

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3699 OF 2014

Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Commissioner

PETITIONER

VERSUS

Suresh S/o Kondiba Ithape,
Age-50 years, Occu-Service,
R/o Plot No.32, Baijabai Society,
Pipeline Road, Savedi,
Ahmednagar

RESPONDENT

Mr.V.S.Bedre, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the impugned judgment and order dated 25/09/2012 by which Complaint (ULP) No.93/2007 has been allowed and the respondent has been granted the post of Junior Engineer.

3. The petitioner submits that the respondent had preferred the ULP Complaint for seeking appointment as a “Junior Engineer” or as an “Assistant Town Planner”. Prayer for promotion to either of these posts was not made by the respondent. Mr.Bedre, therefore, submits that the Industrial Court, by the impugned judgment, could not have directed the petitioner to promote the respondent to the post of Junior Engineer.

4. The grievance of the petitioner is that though the written, statement filed before the Industrial Court, clearly indicated that there were 14 posts allotted to a Junior Engineer, the Industrial Court has granted promotion to the respondent. 13 posts were to be filled in by recruitment and 1 position was to be filled in by promotion. Out of these 14 positions available, 6 were filled in and 1 position which was to be filled in by promotion has been occupied by Mr.K.Y.Ballal, who has been promoted.

5. He further submits that the respondent was appointed as a “Junior Engineer” in 1992 going by the written statement filed. Mr.Bedre clarifies from the written statement that the petitioner was appointed temporarily as a “Junior Engineer”. It is not disputed that he continued to work as a “Junior Engineer” for years together.

6. He further submits that in the affidavit in reply filed in this petition by the respondent, the respondent contends that he was appointed as a “Junior Engineer” in 1992. He preferred Complaint (ULP) No.156/1994, which was allowed by order dated 18/02/1999 and the petitioner was directed to advance benefits of permanency from the date of order as a Junior Engineer. This judgment of the Industrial Court was challenged in WP No.3333/1999 which has been admitted, but this Court has refused interim relief to the petitioner.

7. The petitioner further states that since a criminal ULP complaint for disobedience of the order of the Industrial Court was pending, the General Body of the petitioner / Corporation passed a Resolution on 08/11/2005 appointing the respondent as a “Civil Draftsman” till the post of Junior Engineer is sanctioned by the Government.

8. Mr.Bedre submits on instructions from the Officer of the petitioner present in the Court that the said Resolution dated 08/11/2005, placed on record by the respondent, is the same resolution. He, then, submits on instructions that the written

statement dated 21/01/2008 indicating 7 vacant posts of Junior Engineers, was the prevailing position which is subsequent to the resolution dated 08/11/2005.

9. Mr.Bedre, however, submits that notwithstanding the above, the Industrial Court could not have granted promotion to the respondent and hence, the impugned judgment deserves to be quashed and set aside.

10. Mr.Barde, learned Advocate appearing on behalf of the sole respondent submits that he had specifically prayed for an appointment as a “Junior Engineer” or “Assistant Town Planner”. He had nowhere prayed for a promotion. His prayer for appointment as a “Junior Engineer” was squarely based on the availability of posts and the resolution passed by the petitioner dated 08/11/2005, which is placed on record.

11. He submits that the petitioner has admitted in the written statement that he was working as a “Junior Engineer” from 1992. For the last 23 years, he is in employment. The written statement indicates 7 vacant posts of Junior Engineers. Judgment of the Industrial Court dated 18/02/1999 in Complaint (ULP) No. 164/1991

has not been stayed by this Court. Benefits are still not being extended to the respondent despite the judgment.

12. He further submits that he accepted the post of “Civil Draftsman” from 11/11/2005 only on the basis of the order issued by the petitioner which is based on Resolution No.10 dated 08/11/2005. Since he was given a categoric written assurance that he would be appointed as a “Junior Engineer”, he accepted his appointment as “Civil Draftsman” pending creation of the post of Junior Engineer and appointment on the said post.

13. He submits that the Industrial Court has erroneously used the word “promotion” despite no claim or prayer for promotion having been put forth. He, therefore, submits that this Court may modify the impugned judgment to the said extent and direct the petitioner to appoint the respondent as a “Junior Engineer”.

14. I have considered the submissions of the learned Advocates as have been recorded hereinabove. I have gone through the documents placed on record with their assistance.

15. There is no dispute that the petitioner admitted in the written

statement that the respondent was appointed as a “Junior Engineer” in 1992. 7 posts of Junior Engineer were vacant when the written statement was filed on 21/01/2008. Fearing punishment in Criminal (ULP) Complaint for disobedience of the judgment dated 18/02/1999 delivered by the Industrial Court in Complaint (ULP) No. 156/1994 granting permanency to the respondent as a Junior Engineer, that the petitioner passed a Resolution dated 08/11/2005 and agreed to appoint the respondent on the post of Jr.Engineer on priority.

16. The petitioner, thereafter, addressed the Deputy Secretary of the General Administration, State of Maharashtra on 27/04/2012 seeking sanction for appointing the petitioner on the post of Junior Engineer. The Secretary to the Government, by communication dated 14/08/2012, informed the petitioner that they are at liberty to take a decision since the respondent is an employee of the Corporation.

17. I find from the fact situation, right from Complaint (ULP) No.156/1994, that the petitioner has made every effort to frustrate the claim of the respondent. Judgment of the Industrial Court, which granted him permanency as a Junior Engineer, is disobeyed despite this Court refused to stay the judgment in WP No.3333/1999.

Said petition is still pending. The respondent is 51 years old today. In another 7 years, he would retire.

18. When the respondent initiated proceedings seeking punishment to the petitioner/Officers for disobeying the judgment dated 18/02/1999 delivered by the Industrial Court, the petitioner passed a Resolution dated 08/11/2005 which impressed the respondent and he withdrew the criminal complaint. Thereafter, he is compelled to file Complaint (ULP) No.93/2007 indicating that the post of Jr.Engineer is vacant and he be appointed. Even then, the petitioners neither comply with the judgment of the Industrial Court dated 18/02/1999, nor do they implement their own resolution dated 08/11/2005. These factors convince me to conclude that the petitioner has left no stone unturned to frustrate the claim of the respondent.

19. I also find that the Industrial Court has erroneously observed that the respondent can be promoted as a “Junior Engineer”, instead of noting that he could be appointed as a “Junior Engineer”. This inadvertent error ought not to give any liberty to the petitioner to further frustrate the rights of the respondent.

20. In the light of the above, this petition is dismissed since I do not find any perversity or error in the conclusions of the Industrial Court. By consent of the respondent, considering his prayer in the complaint and the fact situation, the word “promotion” in paragraph No.8 of the impugned judgment and in clause (3) of the order of the Industrial Court dated 25/09/2012 shall be read as “appointing the respondent to the post of Junior Engineer with all incidental and consequential benefits w.e.f. 01/01/2008”.

21. Nevertheless, the litigating parties shall note that benefits incidental to permanency as a Junior Engineer as granted by the Industrial Court by its judgment dated 18/02/1999, which is subject matter of WP No.3333/1999, shall be subject to the result of the said petition.

22. I was inclined to saddle costs of Rs.50,000/- on the petitioner in this matter considering the facts as recorded above, to be paid to the respondent. However, Mr.Bedre solemnly submits that the intention of the petitioner was not to frustrate the respondent and they are not antipathetic towards him. It is a Corporate Body and has no animosity towards the respondent. He prays that costs need not be imposed. Mr.Barde graciously submits that the request of

Mr.Bedre be accepted. I am, therefore, not imposing costs.

23. Writ petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)