

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3234 OF 2014
WITH
CIVIL APPLICATION NO.1759 OF 2015

1. The Deputy Director of Sports
and Youth Services, Aurangabad,
Divisional Sports Complex,
Aurangabad.

2. Director of Sports and Youth
Services, M.S., Pune.

3. The Secretary,
Social Welfare, Cultural Work,
Sports Division, Mantralaya,
Mumbai.

..Petitioners

Versus

Dhondiram Yeshuji Parodkar
Age 55 years, Occ. Service,
R/o Near Rana Patrol Pump,
Padegaon, Aurangabad.

..Respondent

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AGP for Petitioners : Smt. Kshirsagar Y.M.
Advocate for Respondent : Shri Pagare S.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is

taken up for final disposal.

4. The petitioner - Department seeks to challenge the judgment and order dated 1.8.2011, delivered by the Industrial Court, Aurangabad in Complaint (ULP) No. 11 of 2007.

5. This petition has been filed by the petitioners on 21.3.2015, practically, after three and half years of the impugned judgment.

6. Contention of the petitioners is that though the respondent was working as a Chaukidar for more than ten years and has attained the age of superannuation being 63 years old today, his induction in employment is not in accordance with the procedure prescribed. It amounts to a back-door entry.

7. Learned AGP points out from paragraph No.6 of the affidavit-in-reply filed by the Deputy Director of Sports and Youth Services, Aurangabad Division, dated 24.7.2015 that a proposal dated 15.4.1997 was indeed forwarded to the Secretary of the Social Welfare, Cultural Works and Sports Division, Mantralaya, Mumbai requesting the Department to regularise the services of the respondent. It is now submitted that the said proposal has still not been acted upon since the record was destroyed and there is no order passed in respect of his regularisation.

8. Shri Pagare, learned Advocate has strenuously supported the impugned judgment and order of the Industrial Court. He relies upon the judgment of the Apex Court, delivered in the case of MSRTC Vs. Castribe Rajya P. Karmachari Sanghatana [2009 ALL SCR 2236]. He submits that the Industrial Court has considered the law as laid down by the Apex Court and by this Court and has, therefore, allowed the Complaint considering the fact that the respondent has established continuous service with the petitioner from 1985 onwards. He, therefore, prays for the dismissal of the petition.

9. He further submits that this petition ought not to be entertained as it is filed after more than three and half years of the delivering of the impugned judgment. He also submits that the petitioners are not discharging sovereign functions so as to be excluded from the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

10. I have considered the submissions of the learned Advocates and the record before this Court. It is not in dispute that the petitioners are not discharging sovereign functions. So also, the Industrial Court has arrived at a finding on facts that the respondent has been working since 1988 onwards. The documents produced by the respondent from Exhibit U-24 till Exhibit U-35 were proved in the Industrial Court. The factum of employment and continuous service was thus established. The

petitioners were unable to produce any documentary evidence to establish that the petitioners are not an industry.

11. In so far as the contention of the petitioners that the proposal of the respondent dated 15.4.1997 seeking regularisation of his services has not been acted upon as the record is destroyed, is concerned, I do not find that the respondent could be rendered remediless in such a situation. His retired life hangs in balance on account of the apathy shown by the petitioners. I am, therefore, of the view that this is a fit case to direct the petitioners to reconstruct the record of the respondent and take a decision as regards regularisation of his services with retrospective effect, considering his seniority on the basis of his appointment dated 1.6.1985 as a Watchman with the petitioner Department.

12. I also find that the petitioners have merely taken a stand that the respondent's induction amounts to a back door entry. They have not adduced documentary evidence to indicate, even by way of an illustration in a single case of any employee, who could be said to have been appointed after following a particular procedure prescribed. So also, paragraph No.44 of the judgment of the Apex Court in the case of State of Karnataka v. Umadevi - [(2006) 4 SCC 1], squarely applies to this case and mandates the petitioners to regularise the services of the respondent.

13. In the light of the above, this petition is devoid of merits and is dismissed.

14. Nevertheless, in the peculiar facts of this case, I am constrained to issue directions to the petitioners, in their petition, to reconstruct the service record of the respondent, considering his date of entry as a Watchman and initiate appropriate steps for the regularisation of his service with retrospective effect notwithstanding the fact that he has superannuated, so as to make him eligible for claiming difference in wages and retiral benefits. The petitioners shall comply with these directions within a period of five months from today and shall not seek extension of time.

15. Rule is discharged accordingly. No order as to costs.

16. Pending Civil Application stands disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d