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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3539 OF 2014

Shri Rajaram @ Rajendra Parsu Kamble

.. Petitioner

Vs.

The State of Maharashtra and others

.. Respondents

Mr.Anand Jondhale i/be Jondhale & Co., Advocate for the Petitioner.

Mr.A.D.Kango, AGP for Respondent No.1 & 3.

Mr.Rupesh K.Bobade, Advocate for Respondent No.2.

CORAM : R.G.KETKAR, J.

DATE : 21st JANUARY, 2015

P.C. :

. Heard Mr. Anand Jondhale, learned Counsel for the petitioner, Mr.A.D.Kango, learned AGP for respondent No.1 and 3, Mr.Rupesh K.Bobade, learned Counsel for respondent No.2 at length. Rule. The learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order dated 28/06/2011 passed by the learned Member, Industrial Court, Maharashtra, Sangli (for short 'Tribunal') in Complaint (U.L.P.)No. 54

of 2008. By that order, the Industrial Court dismissed the complaint instituted by the petitioner herein, hereinafter referred to as the complainant, filed under section 28(1) read with Items 5, 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act').

3. The complainant instituted aforesaid complaint against the respondents No.2 & 3, hereinafter referred to as respondents, inter alia contending that he is a legal representative of one Parsu Shripati Kamble. He was in the employment of the respondent No.2 i.e. the Municipal Council of Islampur (for short 'Council') since 30/09/1952. Initially he was appointed on the post of 'Kondwada Sevak' and since 01/08/1964, he was working as a 'Safai Karmachari/Zadu Nokar'. There was Kondwada for animals and his father was required to clean that Kondwada. The Kondwada was in existence till 1964 and thereafter it was closed down. The post of Kondwada Sevak was abolished and his father continued the service as Safai Karmachari. He performed the work as Safai Karmachari which was allotted to him by Council till his superannuation on 31/07/1992. It was contended that the recommendations of Lad Committee are applicable to the Council which covers Class-IV employees working therein. As per the said recommendations the legal representatives of the retired employees are entitled to be appointed on compassionate ground. The Council has given appointments on compassionate

ground to the legal representatives as per recommendations of Lad Committee. The complainant further asserted that being legal representative of Class – IV employee, he was entitled to be appointed on compassionate ground. Accordingly, an application was made on 20/08/1992. No steps were taken on that application. He, therefore, approached the District Collector on 15/07/1999 and Director of Municipal Administration on 31/05/2001 and other Authorities. His claim was, however, not considered and benefits of the Lad committee were not extended. The action of the Council is in violation of the service conditions which amounts to unfair labour practices under Items 5, 9 & 10 of Schedule IV of the Act.

4. The Council resisted the complaint and denied all the assertions. It was contended that the complainant was never an employee and therefore, there is no relationship of employer and employee between them. The complainant has no locus to maintain the complaint. The father of the complainant had submitted an application on 25/05/1999 for appointment on compassionate ground. The claim was rejected as the legal representative was not eligible for appointment on compassionate ground. Accordingly, by letter dated 23/03/1999, it was communicated to the complainant. The complainant is instituted on 06/10/2008 i.e. beyond statutory period of limitation. The Council further contended that father of the complainant was never employed on the post of Safai Karmachari and

he worked as Kondwada Sevak from 30/09/1952 to 31/07/1992.

5. On the basis of the pleadings of the parties, the Industrial Court framed the necessary issues. The parties led evidence. After considering the evidence on record, by the impugned order, the Industrial Court dismissed the complaint. It is against this order, the original complainant has preferred this petition.

6. In support of this petition, Mr.Jondhale submitted that the Industrial Court dismissed the complaint mainly on the ground that father of the complainant was working as a “Kondwada Sevak”. Even after closing down Kondwada, he was not designated as a “Safai Kamgar”. Since he was not working as Safai Karmachari, recommendations made by the Lad committee in respect of the employment of the legal representative of Class IV Safai Karmachari on compassionate ground are not applicable to the case of the complainant. Only on this ground, the complaint was dismissed. Mr.Jondhale invited my attention to i) paragraph 12 of the impugned order ii) communications dated 18/04/2011 & 28/03/2011 iii) Muster Roll issued under the Minimum Wages Act and iv) Card issued by Islampur Municipal Servants Co-operative Society Ltd., wherein father of the petitioner is described as 'Zadu Nokar' and that he was discharging his duties of Safai Karmachari. He submitted that the designation of the post is not decisive. What is relevant is the nature of duties performed by the father of the petitioner. He, therefore,

submitted that though these documents are on record, the Industrial Court committed serious error in not considering these documents and in dismissing the complaint.

7. Mr.Bobade was not in a position to controvert this submission. The letter dated 18/04/2011 is issued by the Chief Officer of Islampur Municipal Council to the Director of the Municipal Administration. The communication dated 28/03/2011 is addressed by the Chief Officer of the Municipal Council to brother of the complainant. The muster card is issued by the Municipal Council in favour of the petitioner's father. In all these documents, designation of the petitioner's father is shown as 'Zadu Nokar'. The card issued by the Islampur Municipal Servants Co-operative Society Ltd. also describes the designation of the petitioner's father as 'Zadu Nokar'. Thus, the father of the petitioner was discharging duties of a 'Safai Kamgar.'

8. In view thereof, the impugned order cannot be sustained and deserves to be set aside. Petition succeeds and respondent No.2 is directed to appoint the complainant on compassionate ground for the post of Class-IV employee with effect from 01/02/2015.

9. Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)