

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5828 OF 2012
WITH
CIVIL APPLICATION NO.5174 OF 2015

Udgir Municipal Council,
Udgir, District Latur,
Through its Chief Officer,
Suresh Tukaram Chavan,
Age-50 years, Occu-Service,
R/o Udgir Municipal Council,
Dist. Latur

PETITIONER

VERSUS

1. State of Maharashtra,
Through Collector, Latur,
2. Shiva Vaijinath Gaund,
Age-43 years, Occu-Labour,
R/o Opp. Laxmi Narayan Temple,
Udgir, Dist. Latur

RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.D.R.Korde, AGP for respondent No.1.
Mr.B.B.Yenge, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/09/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment and order dated 23/04/2012 delivered by the Industrial Court, Latur in Complaint (ULP) No.51/2010.

3. I have heard the learned Advocates for the respective sides extensively.

4. The Industrial Court has issued directions in the impugned order, which read as under :

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

2. It is hereby declared that the respondents have committed unfair labour practices under item Nos. 5 and 9 of Sch.IV of the MRTU and PULP Act, 1971 and they are directed to cease and desist from engaging the same forthwith.

3. The respondent No.1 and 2 are directed to appoint the complainant on the post of driver under respondent No.1. w.e.f. 17.05.2003 and respondent No.1 shall pay 25% of arrears of pay and shall give the benefits of continuity in service.

4. The respondents are hereby granted period of six months for completing the necessary formalities and for complying the above order.”

5. The grievance of the petitioner is that the Industrial Court has not even taken into account the date on which the respondent made an application for seeking compassionate appointment in place of his

father who retired as an employee in Class-III category on 31/08/1994, after reaching the normal age of superannuation.

6. His further grievance is that the Industrial Court has not even referred to the GR's dated 08/03/1985, 05/11/1992 and 30/06/1994 which are all prior to the filing of the complaint by the respondent.

7. Mr.Barde submits that the Industrial Court has superficially considered the complaint filed by the respondent. Aspects like having a valid driving license have been taken into account. A resolution purportedly passed by the petitioner dated 29/12/1995 was considered which was produced at Exh.U-11. He submits that without any reference to the law and G.R's applicable, the Industrial Court could not have arrived at a conclusion that the respondent/employee was entitled for compassionate appointment.

8. Mr.Yenge on behalf of respondent no.2 beneficiary has strenuously supported the impugned judgment. He submits that the GR dated 08/03/1985 was squarely applicable to the case of the respondent. He was 15 years old when his father passed away. Though his real brother is in service of the petitioner / Municipal

Council, he lives independently and respondent No.2 and his family are not dependent upon the said real brother.

9. Mr.Yenge further submits that respondent No.2 is willing to forgo the back wages as have been granted by the Industrial Court and is willing to work on any post on which the petitioner may accommodate him.

10. I have considered the submissions of the learned Advocates who have taken me through the record available.

11. Respondent No.2 has filed the complaint on 17/03/2010. His father retired as a Class-III employee on 31/08/1994. It is undisputed that his father has naturally retired.

12. 3 Government Resolutions are before this Court dated 08/03/1995, 05/11/1992 and 30/06/1994 which are prior to the institution of the complaint. By the second and the third GR, only "Safai Kamgars/Sweepers" working in Class-IV category were eligible for compassionate appointment. Respondent No.2 contends that the GR dated 08/03/1995 is applicable and not the other two.

13. I have gone through the GR dated 08/03/1995. The State

Government has introduced the said GR in order to facilitate compassionate appointment to the legal heirs of such employees working in the class-III and class-IV categories who have either passed away on account of grave and serious illnesses or were rendered incapable/disabled from discharging normal duties on account of disease or ailments. The said GR does not prescribe compassionate appointment in the case of an employee who has naturally retired after attaining the age of superannuation. This appears to be the first hurdle in the path of respondent No.2.

14. The GR dated 08/03/1995 further prescribes that subject to the above, an applicant shall apply within one year from the passing away or disability of his father or parent. In the event, he lacks in educational qualifications or the minimum age prescribed as 18 years, he may make such an application within a maximum period of 5 years.

15. In the instant case, though respondent No.2 pleaded before the Industrial Court that he was 15 years old on 31/08/1994, he was 24 years old going by the record available. I find from the judgment of the Industrial Court that neither has the said Court considered the GR dated 08/03/1985, nor has it concluded as regards the date on

which respondent No.2 could be said to have filed an application seeking compassionate appointment.

16. Mr.Yenge, learned Advocate has, therefore, pleaded that the matter be remitted to the Industrial Court, since respondent No.2 was not in a position to lead proper evidence. Mr.Barde submits that even in the pleadings before the Industrial Court, the respondent has not set out details as regards his date of birth and the date on which he has filed an application for compassionate appointment.

17. Notwithstanding the above, the Industrial Court should have gone into the above aspects, which it has failed in doing so. The application preferred by respondent No.2 addressed to the petitioner for seeking compassionate appointment is, therefore, a vital document, which was not before the Industrial Court. The judgment of the Industrial Court, is therefore, rendered perverse and erroneous.

18. Considering the above, I am inclined to quash and set aside the impugned judgment dated 23/04/2012 and remit Complaint (ULP) No.51/2010 to the Industrial Court, Latur so as to enable both the

litigating sides to lead additional evidence in oral and documentary form and for deciding the complaint afresh.

19. As such, this petition is partly allowed. The impugned judgment and order dated 23/04/2012 is quashed and set aside. Complaint (ULP) No.51/2010 is remitted back to the Industrial Court with the following directions :-

(a) Respondent No.2 shall produce the evidence as regards his date of birth.

(b) The application preferred by respondent No.2, if any, shall be produced before the Industrial Court.

(c) The Industrial Court shall consider the effect of the GR dated 08/03/1985, 05/11/1992 and 30/06/1994 as on date of the application made by respondent No.2, seeking compassionate appointment as well as the effect of the Municipal Council Resolution dated 29/12/1995.

(d) The petitioner will be at liberty to confront the said Resolution on its own merits.

(e) The litigating sides shall appear before the Industrial Court on 28/09/2015 and formal notices, therefore, need not be issued.

(f) The Industrial Court shall endeavour to decide Complaint (ULP) No.51/2010 as expeditiously as possible and preferably on or

before 31/03/2016 considering the growing age of respondent No.2.

20. Rule is, therefore, made partly absolute in the aforesaid terms.

21. Pending civil application, in the light of the above, does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)