

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6734 OF 2014

Bapu Digamber Shendge
age 43 years, Occ. service
R/o Vibhagiya Karyashala,
State Transport, Latur
Taluka and Dist. Latur.

..Petitioner

Versus

1. Manohar Pundlikrao Yamulwad,
Age 51 years, Occ. service
r/o Algude Nivas, Near Sachin
Trading Co., Anandnagar,
Latur, Tq. and Dist. Latur.

2. Maharashtra Rajya Parivahan
Mahamandal, Vibhag Latur,
Through Vibhag Niyantrak,
Latur.

..Respondents

...
Advocate for Petitioner : Shri Bhavthankar V.V.
Advocate for Respondent 1 : Shri Gastgar Santosh B.
Advocate for Respondent 2 : Shri Bagul D.S.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 2015
...

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 has questioned the judgment and order dated 25.3.2014, delivered by the Industrial Court in Complaint (ULP) No. 124 of 2012. By the said judgment, the Complaint preferred by the first respondent has been allowed and the Industrial Court has directed the second respondent to promote the first respondent to the post of Head Artisan Blacksmith.

5. The contention of the petitioner is that the second respondent conducted a departmental examination for the promotional post of Head Artisan Blacksmith. One Shri Mule stood first in the order of merit followed by the petitioner at Sr. No.2 and the first respondent at Sr. No.3. Only three persons had passed the departmental examination.

6. Shri Mule was accordingly promoted. He superannuated on 31.5.2011. The first respondent claimed that he had a caste validity certificate and he belonged to the Scheduled Tribe. He was temporarily promoted on 3.4.2012. Apprehending reversion, he had filed the Complaint before the Industrial Court under items (5), (9) and (10). The said Complaint has been allowed by the impugned judgment dated 25.3.2014. The respondent No.2 is held guilty for ULP under items (5), (9) and (10) of Scheduled IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). It is further directed to promote the first respondent as Head Artisan Blacksmith w.e.f. 1.6.2011.

7. Shri Bhavthankar points out from paragraph No.11 of the Written

Statement filed by the second respondent MSRTC. It is stated that, the said post of Head Art Blacksmith was for open category as per Social Reservation. It is further submitted that Shri N.F.Mule belonged to the OBC, the petitioner belongs to NTC and the first respondent belongs to ST.

8. Shri Bhavthankar, therefore, submits that the entire thrust of the first respondent in the Complaint that he belonged to ST and possessed the Tribe Validity Certificate is in itself misconceived, since the promotional post was not reserved for any caste or tribe.

9. Shri Gastgar, learned Advocate strenuously defended the impugned judgment. He submits that the first respondent, even today believes that the post was reserved for ST category. He had the tribe validity certificate and hence was the only eligible candidate. In fact, he should have been promoted prior to Shri Mule as he did not belong to the ST category. He, therefore, submits that notwithstanding whether he is at Sr. No.3 in the order of merit, the Industrial Court has rightly directed his promotion.

10. Shri Bagul, learned Advocate indicates from the Written Statement that the belief of the first respondent is misconceived. The post of Head Artisan Blacksmith, as is stated in the Written Statement in paragraph No.11, was meant for the open category. No reservation was applied. The petitioner stands at Sr. No.2 in the merit list. He is entitled for promotion.

11. I have considered the submissions of the learned Advocates and have

gone through the petition paper book with their assistance. I find from the entire judgment of the Industrial Court that there is no reference to paragraph No.11 in which, the second respondent MSRTC has taken a specific stand that the concerned post was meant for the open category and was not reserved for any specific category. I am unable to perceive as to for what reason has paragraph No.11 been disregarded / overlooked by the Industrial Court.

12. It is not disputed that a departmental examination was conducted by the second respondent for the concerned post. Since Shri Mule stood at Sr. No.1 in the merit list, he was promoted. Shri Bagul points out that as per the seniority list and the result of the departmental examination the petitioner is senior to the first respondent on both counts. Once this examination has been conducted, after the retirement of Shri Mule, it was the turn of the petitioner to be promoted. There would not have been another examination for assessing the comparative merit of the petitioner and the first respondent.

13. I find that the Industrial Court has based its judgment only on the impressions that the said post was reserved for the ST category. If that be so, then neither Shri Mule nor the petitioner could be said to be eligible since they did not belong to the ST category. It is apparent from the above, that the post was for open category and even on seniority as well as on merit as a result of the departmental examination, the petitioner is senior and eligible as compared to the first respondent.

14. The judgment of the Industrial Court is, therefore, based on a misconceived presumption that the post of was reserved for the ST category. The impugned judgment is, therefore, perverse and unsustainable. It has caused grave injustice to the petitioner since his promotion has been taken away on a misconceived stand.

15. So also, there was no material before the Industrial Court to conclude unfair labour practices under items (5) and (10) of Schedule IV of the said Act. No set of workers were identified who could be said to have benefitted from the act of partiality or favouritism by the respondent No.2. So also, there was no allegation of an act of force or violence at the behest of the respondent No.2.

16. For the reasons recorded above, this petition is allowed. The impugned judgment of the Industrial Court, dated 25.3.2014 is quashed and set aside. Complaint (ULP) No.124 of 2012 stands dismissed.

17. Rule is made absolute. No order as to costs.

(RAVINDRA V. GHUGE, J.)

...

akl/d