

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3666 OF 1993

SANJIVANI D/O GYANDEORAO MORE

PETITIONER

VERSUS

THE MUNICIPAL COUNCIL, LATUR
AND ANOTHER

RESPONDENTS

Mr.Parag Shahane, Advocate for the petitioner. (Appointed)
Mr.Ajinkya Deshmukh h/f Mr.V.D.Hon, Advocate for respondent No.1.
Mr.U.S.Mote, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/07/2015

ORAL JUDGMENT :

1. This matter was admitted by order dated 12/11/1993.
2. On 11/06/2015, I have taken cognizance of the fact that the learned Advocate for the petitioner passed away and the Court service of notice on the petitioner was returned unserved for want of sufficient address. I have therefore called upon Mr.Parag Shahane, learned Advocate to conduct the matter on behalf of the petitioner.
3. I have heard Mr.Shahane, Mr.Deshmukh and Mr.Mote, learned Advocates for the petitioner and the respondents and the learned AGP respectively.

4. The petitioner has questioned the judgment and order of the Labour Court dated 31/10/1985 in Complaint (ULP) No.14/1985 vide which the complaint was dismissed and the judgment dated 31/03/1993 delivered by the Industrial Court vide which Revision ULP No.64/1986 was dismissed.

5. The petitioner was appointed as an "Assistant Librarian" on daily wages from 12/03/1980 to 11/09/1980 for 6 months. She was again appointed on 01/11/1983 to 02/02/1984 for 3 months followed by an appointment from 02/02/1984 till 22/10/1984 when she was terminated.

6. She preferred Complaint (ULP) No.14/1985. During the pendency of the complaint, she was engaged from 24/04/1985 till the end of September 1985 for 5 months. Mr.Shahane, therefore, submits that her engagement during the pendency of the complaint is inconsequential since it does not put to rest the cause of action which has arisen on account of her termination on 22/10/1984. He, submits that the petitioner was working continuously going by the admission of the respondents, from 01/11/1983 till 22/10/1984, which is just 9 days short of working continuously for one calendar

year.

7. He, therefore, submits that the respondents were under an obligation to comply with Section 25-F of the Industrial Disputes Act, 1947 notwithstanding whether her appointment was regularly made or not. He, therefore, prays for reinstatement with continuity and full back wages. Consequentially, he prays for quashing the impugned judgments of the Labour Court and the Industrial Court dated 31/10/1985 and 31/03/1993 respectively.

8. Mr.Deshmukh has vehemently opposed the petition. He points out from the basis of the record that the petitioner was not eligible for being appointed as an “Assistant Librarian”. Her temporary engagement was questioned before the competent authority. In a petition before the Additional Commissioner, Aurangabad questioning the appointment of the petitioner led to the passing of the order dated 12/10/1984 and the engagement of the petitioner was held to be illegal. It is under the orders of the quasi-judicial authority that the petitioner was not engaged on temporary basis after 22/10/1984.

9. Mr.Deshmukh, therefore, submits that the engagement of the petitioner was illegal and hence she could not be continued in

employment. Consequentially, she cannot be reinstated in employment, much less with continuity and full back wages. The impugned judgments are, therefore, appropriate and cannot be termed as being erroneous.

10. I have considered the submissions of the learned Advocates. It has been concurrently held on the basis of the record that the temporary appointment of the petitioner was unsustainable. Her appointment u/s 318 of the Municipal Council Act was held to be unsustainable by both the Courts. The revision petition filed by one Mr.Naik led to the conclusion that the petitioner could not continue in service. It is on the basis of this judgment that she was discontinued.

11. Normally, non-compliance of 25-F while retrenching the service of an employee would have invited an order of reinstatement with continuity and with or without back wages depending on the case. In the instant matter, the petitioner is not engaged by the respondents for the last 31 years.

12. From the record, it appears that she has worked continuously for almost 12 calendar years and has completed 240 days in

continuous service. However, it was by the decision of the Additional Commissioner, Aurangabad that the appointment of the petitioner was held to be illegal. The said judgment has not been challenged by the petitioners before any authority going by the record available before the Court as on date.

13. In the peculiar facts of the case as recorded above, I do not find that this is a fit case for causing any interference. The impugned judgments of the Labour Court and Industrial Court cannot be termed as being perverse or erroneous.

14. This petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

15. Since Mr.P.P.Shahane has rendered assistance to this Court in this matter, his fees are quantified at Rs.5,000/- and the same shall be paid to him by the High Court Legal Services Sub Committee at Aurangabad.

(RAVINDRA V. GHUGE, J.)