

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4175 of 1994

1. The State of Maharashtra,
Through Dy.Director,
Technical Education Divisional Office,
Ex-Distilleries Barrack Nashik Rd.,
NASHIK.

2. The Principal, Govt.Polytechnic,
Ahmednagar.

PETITIONERS

VERSUS

1. Yogini Balwant Kulkarni,
Clerk-Typist, Govt.Polytechnic,
ahmednagar,

2. The Ld. Presiding Officer,
Labour Court, Ahmednagar,

3. The Ld.Member, Industrial Court,
Ahmednagar

RESPONDENTS

Mr.D.R.Korde, AGP for State/Petitioner.

Mr.P.V.Barde h/f Mr.T.K.Prabhakaran, Advocate for respondent No.1.

Respondent Nos. 2 and 3 are deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/09/2015

ORAL JUDGMENT :

1. This matter was admitted on 22/03/1996. Interim relief was refused.

2. Leave to delete respondent Nos. 2 and 3. Deletion be carried out forthwith.

3. The learned AGP submits the facts of the case as follows :-

- a. Respondent No.1 was appointed as an “ad-hoc employee” on the position of “Clerk cum Typist” for a period of 6 months.
- b. The petitioner initiated steps for regular recruitment for the post of “Clerk cum Typist”
- c. Respondent No.1 approached the Maharashtra Administrative Tribunal, Bombay (For short, M.A.T.).
- d. The learned Tribunal (Justice C.S.Dharmadhikari - Chairman and Shri.P.P.Godshalwar - Member) passed the following order dated 23/10/1991 :-

“Heard.

Till the candidate duly selected by Selection Board is appointed. Petitioner to continue in service as a purely ad-hoc arrangement. This will not confer any right, title, or interest in post or employment nor will confer any additional benefits. As soon as duly selected candidate is appointed, petitioner’s services to stand terminated, if he is not in the duly selected candidate’s lists.

Liberty to State to apply. Matter stands disposed off.”

- e. Respondent No.1 was terminated on 27/08/1993 under orders of the learned M.A.T. since she was not in the list of duly selected candidates.
- f. Respondent No.1 preferred Complaint (ULP) No.213/1993 before the Labour Court Ahmednagar.

- g. By judgment dated 17/02/1994, the Labour Court granted reinstatement with continuity and full back wages.
- h. The petitioner preferred Revision (ULP) No.8/1994 which was dismissed by judgment and order dated 27/06/1994.

3. This Court admitted this petition on 22/03/1996 and did not grant interim relief.

4. The petitioner has reinstated respondent No.1 and by regularizing her services on 01/09/1999, she has also been promoted after 2004.

5. I have considered the subsequent events that have occurred during the pendency of this petition, moreso in the light of the fact that this Court has refused interim relief to the petitioner/Establishment, respondent No.1 was regularized on 01/09/1999 after reinstatement and was then promoted after 2004, The respondent has settled in employment for the last about 20 years, in the submissions of Mr.Barde.

6. However, I find it necessary to consider the backdrop in which the Labour Court granted reinstatement to the respondent. The Maharashtra Administrative Tribunal (Justice C.S.Dharmadhikari -

Chairman and Shri.P.P.Godshalwar - Member) had specifically ordered on 23/10/1991 in Original Application No.267/1991 filed by the respondent that she would continue purely as an ad-hoc arrangement. This will not confer any right, title or interest in the post or employment nor will confer any additional benefits upon her. It was also ordered that as soon as the duly selected candidate is appointed, her service would stand terminated if she is not in the duly selected candidates' list. The proceedings, thereafter, were disposed of.

7. In my view, the Labour Court could not have ventured into granting reinstatement with continuity and full back wages. Moreover, there is no justification for granting full back wages. Perversity is apparent on the face of the judgment of the Labour Court.

8. I restrain myself from making any further observations about the order passed by the Labour Court and which has been confirmed by the Industrial Court in the above backdrop since the respondent is now in employment for more than 20 years. It is submitted by Mr.Barde that the respondent was reinstated after the judgment of the Labour Court and was paid back wages from 27/08/1993 till

17/02/1994.

9. With due circumspection and after considering the peculiar facts of this case, I am inclined to deprive the respondent of the back wages from 27/08/1993 till the date of her reinstatement, especially, in the light of the fact that the M.A.T. by its order dated 23/10/1991, had concluded that the respondent employee was purely an ad-hoc appointee and had no right to continue in the post nor claim any benefits. It would be harsh to disturb the respondent who has settled in employment for the past 20 years. As such, the error committed by the Labour and the Industrial Court, needs to be cured by depriving the respondent of the back wages.

10. In the light of the above, this petition is partly allowed. The impugned judgment and order of the Labour Court dated 17/02/1994 is modified to the extent of depriving the respondent of the back wages. The Industrial Court judgment dated 27/06/1994 stands modified accordingly. The respondent shall return the back wages to the petitioner/establishment which were paid to her for the period from 27/08/1993 till her reinstatement, but without interest, within a period of 8 (eight) weeks from today.

11. Rule is, accordingly, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)