

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3846 of 1994

Mustafa Khan S/o Umer Khan,
Age-32 years, Occu-Service,
R/o Osmanpura, Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Government Pleader,
High Court, Aurangabad,
2. The Deputy Executive Engineer,
(Mechanical) Division,
Public Works Department,
Aurangabad,
3. The Executive Engineer,
Public Works Department,
Division No.1, Padampura,
Aurangabad,
4. Shaikh Pasha Khan S/o Sk.Rahman,
Age-Major, Occu-Service,
R/o C/o Office of the Executive Engineer,
PWD, Aurangabad

RESPONDENTS

Ms.A.N.Ansari, Advocate for the petitioner.
Mr.K.N.Lokhande, AGP for respondent Nos. 1 to 3.
Respondent No.4 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/10/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 24/11/1994. Interim relief in terms of prayer clause 'D' was granted and the same has been

continued. Prayer clause 'D' reads as under :-

“During the pendency and final disposal of this writ petition, the respondents be directed to continue the petitioner as a driver, by issuing any appropriate writ order or direction as the case may be.”

2. Mrs. Ansari, learned Advocate for the petitioner submits that he has challenged the judgment and order dated 29/09/1994 delivered by the Industrial Court in Complaint (ULP) No.574/1990. During the pendency of the complaint, the petitioner was protected. Even after the dismissal of the complaint on 29/09/1994, he preferred an application on the same date and the Industrial Court kept the judgment in abeyance for a period of 1 month by passing an order on the same date. Copy of the said order is placed on record. She, therefore, submits that owing to the interim relief granted by this Court on 24/11/1994, the petitioner has continued in employment.

3. She submits that the petitioner joined the service of the respondent on 16/03/1989 as a Driver. He has continued as a Driver ever since. By the affidavit in reply filed by the respondent / Department, it was stated that he held a driving license. He was taken on CRT as a cleaner and was asked to drive the vehicles on daily wages. As per the seniority of the post of cleaner, the name of the petitioner is

recommended and submitted to the Government so as to bring him on CRT establishment as a driver. It is also stated in the affidavit that the Government is likely to give him the benefits of the post of a Driver.

4. She submits that in the light of the above fact situation, it is evident that the petitioner had settled in employment in the last 26 years. This court had granted interim relief to the petitioner prima facie considering the merits in the petition. She, therefore, prays that this petition be disposed off in the light of the proposal forwarded by the respondents and they be directed to decide the same expeditiously considering the advanced age of the petitioner and the possibility of his superannuation in the near future.

5. Learned AGP appearing on behalf of respondent Nos. 1,2 and 3, submits that the affidavit in reply having been filed, would indicate from paragraph Nos.6, 9 and 12 that the proposal of the petitioner has already been forwarded for giving him the benefits of the post of a driver. The Government would take a decision on the same, if not already taken. In the event, any decision is taken, same will be communicated to the petitioner within 4 weeks from today. In the event, no such decision is taken, the same would be taken expeditiously and could be conveyed to the petitioner.

6. Notwithstanding the fact that the complaint filed by the petitioner challenges his purported reversion from the position of Driver to Cleaner, I do not find that it could be an impediment to the respondents in taking a decision on the proposal of the petitioner. It is conceded by the petitioner that he was appointed as a Cleaner and since he was working as a Driver that the complaint had been filed for challenging the purported reversion.

7. In the light of the above, this petition is disposed off with a direction to the respondents that if any decision has already been taken on the proposal of the petitioner, the same be communicated to the petitioner within a period of 4 weeks from today.

8. In the event, there is no decision on such proposal, the respondents shall endeavour to decide the same as expeditiously as possible and preferably within a period of 16 (sixteen) weeks from today, pursuant to which the decision be communicated to the petitioner.

9. In the event, an adverse decision has been taken, the petitioner shall be at liberty to seek redressal of his grievance in accordance with the legal remedies as may be available.

10. Rule is, therefore, discharged.

11. No costs.

(RAVINDRA V. GHUGE, J.)