

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10113 OF 2014

Rajeshree Rajendra Pingale,
Age 30 years, Occ. Service,
R/o C/o Gajendra Ramling Ambirkar,
Diksal, Tq. Kallamb, Dist. Osmanabad

..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Revenue and Forest Department,
Mantralaya, Mumbai 32.

2. The Senior Administrative Officer,
Maharashtra Pollution Control Board,
Mumbai, 2 & 3 Floor, Kalpataru Point,
Sayan-Matunga Scheme Road No.8,
Infront of Sayan Circle, Sayan (East),
Mumbai 22.

3. The Sub-Regional Officer,
Maharashtra Pollution Control Board,
Sub-Divisional Office, Deo Towers,
Infront of Tahasil Office,
Plot No.RL-2045, Main Road, Latur.

..Respondents

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Advocate for Petitioner : Shri Kale Ajinkya h/f Shri Talekar S.B.

AGP for Respondent 1 : Smt. Shelke S.D.

Advocate for Respondents 2 & 3 : Shri More Popat P.

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WITH

WRIT PETITION NO. 10260 OF 2014

1.Maharashtra Pollution Control Board,
Sub-Regional Office, Deo Towers,
Infront of Tahasil Office,
Main Road, Latur, Tq. and Dist. Latur,
Through its Sub Regional Officer.

2. Maharashtra Pollution Control Board,
Mumbai, Kalpataru Point, 2 & 3 Floor,
Matunga, Sion Sion Road No.8,
Opp. Sayan Circle, Sayan (East),
Mumbai 22 Through Accounts Officer (EB).

..Petitioners

Versus

Rajeshree Rajendra Pingale,
Age 29 years, Occ. Service,
R/o C/o Gajendra Ramling Ambirkar,
Diksal, Tq. Kallam, Dist. Osmanabad

..Respondent

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Advocate for Petitioners : Shri More Popat P.
Advocate for Respondent : Shri Kale Ajinkya h/f Shri Talekar S.B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 13, 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. In the first petition, the petitioner is the employee of respondent Nos.2 and 3, which is the Maharashtra Pollution Control Board. In the second petition, the said Board is the petitioner. Since the employer as well as the employee have challenged the same judgment and order dated 16.6.2014, delivered by the Industrial Court, Latur in Complaint (ULP) No.104 of 2012, I am hearing both the petitions together. For the sake of brevity, the parties shall be known as the employer and the employee.

5. The employee has acquired the educational qualifications of Bachelor of Arts and has qualified the Marathi and English typing examinations by possessing M.S.C.I.T. She joined as a Jr. Clerk on contractual basis since 2005. She preferred Complaint (ULP) No.104 of 2012 before the Industrial Court for claiming benefits of regularization and permanency. By the impugned judgment dated 16.6.2014, the complaint was partly allowed.

6. The employee had claimed completion of 240 days in the continuous and uninterrupted service of the employer. The complaint was opposed by the employer on the ground that she was first appointed as an Assistant on “SAKAM” project, which was eventually transferred to the Dayanand Education Institute, Latur in 1999. The employee, however, continued on daily wages with the employer and ever since then has continued in employment.

7. Upon considering the oral and documentary evidence brought on record, the Industrial Court by its impugned judgment partly allowed the complaint. The declaration and directions set out in the operative part of the impugned judgment are as follows:-

“1. Complaint/ULP No.104/2012 is partly allowed.

2. It is hereby declared that the respondent has engaged in unfair labour practice within the scope of Item No.5,6,9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 and respondent is

directed to cease and desist from unfair labour practice.

3. *The respondent is directed to send a proposal of complainant for absorption in the employment to the government within two months from today and it is for the government to consider the same in accordance with law as early as possible.*

4. *No order as to cost.”*

8. The employee is aggrieved by the impugned judgment to the extent of Clause (3) by which the Industrial Court has directed the employer to send a proposal of the employee to the Government for absorption and benefits incidental and consequential thereto. Grievance is that the Industrial Court should have allowed the complaint in its entirety, since she has completed 240 days in the continuous and uninterrupted service of the employee.

9. The employer is also aggrieved by the impugned judgment in relation to Clause (2), by which the Industrial Court has concluded that the employer is guilty of unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

10. Shri Kale, learned Advocate has further placed on record a communication dated 24.12.2013 to indicate that the same has been addressed to the employer by the Deputy Secretary of the Environment Department, State of Maharashtra. Based on the same, he submits that the

employee can draw benefit since it is a direction to the employer to regularize 24 contract / daily wage labourers in its service. It is also stated in the communication that after regularizing such 24 employees, it should not be treated as a precedent.

11. The communication dated 24.12.2013 is taken on record and marked as Exhibit "X" for identification.

12. Shri More, learned Advocate for the employer submits that the employee herein is not connected with the said communication and Exhibit "X" is merely an indication to the Pollution Control Board to impose nine conditions upon the contract / daily wage employees while regularizing their services. He, however, cannot agree with the direction given by the Industrial Court to forward the proposal of the employee for absorption.

13. Having considered the rival submissions of the learned Advocates, it would be apposite to refer to two judgments delivered by this Court in two groups of cases in the matters of Municipal Council, Tuljapur Vs. Vishal Vijay Amrutraj - Writ Petition No. 11257 of 2014 with connected matters, dated 11.12.2014 and in the group of petitions in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale - Writ Petition No.1843 of 2015 and connected cases, dated 26.2.2015. This Court has directed the Municipal Council Tuljapur to refer the proposals of the Class IV employees to the Government, for absorption.

14. The employer herein is an instrumentality of the Government and is not empowered to create posts. It is made clear by Shri More that the Pollution Control Board has to address the State Government for creation of posts and the same are to be filled in by following the due procedure of law. He, therefore, submits that the employees' case cannot be considered for regularization as it amounts to a back-door entry and mere completion of 240 days would not create any right in the said employment for seeking regularization.

15. In so far as the submission of Shri More to the extent of creation of posts is concerned, the same is sustainable as the Government has to create posts. However, I am unable to accept his other submissions that the employee herein is not entitled for regularization as she has acquired a job as a back-door entry. When Shri More was confronted as to which officer should be held responsible for such purported back door entry, he had no answer.

16. Be that as it may, the employee has put in ten years of service as a daily wager with the employer. The Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi [2006 II CLR 261], has laid down the law that irregular appointments if have been continued in service for ten years or more, the employer should device a scheme for absorption of such appointees. The distinction between an illegal appointment and an irregular appointment is evident from the Umadevi's judgment (supra). Similarly, the Apex Court has concluded in the M.S.R.T.C. and another Vs.

Castribe Rajya Parivahan Karmachari Sanghtana [(2009) 8 SCC 556], that the provisions of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 are not denuded by the view taken by the Apex Court in the Umadevi judgment (supra).

17. In the above backdrop, having held that the employer cannot create posts, the declaration of ULP is unsustainable. In the instant case, there is no evidence on record to indicate that the employer has committed unfair labour practices by deliberately continuing the employee on daily wages or violating any settlement, agreement or Award or committing an act of force or violence against the employees.

18. The employee has also contended that a junior employee at Sr. No.21, who is working along with the employee herein since 1.6.2005 has been included in a proposal forwarded to the Government for regularization.

19. It is also contended by the employee that there are six vacant posts. The employer, therefore, is under an obligation to refer the proposal of the employee for regularization. Shri Kale submits that there is every possibility that an order in favour of the employee may be passed by the concerned department of the State Government on the lines of Exhibit "X". Shri More submits that this matter may be admitted by protecting the services of the employee till the vacancies are created. He relies upon the order dated 9.4.2015 delivered by this Court (Coram : N.W.Sambre, J.) in

Writ Petition No.10253 of 2014 and has prayed for a similar order.

20. I do not find that this petition should be kept pending in this Court. When sustainable directions had already been issued by the Industrial Court to forward the proposal of the employee for absorption, I see no purpose in keeping both the petitions pending. The employee can be protected pending the decision on her proposal. In the light of the above, the petition filed by the employee is partly allowed.

21. In so far as the petition filed by the employer is concerned, the same is partly allowed by setting aside the declaration of ULP made by the Industrial Court against the employer. The direction of the Industrial Court to forward the proposal of the employee for absorption in employment is sustained. However, I am issuing certain directions to the employer which are as follows:-

(A) The employer - Pollution Control Board shall send a proposal of the employee for absorption within a period of six weeks from today.

(B) The proposal shall be complete in all respects and shall indicate the tenure of service put in by her.

(C) Copy of this judgment, along with Exhibit "X" shall be annexed to the proposal so as to bring it to the notice of the concerned department that the employee will have to be considered for regularization as per her seniority and in the light of Exhibit "X".

(D) The concerned department, after receiving the proposal from the Pollution Control Board, shall consider the same and shall take a decision for her absorption within a period of twelve weeks thereafter and shall also indicate the deemed date of regularization so as to make her eligible for benefits incidental and consequential to regularization.

(E) The employee herein shall not be discontinued from employment as a retaliatory action and merely on the ground of she being a daily wage employee. This protection shall of course not be in relation to any act of mis-conduct, if committed by the concerned employee.

(F) In the event any adverse order is passed against the employee, she will have the liberty to take recourse to the legal remedy as may be available to her.

22. Rule is therefore, made partly absolute in both the petitions.

(RAVINDRA V. GHUGE, J.)

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