

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10400 OF 2012

KASHINATH GUNDAPPA NAVKHANDE

PETITIONER

VERSUS

THE DIVISIONAL CONTROLLER, MSRTC, LATUR

RESPONDENT

Mr.K.M.Nagarkar, Advocate for the petitioner.

Mrs.R.D.Reddy, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2015

ORAL JUDGMENT :

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

2. The petitioner assails the judgment and order dated 25/09/2012 delivered by the Industrial Court in Complaint (ULP) No.107/2011.

3. The petitioner was heard at length. It is contended that he was appointed as a "Driver" in 1978. He was taken in Group No.II on 16/11/1983 and was granted regularization on a clear vacant post of a "Driver" on 25/11/1991. The petitioner retired from service upon attaining the age of superannuation on 30/06/2007.

4. By writ petition No.7654/2008, filed after his retirement, the petitioner raised a grievance before the Division Bench of this Court that juniors were promoted and thus he was superseded in 1991. Without going into the merits of the claim of the petitioner, this Court dismissed the petition by its order dated 05/05/2011 relegating him to exhaust the alternate remedies.

5. Thereafter, the petitioner filed Complaint (ULP) No.107/2011 before the Industrial Court invoking Items 5, 9 and 10 of Schedule IV of M.R.T.U. and P.U.L.P.Act, 1971 (For short, State Act). By the impugned judgment and order dated 25/09/2012, the complaint was dismissed.

6. The petitioner submits that four persons namely Mr.R.D.Shinde, Mr.B.D.Bhange, Mr.A.D.Pathan and Mr.R.S.Kamble have been included in Group No.II after the petitioner and as such they should not have been granted regularization ahead of the petitioner. It is submitted that the petitioner has brought necessary oral and documentary evidence on record. He has himself stepped into the witness box and led evidence. The Industrial Court has not scrutinized the evidence before it in proper perspective. Unsustainable reasons have been put forth by the Industrial Court

while arriving at erroneous conclusions. The impugned judgment is perverse and unsustainable reflecting non-application of mind. He, therefore, prays that his petition be allowed.

7. I have summarized the extensive submissions of Mr.Nagarkar as above. With his assistance, I have gone through the petition paper book. Record and proceedings are perused.

8. Though the petitioner has canvassed in *extenso* and has narrated a host of factors, in the writ and supervisory jurisdiction of this Court, dealing with the impugned judgment of the Industrial Court, it ought to be seen as to what was the material placed before the Industrial Court by the litigating sides.

9. A declaration of unfair labour practices has serious consequences and such a declaration ought not to be made at the mere askance, unless and until the Labour or Industrial Court, dealing with such matters, are sufficiently convinced on the basis of the oral and documentary evidence adduced before it that the complainant has succeeded in proving commission of unfair labour practices at the hands of the respondent.

10. I find from the impugned judgment that though the complaint was delayed by 20 years, in view of the limitation of 90 days prescribed u/s 28(1) of the State Act and Regulation 101 of the Industrial Court Regulations, 1975, the Industrial Court overlooked this aspect only because it desired to scrutinize the claim of the petitioner on its merits.

11. No more magnanimity could have been shown by the Industrial Court which has considered the complaint on its merits by observing in paragraph No.7 as follows :-

“7. Before proceeding further, it is necessary here to examine the maintainability of the complaint from the point of limitation. As per the case of the complainant himself, he was absorbed in the service of the respondent and conferred with the benefits of permanency since 25/11/1991. Not only this, the complainant has retired from service of the respondent in the year 2007. The present complaint is filed in June, 2011. Therefore, even if we keep aside the date 25/11/1991 and take into consideration the date of retirement of the complainant, the present complaint is hopelessly time bared in view of clear provisions of sub section (1) of Section 28 of the Act. Not only this inspite of knowing that his complaint is hopelessly time bared, the complainant has not bothered to take recourse of Regulation 101 of the Industrial Court Regulations, 1975. This conduct on the part of the complainant shows that the present complaint is luxurious

litigation. On this count alone, the present complaint deserves to be dismissed with exemplary costs. But as the complainant in this complaint has raised an issue which will have bearing on his retiral benefits and at present the complainant has retired, I think it just to consider the case of the complainant on merit and equitable grounds by keeping aside this procedural aspect. With this, I advert further to consider the case of the complainant on its merits.”

12. Since the respondent MSRTC is not aggrieved by the observations of the Industrial Court in paragraph No.7, reproduced above, I am not dealing with the issue of delay of 20 years in this matter.

13. The petitioner has invoked Item 5, 9 and 10 of Schedule IV of the State Act.

Item 5 reads as under :- To show favouritism or partiality to one set of workers, regardless of merits.

Item 9 reads as under :- Failure to implement award, settlement or agreement.

Item 10 reads as under :- To indulge in act of force or violence.

14. In so far as Item 10 is concerned, which involves an act of force or violence at the hands of the employer, there are no pleadings in

the complaint, much less any evidence on record. I need not therefore look into the said allegation.

15. In so far as Item 5 is concerned, it is incumbent upon the complainant (the petitioner herein) to come out with specific pleadings in the complaint and name the workers who formed a set of such workers, who have been shown favoritism or partiality regardless of merits. The Industrial Court, while considering the said issue, has observed in paragraph No.12 that the so called set of workers, who have allegedly been shown undue favoritism, was not specifically pointed out by the petitioner in the complaint. Though the names of 4 persons were stated in the evidence / affidavit in lieu of examination in chief, no evidence was led by the petitioner to prove the said aspect. Their orders of permanency were neither produced nor was a notice for production of documents given to the respondent.

16. The petitioner did not lead oral or documentary evidence to the extent of establishing how identically situated workmen or juniors to him were granted permanency prior to conferring the said status on the petitioner in 1991.

17. The complainant relied upon a letter dated 28/11/2007 addressed to him by the respondent, vide which information was furnished with regard to 4 drivers whose names were mentioned in the oral evidence of the petitioner. Mr.R.D.Shinde was proved to be senior to the petitioner.

18. There were about 143 drivers including the petitioner, who had appeared before the Selection Committee. Considering their seniority and their default and records, 127 drivers were selected and were entered in the select list to be granted regularization as and when the permanent post of drivers fell vacant. The petitioner was at Sr.No.121. The selection committee's list dated 8-9/6/1987 was implemented in stages as and when the posts became vacant and the turn of the petitioner at Sr.No.121 was reached on 25/11/1991. Such a grievance should have been raised with promptitude, if at all the petitioner had any grievance.

19. The other facets of this case are that any benefit, if given to the petitioner through his complaint, would affect 3 persons namely Mr.Bhange, Mr.Pathan and Mr.Kamble as their benefits granted on 01/07/1988 would have to be taken away. The petitioner was in deep slumber till he retired. None of these persons were arrayed in

the complaint. No opportunity of hearing is therefore possible to be given to these 3 persons at this stage in the event any interference is to be caused. All these persons have retired. The issue therefore does not deserve to be racked up after about 25 years.

20. In the light of the above, I do not find any perversity in the impugned judgment of the Industrial Court. No error has been caused in dismissing the complaint. This petition is devoid of merit and is therefore dismissed.

21. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)