August 1991, he failed to raise industrial dispute immediately. It appears that he made a Representation dated 17 March 1996 for fresh engagement. This shows that the Respondent-workman was not aggrieved by his termination and was willing to accept a fresh engagement in municipal service. The request was however rejected on 3 November 1996. Again fresh request was made by the Respondent for fresh engagement on 23 April 1998 which again was rejected on 25 February 1990. The third request was made by him eight years later in the year 2007 again requesting for fresh appointment which again was rejected on 15 February 2008. Thus, the correspondence made by him after 23 April 1998 till he made a demand before the Deputy Commissioner of Labour would indicate that he was pursuing his case for fresh engagement

and not termination. It is for the first time on 28 July 2009 that the Respondent-Workman took a *volte-face* and raised a grievance about termination and sought reinstatement with full backwages. Thus, the first demand for reinstatement was made by the Respondent-Workman 18 years later on 28 July 2009. The Labour Court has completely glossed over this vital aspect while directing reinstatement and backwages. While in ordinary course, the delay alone cannot be a reason for rejecting the Reference and delay can be used only for molding the relief. In the present case, gross and inordinate delay of 18 long years coupled with request made for fresh engagement was sufficient to deny relief of reinstatement as well as backwages. When the Respondent himself was pursuing reinstatement and was requesting for fresh engagement, how his demand for reinstatement belatedly made after 18 long years can be considered, is incomprehensible.

13) Thus, on merits, I find the findings recorded by the Labour Court to be totally perverse. The Respondent raised the grievance of sickness and medical treatment and relied upon some stray Medical Certificates. The Labour Court ought to have been mindful of the fact that the Respondent was merely working against leave vacancy and had remained unauthorisedly absent for a considerable period of time. The Labour Court has however accepted the defence of Respondent that he was under medical treatment for mental disorder of schizophrenia during 14 June 1999 to 16 October 2009. Even if this defence was to be accepted, no cogent reason is cited for absence till the year 1999. Secondly and more importantly, while Respondent took a defence of medical treatment, the Labour Court completely ignored the fact that he was pursuing requests for fresh engagement in municipal service. If

he was indeed sick or under medical treatment, how he could make repeated requests for fresh engagement in municipal service, is something which has remained unexplained and which is completely ignored by the Labour Court. I therefore find the findings recorded by the Labour Court to be totally perverse. The Labour Court has not even considered the fact that it was awarding full backwages to someone who had rendered short spells of service during 4/5 years and paying huge financial burden on public exchequer by offering on platter full backwages from 12 August 1991 onwards. The effect of the Award of the Labour Court is that the Respondent-workman who remained unauthorisedly absent has been rewarded with full backwages from 12 August 1991 till the date of Award dated 3 December 2014 i.e. after 23 long years. In my view, therefore the Labour Court's Award is totally unsustainable and deserves to be set aside.

14) Though the Award itself is unsustainable and deserves to be set aside, on account of order passed by this Court on 26 September 2022, Respondent has drawn wages under Section 17B of the Industrial Disputes Act during the period from 8 June 2015 till the date of attaining the age of superannuation on 31 May 2021.

15) The reliance of Mr. Sawant on judgment of this Court in *Sitaram Tukaram Walunj* does not cut any ice. The issue here is not supremacy between Municipal Service Regulations and Model Standing Orders. Even if it is held that Model Standing Orders apply in the present case, no case was made out for setting aside the order of termination. The order passed by this Court in *Baban Kashiram Jadhav* is rendered in the

facts of that case where the absence was only for 135 days, whereas in the present case, Respondent-Workman remained absent from 12 August 1991 till he made first correspondence on 1 March 1996. The judgment of the Apex Court in *Raghubir Singh* is on the aspect of delay and entitlement for backwages. In the present case, the delay in raising industrial dispute is inordinate. Even if the aspect of delay was to be ignored, no case was made out on merits for interference by this Court in the order of termination.

16) The Writ Petition accordingly succeeds. The Award dated 3 December 2014 passed by the Presiding Officer, 3rd Labour Court, Mumbai in Reference (IDA) No.54 of 2013 is set aside. The Writ Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2024.04.12
14:43:44
+0530

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.,