

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1229 OF 2013

The Chief Officer,
Pathardi Nagar Palika, Pathardi,
Dist.Ahmednagar

PETITIONER

VERSUS

1. Sanjay Ashru Khorde,
Age-44 years, Occu-Service,
R/o Handalwadi, Tq.Pathardi,
Dist.Ahmednagar,

2. The Secretary,
Urban Development Department,
Maharashtra State.

RESPONDENTS

Mr.K.D.Bade Patil, Advocate for the petitioner.
Mr.A.P.Avhad, Advocate for respondent No.1
Mr.S.M.Jadhav, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/07/2015

ORAL JUDGMENT :

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

2. The petitioner / Municipal Council, Pathardi, Dist.Ahmednagar is aggrieved by the judgment and order dated 26/07/2012 delivered by the Industrial Court in Complaint (ULP) No.35/2005.

3. The contention of Mr.Patil is that the Industrial Court could not have made a declaration under Item No.6 and 9 of Schedule IV of the MRTU and PULP Act, 1971 and could not have further directed the petitioner to grant permanency to the complainant pending decision of the Government on a proposal for sanction of posts.

4. Mr.Patil submits that the petitioner has been working from October 1993. Even today, he is in employment and is performing his duties, sometimes as a “Helper” and sometimes as a “Peon”. By now, he has put in about 22 years in employment.

5. He further submits that the petitioner does not have the power to create posts. Proposals have to be sent to the appropriate authority, which takes a decision and creates posts. Procedure has to be followed for appointment of candidates on such posts.

6. As such, neither has the petitioner avoided creating posts, nor can it be held guilty of keeping the petitioner temporary for years together with the alleged intention of depriving him of the benefits of permanency. Similarly, there cannot be a declaration that the petitioner has failed to implement any settlement, agreement or award.

7. He points out the following judgments delivered by this Court :-

1. Mukhyadhikari, Nagar Parishad, Tuljapur Versus Vishal Vijay Amrutrao and others, passed in WP No.11257/2014 and other connected matters, dated 11/12/2014,
2. Municipal Council, Tuljapur Vs.Baban Hussain Dhale, passed in WP No.1843/2015 and other connected matters, dated 26/02/2015,

8. He, therefore, submits that the directions given by the Industrial Court to the extent of submitting the proposal for the petitioner can be sustained and the declaration of ULP and directions to grant permanency before creation of posts needs to be set aside.

9. Mr.Avhad, learned Advocate appearing on behalf of respondent No.1 confirms that he is still in employment and has now put in more than 22 years. He is in his 40's and a decision on regularizing his service needs to be taken urgently since his future and his life post retirement depends on his regularization. He, therefore, submits that the view taken by this Court in the above referred judgments needs to be followed and a time frame needs to be directed so as to enable respondent No.2 to take a decision.

10. The learned AGP has appeared on behalf of respondent No.2.

He submits that the directions as have been issued by this Court in the above referred three cases, could be issued. However, it is to be left to the Government for creating posts depending upon the work load available with the Municipal Council and its financial strength. There cannot be a direction to grant permanency. It could, at the most, be a direction to consider respondent No.1 for regularization.

11. The operative part of the Industrial Court order reads as under :-

“1. The complaint is partly allowed.

2. It is hereby declared that the Respondent has engaged in and continues to engage in unfair labour practice under Items-6 and 9 of Sch.IV of the MRTU and PULP Act, 1971. The Respondent is hereby directed to cease and desist from continuing to engage in said unfair labour practice by taking follow up of the proposal sent in respect of the Complainant for granting him permanency and if the Govt. does not take any steps within a period of one month, grant permanency to the Complainant pending decision of the Govt. of Maharashtra, w.e.f. The date of order of this Court alongwith the benefits of permanency.

3. In the circumstances, there is no order as to costs.”

12. As such, this petition stands partly allowed. The declaration of ULP under Item 6 and 9 of Schedule IV in the impugned judgment is quashed and set aside.

13. The petitioner is directed to prepare the proposal of respondent No.1 by stating his exact date of joining, tenure of employment, nature of service rendered, salary being paid today and the amount of work available. The proposal shall be forwarded to respondent No.2 within a period of 8 (eight) weeks from today. Respondent No.2 shall thereafter decide the said proposal and consider grant of sanctioned posts to the petitioner so as to absorb respondent No.1 depending on his seniority in the Class in which he works. The decision by respondent No.2 shall be taken within 16 weeks after receiving the proposal.

14. Till the decision is taken, respondent No.1 shall not be terminated merely on the ground that he is a temporary employee. Obviously, this protection shall exclude acts of indiscipline or disciplinary proceedings.

15. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)