

kps

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9721 OF 2014

SANJAY SADASHIV KULKARNI,
Age : 50 years, Occ : Service,
R/o Onkareshwar Nagar,
Near Kalika Nagar, Bhadgaon Road,
Pachora, Tq.Pachora, District Jalgaon.

...PETITIONER

-VERSUS-

THE CHIEF OFFICER, MUNICIPAL COUNCIL,
PACHORA, DISTRICT JALGAON.

...RESPONDENT

...

Advocate for Petitioner : Shri Awasarmol Rahul O.

Advocate for Respondent : Shri Thoke Dhananjay B.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2015

Oral Judgment:

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

2 The Petitioner/workman is aggrieved by the impugned judgment and order dated 21.05.2014 delivered by the Labour Court in Application (IDA) No.7/2009. By the impugned judgment, the said

application preferred by the Petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 for recovery of money due from the Respondent/ Employer, has been rejected.

3 I have heard Shri Awasarmol, learned Advocate for the Petitioner and Shri Thoke, learned Advocate for the Respondent for quite sometime.

4 The Petitioner contends that he had initially preferred Complaint (ULP) No.180/1991 whereby, he had claimed reinstatement and continuity of service. The same was allowed and he was working as a Sweeper with the Respondent.

5 The Petitioner further submits that he preferred another Complaint (ULP) No.1210/1999 before the Industrial Court claiming regularization on the post of Peon. It is stated that the said complaint was compromised and disposed of. The compromise, however, was in oral form and not in writing.

6 The Petitioner submits that he was continuously working as a Peon. For the period 01.01.1986 upto 01.12.1995, the Petitioner was paid the wages of a Sweeper and not those payable to a Peon. He had,

therefore, claimed payment of difference in wages under Section 33C(2) of the Industrial Disputes Act, 1947.

7 The said application has been rejected by the impugned order on the ground that the Petitioner could not establish that he was working as a Peon and not as a Sweeper. It is further submitted that the Labour Court has misdirected itself and has committed a grave error in rejecting the application of the Petitioner.

8 Shri Thoke has strenuously supported the impugned order. He submits that even in Complaint (ULP) No.180/1991, the Petitioner was not reinstated on the post of Peon. He continued to work as a Sweeper. It was only through Complaint (ULP) No.132/1996 (new No.1210/1999 after being transferred from Industrial Court, Nashik to Industrial Court, Jalgaon) that the Petitioner made a claim that he was working on the position of Peon and not as a Sweeper. The said complaint was voluntarily withdrawn by the Petitioner. It is undisputed that there was no written agreement/ compromise between the Petitioner and the Respondent.

9 Shri Thoke submits that the Respondent had never given any assurance to the Petitioner that he would be accommodated on the post of Peon when he was actually working as a Sweeper. Even today, he works as

a Sweeper. He, therefore, submits that this petition be dismissed with costs.

10 I have considered the submissions of the learned Advocates as have been recorded herein above. The Petitioner did not bring on record before the Labour Court such oral and documentary evidence which could establish that he was consistently working as a Peon from 01.01.1986 to 01.12.1995.

11 There have been two rounds of litigation between the Petitioner and the Respondent before the Courts below. There is nothing on record to establish that the Industrial Court ever concluded that the Petitioner be accommodated on the post of Peon and should be regularized on the said post.

12 Even in Complaint (ULP) No.180/1991, the Petitioner had contended that he was working on daily-wages in the Shopping Centre of the Respondent. His termination was set aside by the Labour Court vide judgment dated 23.12.1994 and he was reinstated with continuity of service and full back-wages except the period for which he had worked under the interim orders of the Labour Court.

13 In the light of the above, the Labour Court, which was to adjudicate upon the claim of the Petitioner for difference in wages in between the post of Peon and the post of Sweeper, had no evidence before it to conclude that for the period 01.01.1986 to 01.12.1995 the Petitioner was working on the post of Peon. I, therefore, do not find any error or perversity in the conclusion drawn by the Labour Court.

14 Notwithstanding the above, in the event the Petitioner has any grievance that though he was appointed as Peon, but was made to work as a Sweeper by the Respondent, he is at liberty to resort to available legal remedies, if not already availed of.

15 In the light of the above, I do not find that this petition deserves to be entertained. The same is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)