

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10293 OF 2014

The Chief Officer,
Municipal Council, Jalna

PETITIONER

VERSUS

Shobhabai Madhukar Sable

RESPONDENT

Mr.S.R.Bagal, Advocate for the petitioner.

Mr.A.B.Katkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/03/2015

PER COURT :

1. On 01/12/2014, while issuing notice to the respondent, I had passed the following order :-

"1. Heard.

2. Issue notice before admission to the respondent.

3. Shri Abhishek C. Deshpande h/f Shri A.B.Katkar, learned Advocate, appears on caveat, for the respondent and waives service.

4. Learned Advocate for the petitioner to file copy of the appointment order dated 25.4.2008 issued to the respondent, report of the Committee constituted by the Collector and the copy

of the inward register, wherein, the petitioner contends that there is an overwriting to indicate the entry of the application of the respondent, dated 12.12.1988, when she was a minor. Said documents be filed on record along with a short affidavit.

5. S.O. to 13.1.2015.

6. *In the meanwhile, the petitioner shall not resort to coercive action for the implementation of the impugned judgment and order, dated 18.8.2014."*

2. I have heard the learned Advocates for the respective sides for quite some time. Issue is as regards compassionate appointment on the basis of "Warsa Washila Paddhat" which flows from the Lad Committee recommendations.

3. It is not in dispute that the mother of the respondent Smt.Martha Madhukar Sable was working as a "Safai Kamgar" with the petitioner. Upon her retirement, the respondent, being the daughter, claimed compassionate appointment. Appointment order dated 25/04/2008, issued to the respondent, clearly indicates that the said appointment was subject to 4 conditions set out therein. The respondent was dis-continued on 27/09/2011 as the appointment order dated 25/04/2008 was cancelled.

4. The respondent preferred complaint (ULP) no.12/2011 before the Labour Court at Jalna. Contention was that Section 25F and 25G of The Industrial Disputes Act, have been violated. By judgment and order dated 16/09/2013, the Labour Court, Jalna dismissed the complaint by holding that there were several irregularities in the appointment of the respondent.

5. The respondent preferred Revision (ULP) NO.179/2013 before the Industrial Court at Jalna. By its judgment and order dated 18/08/2014, the Industrial Court came to a conclusion that an opportunity of hearing was not given to the respondent and there has been violation of the principles of natural justice. The Industrial Court concluded that the judgment of the Labour Court dated 16/09/2013 was perverse and, as such, allowed the revision petition by quashing and setting aside the judgment of the Labour Court.

6. Contention of the petitioner is that the appointment of the respondent was on compassionate basis. It was subject to the approval to be granted by the District Collector, Jalna. No such approval was granted. There were several complaints with the District Collector, Jalna as regards false documents having been filed by several individuals, based on which their appointments were

secured on compassionate basis. The District Collector caused an investigation and concluded that there were several such irregularities in compassionate appointments. Approval was therefore not granted to the appointment of the respondent and consequentially her appointment was cancelled on 27/09/2011.

7. The petitioner submits that in the peculiar facts of the case, the Industrial Court could not have gone into the period of employment performed by the respondent, in as much as it could not have come to a conclusion on the basis of Clause 4 of the appointment order dated 25/04/2008 to conclude that the respondent had completed 2 years in employment and was therefore deemed confirmed in service. It is, therefore, submitted that the judgment of the Industrial Court is perverse and erroneous.

8. Learned Advocate for the respondent has strenuously supported the impugned judgment of the Industrial Court dated 18/08/2014. He submits that the petitioner, prior to coming to a conclusion that the respondent had acquired compassionate employment on the basis of forged documents, should have at least heard the respondent before passing any order.

9. He submits that the rules of the petitioner themselves provide for causing an investigation into the allegations of obtaining employment on the basis of false and fabricated documents. An order of the Collector below list Exh.C-16 was placed on record which indicates that if any employee primarily is found guilty of furnishing false and fabricated documents, his record could be verified and thereafter a departmental enquiry could be conducted against him. He, therefore, submits that this procedure was not followed by the District Collector.

10. Learned Advocate further submits that there is no dispute as regards the mother of the respondent being in employment with the petitioner. Entry at Sr.No.8689 dated 12/12/1988 in the original inward register maintained by the Municipal Council, Jalna indicates that the mother of the respondent made an application. This issue should have been gone into by the Lower Courts.

11. I find that the Industrial Court appears to have lost sight of the fact that the appointment of the respondent was subject to the approval by the Collector. Since the appointment of the respondent was on compassionate basis, in view of the "*Warsa Washila Paddhat*", it was necessary for the District Collector to consider the

appointment of the respondent in order to take a decision for according approval or refusing to accord such an approval. This exercise has not been completed.

12. Learned Advocate for the petitioner submits that the District Collector can look into the entire proposal of the petitioner and take a decision in accordance with the Rules applicable. The respondent can be heard by the District Collector before passing any order. In the event, her appointment is in conformity with the Rules and the Lad Committee Recommendations, an approval can be granted for regularizing her compassionate appointment. However, if the findings are that the appointment was obtained by misrepresentation or on the basis of false/fabricated documents, the District Collector can very well pass a reasoned order.

13. The learned Advocate for the respondent submits that unless the District Collector hears the respondent, no such order could be passed. He refers to the recommendations of the Enquiry Committee which are annexed to the communication dated 02/09/2011 and submits that merely because a roving enquiry has been conducted by the petitioner, would not mean that the appointment of the respondent was irregular and was on the basis of false and fabricated

documents. He submits that though her name appears at Sr.No.1, in the said report, the respondent can convince the District Collector about the regularity in the procedure followed and the legality in appointing the respondent on compassionate basis.

14. As such, in the light of the above, this petition is partly allowed. The impugned judgment and order of the Industrial Court dated 18/08/2014 in Revision (ULP) No.179/2013 is modified as under :-

- (a) The petitioner shall refer the proposal of the respondent to the District Collector, Jalna within a period of 3 (three) weeks from today.
- (b) It shall be the responsibility of the petitioner to submit the said proposal, complete in all respects and by placing the original documents including the Inward Register before the District Collector, Jalna.
- (c) The District Collector, Jalna shall consider the proposal of the respondent in accordance with the Rules and the procedure laid down and shall verify all the documents submitted by the petitioner.
- (d) The District Collector, Jalna shall hear the respondent by issuing notice to her and by affording her a reasonable opportunity of presenting her case.
- (e) The respondent is at liberty to submit a written explanation alongwith supporting documents while addressing the mind of the District Collector.

- (f) Needless to state, any order passed by the District Collector either approving or rejecting the approval to the appointment of the respondent dated 25/04/2008, shall be a reasoned order.
- (g) In the event, the order of the Collector is prejudicial to the interest of the respondent, she shall be at liberty to avail of such legal remedy as may be permissible in Law.
- (h) The District Collector shall decide the proposal of the respondent within a period of 6 (six) weeks from the date of appearance of the respondent in response to the notice that the District Collector shall issue after receiving the proposal.
- (I) In the event the appointment of the respondent is approved, the respondent would be at liberty to make a request for wages from 27/09/2011 till the approval of her appointment, which the petitioner shall consider sympathetically.

15. In the light of the above, criminal (ULP) No.3/2014, pending before the Labour Court, Jalna stands disposed of.

(RAVINDRA V. GHUGE, J.)