

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 2498 OF 2012.

Karmala Municipal Council, Karmala & ors. .. Petitioners
Vs.
Sou Asha Mahadeo Raut .. Respondent

***Along with
WRIT PETITION NO. 9713 OF 2014.***

Asha Mahadeo Raut .. Petitioner
Vs.
Karmala Municipal Council, Karmala & anr. .. Respondents

Mr.Sarang Aradhye, for the Petitioners in Writ Petition No.2498 of 2012 and Respondent in Writ Petition No.9713 of 2014.
Mr.Suhas Inamdar, for the Respondent in Writ Petition No.2498 of 2012 and Petitioner in Writ Petition No.9713 of 2014.

***CORAM: N.M.Jamdar, J.
Wednesday 9 September, 2015***

P.C.:

The petitions are listed for directions. However by consent of the parties taken up for final disposal. Accordingly Rule, in both the petitions. The respective Respondents waive service.

2. Writ petition No.2498 of 2012 is filed by the Municipal Council of Karmala challenging the order passed by the Industrial Court Solapur, directing that the Respondent-employee in this petition be declared as permanent from the date of appointment,

on Class IV post, and to give her all consequential benefits.

3. Writ petition No.9713 of 2014 is filed by the employee challenging the same impugned order in as much as it directs grant of permanency on a Class IV post, wherein according to the employee permanency should be on a Class III post.

4. After having heard the learned counsel for the parties, it appears that the matter needs to be remanded to the Industrial Court for fresh consideration. This is necessary since the Industrial Court, after finding that the employee had worked with the Municipal council between 1992 to 1994 and had completed 240 days, straightaway granted the relief of permanency without considering various legal positions regarding the grant of permanency in the services of a public body. The Industrial Court has primarily relied on the fact that three employees were made permanent in the year 2003. However, the Industrial Court appears to have not noticed the change in the Staffing Pattern which occurred in the year 2005 in the Municipal Council before the final direction.

5. By way of an additional affidavit, the Municipal Council has placed on record the revised Staffing Pattern. It is the contention of the Municipal Council that as regards the Balwadi Shikshika there is only one post that is also a temporary post, and as and when the occupant of this post retires, the post will come to an end.

Before directing grant of permanency this aspect ought to have been considered by the Industrial Court. Though the learned counsel for the employee has contended that the direction for permanency is correct and proper as indicated earlier, the position of sanctioned posts and availability of vacancies is an important aspect that the Industrial Court will have to keep in mind before issuing direction to grant permanency. This is not to conclude the controversy on merits but to indicate the factors that Industrial Court will have to keep in mind. Furthermore, the Employee is also aggrieved by the direction to absorb her on the Class IV post. Perusal of the impugned order does not indicate as to why, if the case of the employee was that she was working on Class III post, a direction to make her permanent on a Class IV post is given. This is one more reason why the matter needs to be remanded back to the Industrial Court.

6. In view of the above position both the Writ petitions are disposed of by quashing and setting aside the impugned order dated 31 October 2011. The Complaint (ULP) No.184 of 1997 stands restored to file of the Industrial Court, Solapur. All contentions on merits are kept open. The Industrial Court will keep in mind that the Complaint is of the year 1997 and take up the same for disposal early unless there are other time-bound commitments or older matters to be disposed of.

(N.M.Jamdar, J.)

“Certified to be true and correct copy of original signed Order.”