

JPP

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

CIVIL WRIT PETITION NO. 4262 OF 1999

The Ulhasnagar Municipal Corporation. ... Petitioner.

V/s.

Vithal Laxman Yeole & Anr. ... Respondents.

Mr. Vijay Patil for the Petitioner.

Mr. Vinod Tayade for Respondent No.1.

CORAM : N.M. JAMDAR, J.

DATE : 3 SEPTEMBER, 2015.

P.C. :-

By this Petition the Petitioner – Municipal Corporation challenges the order passed by the Industrial Court, Thane directing that, though Respondent No.1 is not entitled to claim permanency from 17 October 1988, the Petitioner – Corporation shall give all the monetary benefits to Respondent No.1 from 17 September 1988 to 1 February 1992.

2. Respondent No.1 was appointed as a Clerk on temporary basis on 17 October 1980 in the services of the Petitioner – Corporation.

3. Respondent No.1 filed a Complaint (ULP) No. 871 of 1988 claiming benefits of permanency and other monetary benefits from 17 September 1980. During the pendency of the complaint, Respondent No.1 was made permanent by order dated 1 February 1992. Thereafter, the complaint was taken up for consideration by the Industrial Court, Thane. The Industrial Court considered the evidence on record and after hearing the arguments came to the conclusion that the claim of the Petitioner to be made permanent from 17 September 1980 cannot be granted, and at the most it can be considered from 17 September 1988, which was date of cause of action given by Respondent No.1. The Industrial Court, however, did not give effect to claim of permanency of Respondent No.1 even from 17 September 1988 on the ground that the other persons who are not party will be affected. The Industrial Court however directed to give all monetary benefits to Respondent No.1 from 17 September 1988, even though he was made permanent from 1 February 1992.

4. Rule was issued on the Petition on 4 August 1999 and by way of interim relief the impugned order is stayed. It is informed that Respondent No.1 is receiving the pensionary benefits according to the date of permanency of 1 February 1992. Now only question remains is of difference in pay for the period between 17 October 1988 to 1 February 1992. Respondent No.1 now has retired on superannuation.

5. Mr. Vijay Patil, the learned Counsel for the Petitioner – Corporation submitted that having dismissed the claim of permanency of Respondent No.1 from 17 October 1988, the Petitioner would not have been directed to give difference in wages and other benefits to Respondent No.1.

6. There is merit in this submission. If the Industrial Court was of the opinion that in fact Respondent No.1 was to be made permanent from 17 September 1988 and such direction would affect other employees, necessary direction to join and implead other persons, could have been issued. However, the same was not done and the claim of Respondent No.1 for permanency from 17 October 1988 was negatived. It is informed by Mr. Tayde, learned Counsel for Respondent No.1 that Respondent No.1 also challenged the refusal to grant permanency from 17 October 1988 by way of Writ Petition, but the Petition was not entertained on the ground of laches. Thus, on record now, there are dates of permanency. First from the date which he was made permanent i.e. 1 February 1992 and another i.e. 17 October 1988, the date from which all monetary benefits are given to Respondent No.1. Mr. Tayade is unable to show as to how this course of action can be adopted. Nothing stopped the Industrial Court, if permissible in law, in granting relief of permanency from 17 October 1988. Having not done that, the Industrial Court ought not to have directed the Petitioner to give

monetary benefits to Respondent No. 1 from 17 October 1988 to 1 February 1992, on mere equitable considerations.

7. In the circumstances, the Writ Petition deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (c). No order as to costs.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

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