

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7214 OF 2014

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Osmanabad Division,
Osmanabad.

..Petitioner

Versus

Kiran Sham Zadpide,
Age 29 years, Occ. Nil,
R/o Near Bus Depot,
Osmanabad.

..Respondent

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Advocate for Petitioner : Shri Jain R.N. h/f Shri Bagul D.S.
Advocate for Respondent : Shri Ghute Suhas B.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 22, 2015
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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is heard finally.
4. The petitioner is aggrieved by the judgment and order dated 22.2.2012, delivered by the Industrial Court, Latur in Complaint (ULP) No. 89 of 2010.

5. The undisputed facts emerging from the case are as follows:-

(a) An employee - Sham Zadpide (now deceased) was employed with the petitioner as a part-time Waterman from 16.3.1981, to supply water for washing the Buses of the petitioner Corporation.

(b) He was charged with having committed theft of the property of the petitioner and having sold the said property in the market.

(c) He was finally dismissed from service on 19.7.1997.

(d) The departmental appeal of the deceased was considered sympathetically and he was issued with an order of fresh appointment.

(e) He joined on 12.9.1998 and he died on 6.6.2006.

(f) The son of the deceased, namely, Kiran Sham Zadpide moved an application seeking appointment on compassionate basis as a part time worker in the place of his father. The request was not entertained.

(g) The respondent filed Complaint (ULP) No.89 of 2010 before the Industrial Court, Latur alleging violations of items 5 and 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ").

(h) By the impugned judgment and order, dated 22.2.2012, the Complaint was allowed and the petitioner was directed to consider the application dated 4.5.2009 sympathetically for appointment on compassionate ground on the post of Cleaner or any other suitable

post as per the qualification of the respondent - complainant.

(i) The respondent has passed his VIII Standard.

6. The petitioner submits that after the deceased was issued an appointment, he joined as a fresh employee on 12.9.1998 as a part time Waterman. He worked for about 7 years and 9 months at the time of his death on 6.6.2006. A circular dated 8.8.2005 enables the conversion of part-time employees into full time employees, provided, they were working continuously and prior to 5.6.1989. Since, the deceased was dismissed from employment on 19.7.1997, he cannot be said to be eligible under the said Circular, dated 8.8.2005, in order to be converted from a part-time employee to a full-time employee.

7. The petitioner submits that since the deceased passed away after putting in only about seven and half years in employment, he cannot be treated as a full-time employee. It is further stated that there is no Circular with the petitioner, providing for appointing a son of a part-time employee as "a part-time" employee on compassionate basis. He, therefore, submits that the impugned order is unsustainable and deserves to be set aside.

8. The learned Advocate for the respondent has strenuously contended that the deceased can be said to be eligible under the Circular dated 8.8.2005, since he was working from 1981 onwards. He further submits that the removal of the deceased from employment needs to be dis-regarded as

he was given a fresh appointment and he joined on 12.9.1998.

9. He further submits that the Industrial Court had considered the above facts and has passed a reasoned order. He points out from paragraph No.12 onwards that the Industrial Court has properly appreciated the evidence and has rightly come to a conclusion that the respondent deserves to be appointed on compassionate basis.

10. He further points out that the Industrial Court has come to a conclusion that no such Circular is produced on record, whereby, the death of a part-time employee would not qualify his dependent to claim compassionate appointment. It is further submitted that the Industrial Court has concluded that the respondent - Management's witness was giving false reasons for denying the claim of the son of the deceased employee. It is also submitted that the letter of the General Manager, dated 20.6.2002 was in the form of prescribing guidelines in the matters of compassionate appointments and preparation of waiting list.

11. Learned Advocate for the respondent further submits that the Industrial Court, upon careful perusal of the letter of the General Manager has observed that the part-time employee must put in 25 years, to be considered as a regular employee. He, therefore, submits that the judgment of the Industrial Court calls for no interference and needs to be sustained.

12. I have considered the rival submissions. The respondent had preferred Complaint (ULP) No. 89 of 2010 under items 5 and 9 of Schedule IV of the said Act.

Item 5 reads as under:-

“(5) To show favouritism or partially to one set of workers, regardless of merits. ”

Item 9 reads as under:-

“(9) Failure to implement award, settlement or agreement.”

13. It is trite law that item 5 could be established, provided, a set of workers are specifically identified by the complainant and who are similarly and equally placed. In short, a group of workers, who are equally placed with the complainant, but are given a preferential treatment by an act of favoritism regardless of merits, would constitute the ingredients for establishing item 5.

14. No such set of workers has been identified by the respondent in the complaint, so as to indicate that they are identically placed with the respondent, their deceased parent was also a part timer and yet they were appointed on compassionate basis. Without such pleadings, without identifying such a set of workers who could be said to be unduly favoured by the petitioner and in the absence of any evidence before the Industrial Court, the Court could not have concluded that the ULP under item 5 of

Scheduled IV was established

15. Failure on the part of the employer to implement a settlement, agreement or award, would constitute a ULP under item 9 of Schedule IV. From the entire judgment of the Industrial Court, I am unable to notice any specific circular or a settlement or agreement or an award, so as to indicate that the petitioners have, by refusing compassionate appointment to the respondent, violated any such circular or settlement/agreement or award.

16. In fact, the conclusion of the Industrial Court in paragraph No.12 is on the basis that "no Resolution is placed before the Court to conclude that the respondent was not eligible for compassionate appointment." In relation to the Circular, dated 8.8.2005, the Industrial Court has concluded in paragraph No.14, that the respondent / applicant is entitled for compassionate appointment since *"It is also not disputed that the said Sham Zadpide had started the service as a part-time Waterman right from the year 1981"*. Based on this conclusion, the Industrial Court held that part-time employees, who were working prior to 5.6.1989, were made full-time employees by the petitioner and therefore, the Industrial Court concluded that, *"It is clear that the said Sham Zadpide would have got the benefits of such Circular had he survived after 6.6.2006."*

17. I am surprised by the above conclusions of the Industrial Court. The deceased Sham Zadpide was dismissed from employment on 19.7.1997, after he was found guilty of a serious mis-conduct of having committed

theft of the property of the petitioner and having sold the property in the market. He was given a fresh appointment as a new employee on 12.9.1998. He has not challenged the said action of the petitioner. As such, his services from 1981 till his dismissal, cannot be reckoned for calculating continuous service till 6.6.2006. His fresh engagement on 12.9.1998 would dis-entitle the respondent from claiming that this father was in the employment of the petitioner prior to 1989.

18. The Industrial Court has also arrived at an astonishing conclusion with regard to the statement made by the witness of the petitioner. The witness has stated, in cross-examination, that “ I cannot say whether the legal heirs of part-time regular employees could be given appointment on compassionate basis.” While considering this statement, the Industrial Court has concluded in paragraph 16 that the respondent is giving false reasons for denying the claim of the legal heir of the deceased Sham Zadpide.

19. The Industrial Court has further concluded as follows:-

“ It is clear from the above admission that the respondent is giving false reason for denying the claim of the legal heirs of deceased employee Sham Zadpide. The learned Counsel for the complainant also produced copy of letter of General Manager, dated 20.6.2002. The guidelines given by the General Manager in this letter for giving appointment on compassionate ground and for preparation of waiting list and for giving preference in the said

waiting list. There are 4 clauses, (a), (b), (c) and (d) mentioned in the said letter. On careful examination of these clauses, it is clear that there is no such differentiation made by the General Manager into part time employee and full time employee. It is, therefore, necessary to consider this aspect in the letter dated 20.6.2002 and the above said admission of the witness of the respondent in a proper perspective and it is also necessary to consider that the deceased had worked for period of about 25 years under the respondent which shows that he was regular employee of the respondent / Corporation, and therefore, respondent / Corporation cannot deny benefits of appointment on compassionate ground to the legal heirs of the such employee.”

20. It is, therefore, necessary to consider this aspect of the letter dated 20.6.2002 and the above said statement of the witness of the respondent in a proper perspective. It is also necessary to consider whether the deceased had worked for a period of about 25 years under the respondent which could show that he was a regular employee of the respondent Corporation and, therefore, the respondent Corporation cannot deny benefits of appointment on compassionate grounds to the legal heirs of such employees.

21. The above conclusion is apparently an aberration on the part of the Industrial Court. The dismissal of the deceased employee and his fresh employment as a new employee on 12.9.1998 would not entitle him to claim continuity of employment for 25 years prior to his demise. There is no material before the Industrial Court, on the basis of which, it could have concluded that the deceased employee had continuously worked for 25

years, till his demise on 6.6.2006. Even if, for the sake of assumption, his earlier service is added to the second part of his employment, it would make 22 years and 9 months.

22. The Industrial Court has issued the following directions to the petitioner in its operative part:-

“1. The complaint is hereby allowed with no order as to costs.

2. It is hereby declared that the respondent has committed unfair labour practice under item Nos.5 and 9 of Sch. IV of the MRTU & PULP Act, 1971 and it is directed to cease and desist from engaging in such unfair labour practices forthwith.

3. The respondent shall sympathetically consider the application of the complainant dated 4.5.2009 for appointment on compassionate ground as early as possible to the said post of cleaner or to any other suitable post according to the qualification of the complainant and in case there is any waiting list, the respondent shall place the complainant at a proper seniority number by considering the date of his application i.e. 4.5.2009.”

23. Considering the evidence on record, I do not find that the above said directions, issued to the petitioner and declaration of ULP under items 5 and 9 of Schedule IV are sustainable. The impugned judgment and order of the Industrial Court is perverse and erroneous. The said judgment dated 22.2.2012, delivered in Complaint (ULP) No.89 of 2010 is, therefore, quashed and set aside. The said Complaint stands dismissed.

24. The Writ Petition is, therefore, allowed. Rule is made absolute, accordingly.

(RAVINDRA V. GHUGE, J.)

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