IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
**WRIT PETITION NO.3973 OF 1997**

Maharashtra State Electricity Board ….Petitioner

V/s.

Babu George & Anr. ….Respondents.

Mr. A. R. S. Baxi, Advocate for the petitioner.
Mr. H. J. Buch I/b N. J. Buch, Advocate for the respondents.

CORAM : Smt. R. P. SondurBaldota, J.
DATE : 16th July, 2015.

P.C.:

1. Respondent No.1 had joined the service of the petitioner as a semi-skilled workman on 8th May, 1978. He was promoted to Grade Artisan-D on 12th June, 1979. He filed Complaint (ULP) No.295 of 1994 alleging unfair labour practice on the part of the petitioner under Items- 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU and PULP Act"). In his complaint he had referred to one Mr. K. V. Sarode, as an employee junior to him who had been granted promotion in the year 1989 with retrospective effect from the year 1985. The Industrial Tribunal, Thane by it's judgment and order dated 2nd May 1997 allowed the complaint and directed the petitioner to promote respondent no.1 to the post with retrospective effect and give him consequential monetary benefits.

2. The educational qualification of the respondent is of SSC, whereas the qualification as per Classification & Recruitment

Regulations, 1961 prescribed by the petitioner for designation of Artisan Group-'B' reads as under:

> "National Apprenticeship Certificate in respective trade aswarded by the National Council for Training in vocational Trade(NCTVT), New Delhi on completion of National Apprenticeship under the Apprenticeship Act, 1961 or National Trade Certificate in the respective trade awarded by the NCTVT, New Delhi on completion of I.T.I. Trade Course."

3. The regulations provide for two methods of filling the vacancy i.e. by departmental promotion and by direct recruitment. Admittedly, respondent no.1 did not possess the prescribed qualification at the relevant time i.e. at the time of the complaint. Therefore, there was no question of he being considered for the promotion.

4. In his complaint respondent no.1 alleged unfair labour practice on the part of the petitioner under Item No.5, 9 and 10 of Schedule IV of MRTU and PULP Act. The three items read as under:

> "General unfair labour practices on the part of employers
>
> Item No.5 – To show favouritism or partiality to one set of workers, regardless of merits.
>
> Item No.9 - Failure to implement award,, settlement or agreement.
>
> Item No.10 – To indulge in act of force or violence."

. Perusal of the complaint shows that, there were no averments to support the unfair labour practice under Item nos.9 and 10 of the schedule. The only complaint of the petitioner is that, Mr. K. V. Sarode

was considered for promotion. In the facts of the case, where the petitioner did not even hold the prescribed qualification for promotion, the allegations made will not constitute unfair labour practice under Item-5. Actually, it is not the case of respondent no.1 that, Mr. K. V. Sarode was favoured because the complaint is that, Mr. K. V. Sarode has been promoted in the year 1989 with retrospective effect from the year 1980. There is no dispute that Mr. K. V. Sarode was holding necessary qualification for promotion to the post of Artisan Group 'B'. Therefore there could be no comparison between respondent no.1 and Mr. K.V. Sarode for the purpose of promotion.

5. Despite the above factual position, the Industrial Tribunal, for the reasons quoted hereinafter, allowed the complaint.

> "It has been clearly mentioned in the rules that the concerned officer in the field must furnish all the relevant information to the Selection Committee regarding the candidates who are suppose to be entitled for the promotion as per the provisions of the Service Rules and Regulations regarding departmental promotion. And in this context it is clearly seen from the record, nowhere respondents has submitted that all the information regarding the complainant was furnished before the Selection Committee while Selection Committee has re-opened the issue of Shri. Sarode's promotion. In my opinion, it is duty of the respondents to put before the Selection Committee the facts that though Shri. Sarode entitled for the promotion as he was selected in the year 1980, but at this juncture and as per the seniority list which is published in the year 1989 is on record 363 of 1989 at Exh. U-1/C collectively.

> So it would have been convenient for the Competent Selection Committee to decide the issue of the promotion of the Complainant."

The reasons being contrary to the facts of the case, the impugned order cannot be sustained. The petition is therefore allowed in terms of prayer clause (a).

(SMT. R. P. SONDURBALDOTA, J.)