

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1337 OF 2015

The Ichalkaranji Municipal Council ... Petitioner
Vs.
Pandurang Shakar Pise and others ... Respondents

Mr. Tejpal S. Ingale for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 11, 2015

P.C. :

Heard Mr. Ingale, learned Counsel for petitioner at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'Municipal Council', has challenged the judgment and order dated 12.02.2013 passed by the learned Member, Industrial Court No.2, Kolhapur (for short 'Tribunal') in Complaint (ULP) No.124 of 2008. By that order, the Tribunal partly allowed the complaint and declared that the respondents before it had engaged in unfair labour practice under item No.9 of Schedule IV of the Act and they were also directed to cease and desist from the same forthwith. The Municipal Council was further directed to pay to the complainant difference in wages actually paid to the complainant and due to him as per the Government Notification on account of time-bound promotion on or before 13.05.2013.

3. Respondent No.1, hereinafter referred to as the 'complainant' had instituted complaint under Section 28 read with items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') against the Municipal Council and respondents No.2 and 3 herein alleging that

they have engaged in unfair labour practice by not giving the benefits of time-bound promotion to him.

4. In support of this Petition, Mr. Ingale submitted that the complainant was appointed on the post of Peon in the Municipal Council on 22.03.1965. He was promoted as Telephone Operator with effect from 01.11.1969. The complainant attained the age of superannuation on 01.03.1999. He submitted that the complainant was given all the terminal benefits after attaining the age of superannuation. The complainant was also given higher pay-scale in the year 1982. He submitted that the complainant claimed time-bound promotion as per the Government Resolution dated 08.06.1995 on the ground that he had completed 12 years continuous service on the post of Telephone Operator. He came with the case that there was no further promotional post from the post of Telephone Operator. Despite that, the Municipal Council failed to implement the Resolution dated 08.06.1995, and therefore, committed unfair labour practice.

5. He submitted that the Tribunal committed error in partly allowing the complaint as basically, the complainant was given higher pay-scale in the year 1982. That apart, the complainant had passed 4th Standard. The qualification for the post of Clerk is S.S.C. As the complainant does not possess qualification of S.S.C., he cannot be given time-bound promotion after completion of 12 years continuous service. In support of this submission, he relied upon-

- (a) Government Resolution dated 08.06.1995, and in particular, clause 2-B thereof;
- (b) Clarification issued by the Government on 01.11.1995, and in particular, clause 9 thereof;
- (c) Minutes of decision of Departmental Promotion Committee

(for short 'D.P.C.'). D.P.C. relying upon clause 2-B of Government Resolution dated 08.06.1995 held that since the qualification of the complainant is 4th Standard passed, he is not entitled to time-bound promotion;

(d) Communication dated 28.08.1992 addressed by the Commissioner and Regional Director, Municipal Administration to the Chief Officer of Municipal Corporation;

(e) Order dated 19.10.1991 issued by the Deputy Director of Municipal Administration;

(f) Order dated 11.08.2000 passed by the Collector, Kolhapur, and in particular paragraph 8 thereof.

6. Mr. Ingale further submitted that the Complainant attained superannuation in the year 1999 and the present complaint is instituted in the year 2008 that too after accepting all the terminal benefits. The complaint is, therefore, barred by gross delay and laches as also the complainant is precluded from claiming time-bound promotion after having received all the benefits on attaining the age of superannuation. He further submitted that the object behind passing resolution of 08.06.1995 was to ensure that those employees who could not get promotion on higher post even once are alone entitled to benefit flowing therefrom. In other words, the complainant was initially appointed on the post of Peon. He was thereafter promoted to the post of Telephone Operator. As the complainant was already promoted, he cannot take benefit of Government Resolution dated 08.06.1995. In any case, he has to fulfill the requirements laid down in clause 2-B of the Government Resolution dated 08.06.1995. Having regard to the educational qualification of the complainant, he does not fulfill the requirement of elementary qualification for the post of Senior Clerk i.e. S.S.C.

7. I have considered the submissions advanced by Mr. Ingale. I have also perused the material on record. It is not in dispute that the complainant was appointed as a Peon on 22.03.1965. It is also evident from record that he was promoted to the post of Telephone Operator w.e.f. 01.11.1969. It is equally not in dispute that Telephone Operators have no further promotional avenues. Government of Maharashtra, General Administration Department issued Government Resolution dated 08.06.1995. The said Government Resolution recited that in some cases, employees working in Class C and Class D have no opportunities for further promotion. Even when there are opportunities for further promotion, it takes long time for effecting promotions. The employees' association of Central Government was consistently demanding introduction of time-bound promotion scheme. Central Government accordingly issued order on 13.09.1991 and the said order was modified. On that basis, taking into consideration the interest of its employees, some of the State Governments have implemented the scheme. Government of Maharashtra also took decision on 22.09.1994 to implement the scheme. Clause 2 thereof recited that employees in Class III and Class IV putting in 12 years continuous service will be given pay-scale of higher post. In case of the employees, who have no promotional post, the concerned employees will be paid higher pay-scale as per the Schedule. clause 2-B thereof provides that for becoming eligible for higher pay-scale, one has to comply with the procedure of recruitment, seniority, eligibility, qualifying examination and departmental examination of promotional post.

8. Mr. Ingale submitted that for the post of Clerk, the educational qualification is S.S.C. The complainant has passed 4th Standard. In short, his submission is that the complainant does not possess the requisite qualification of promotional post and on that ground only, the

D.P.C. in its meeting held on 10.10.2008 denied him time-bound promotion. It is not possible to accept this submission. It is not in dispute that for the post of Telephone Operator, there is no further promotional avenue. The Tribunal has considered this submission in paragraph 17. The Tribunal observed that Condition 2-B is applicable to employees who have further opportunity of promotion. The said condition is applicable to the employees, whose duties and responsibilities are going to be increased along with the pay-scale. Condition 2-B of Government Resolution dated 08.06.1995 does not apply to the complainant. The basic object and intention behind passing of Government Resolution dated 08.06.1995 was to give monetary reward to the employees coming from Class-III and IV category after completing 12 years of service as they do not get promotion when they become eligible and it takes time.

9. Mr. Ingale submitted that in the year 1982, the complainant was already given benefit of higher pay-scale. In view of clarification dated 01.11.1995, and in particular, clause (9) thereof, the benefit of higher pay-scale is admissible only once. It is not possible to accept this submission as well. The Government Resolution dated 08.06.1995 does not prescribe any condition namely, if in the past, the employee had received higher pay-scale then the said employee will not get time-bound promotion or higher pay-scale. It is not the case of the Municipal Council that after 08.06.1995, the complainant was given benefit of higher pay-scale.

10. Mr. Ingale further submitted that the complainant had received all the benefits on attaining the age of superannuation. The present complaint is instituted in the year 2008, which is barred by gross delay and laches. In view of the conduct of the complainant also, he is

precluded from claiming benefit arising from Government Resolution dated 08.06.1995. The Tribunal has considered this submission in paragraph 20. It was observed that the complainant had produced on record office copies of representations made by him to the Municipal Council and other various authorities. Perusal of this representations shows that the complainant had requested the authorities to give benefits of the Government Resolution dated 08.06.1995. The Municipal Council and other authorities did not inform the complainant that he is not entitled to the benefit of time-bound promotion as he does not fulfill condition No.2-B of Government Resolution dated 08.06.1995. As noted earlier, the D.P.C. has taken decision as late as on 10.10.2008 denying benefit of time-bound promotion on the ground that the complainant possesses educational qualification of 4th Standard. In other words, for the first time, the decision is taken by the D.P.C. denying benefit of Government Resolution dated 08.06.1995. In view thereof as also for the reasons stated by the Tribunal, it cannot be said that the complaint suffers from gross delay and laches.

11. As far as the submission that the complaint is instituted after receiving terminal benefits in 1999 is concerned, the said submission is equally devoid of any substance as basically, Municipal Council was not justified in denying the benefits of the complainant flowing from the Government Resolution dated 08.06.1995. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)