

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.7148 OF 2007
WITH
CIVIL APPLICATION NO.157 OF 2015**

The Commissioner
Nashik Municipal Corporation .. Petitioner
Vs.
Vilas Govind Khedalekar and another .. Respondents

Mr.M.L.Patil, Advocate for Petitioner.
Mr. Pratap Patil, Advocate for Respondent No. 1.

**CORAM : R. G. KETKAR, J.
RESERVED ON : 26th FEBRUARY, 2015
Pronounced on : 26th MARCH, 2015**

P.C. :

. Heard Mr.M.L.Patil, learned Counsel for the petitioner and Mr.
Pratap Patil, learned Counsel for respondent No. 1 at length.

2. By this petition under Article 226 of the Constitution of India, the petitioner, hereinafter referred to as 'Corporation', has challenged the judgment and order dated 17/08/2006 passed by the learned Member, Industrial Court, Nashik (for short 'Tribunal') in Complaint (ULP) No. 56 of 2004. By that order, the Tribunal allowed the complaint instituted by respondent No.1, hereinafter referred to as 'Complainant', under section 28 read with Items No. 5, 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for

short 'Act') and declared that the Corporation by changing the deemed date and ordering recovery of salary on the basis of the audit report amounted to commission of unfair labour practices under Item 9 of Schedule IV of the Act. The Corporation was directed not to change the deemed date given to the Complainant as well as not to make the proposed recovery. The order issued to that effect to the Complainant was set aside. The relevant and material facts, giving rise to filing of the petition, briefly stated, are as under.

3. It is the case of the Corporation that the Complainant passed S.S.C. examination in March 1975. He was working on daily wages before 01/05/1984. On 27/04/1984, the General Body passed Resolution appointing him as well as 60 others as a Junior Clerk with effect from 01/05/1984 in the scale of 260-495. In September 1989, the Complainant passed Local Self Government Diploma (for short 'L.S.G.D.') examination. Thereafter, by order dated 14/07/1994, the Complainant was given a deemed date of promotion as a Junior Clerk with effect from 17/12/1981.

4. On 24/01/2001, the Chief Auditor submitted a report to the Municipal Commissioner pointing out therein that deemed date of promotion given to the Complainant was illegal. After receiving the report of the Auditor, the Municipal Commissioner issued a show

cause notice on 30/07/2001 to the Complainant. The Complainant gave reply to the show cause notice on 04/08/2001. On 30/12/2003, the Municipal Commissioner issued order cancelling the deemed date of promotion of Junior Clerk with effect from 17/12/1981 and fixed date of promotion as a Junior Clerk with effect from 01/05/1984.

5. The Complainant thereafter instituted Complaint (ULP) No. 56 of 2004 before the Tribunal challenging the order dated 30/12/2003. The Complainant also alleged that the Corporation has indulged in unfair labour practices. The Corporation resisted the complaint by filing written statement. On the basis of the pleadings of the parties, the Tribunal framed the necessary issues. The parties led evidence. After considering the material on record, by the impugned order, the Tribunal allowed the complaint as indicated hereinabove. It is against this order, the Corporation has instituted present petition under Article 226 of the Constitution of India.

6. In support of this petition, Mr.Patil strenuously contended that basically the order dated 14/07/1994 passed by the Municipal Commissioner giving deemed date of promotion to the Complainant as a Junior Clerk with effect from 17/12/1981 amounted to creation of imaginary post and making appointment of

the Complainant in that post with retrospective effect. This has resulted in severe financial burden on the Corporation. He submitted that by the impugned order, the Tribunal disposed of several complaints instituted by the employees of the Corporation raising identical grievances. This Court (Coram : Abhay S. Oka, J.) has allowed the Writ Petition No. 4091 of 2007 on 20/12/2007 by holding that there is no allegation in the complaint regarding the failure on the part of the Corporation to implement any award, settlement or agreement and therefore, Item 9 of Schedule IV of the Act is not attracted. The Tribunal has held that Items 5 & 10 of Schedule IV of the Act are not attracted. For all these reasons, he submitted that the impugned order deserves to be quashed and set aside, thereby allowing the Writ Petition.

7. On the other hand, Mr. Pratap Patil supported the impugned order. He submitted that from 23/06/1977, the Complainant was appointed as a Junior Clerk on daily wages basis by the then Nashik Road Devlali Municipal Council. He was continued upto 21/08/1978 as daily wages Octroi Clerk. On 07/11/1982, the Municipal Corporation of City of Nashik was constituted upon amalgamation of - (i) Nashik Municipal Council, (ii) Nashik Road Devlali Municipal Council, (iii) Satpur Municipal Council and some villages. On 07/11/1982, his services were

illegally terminated. He preferred Appeal before the Resident Deputy Collector. The Resident Deputy Collector directed authorities to absorb him as Octroi Clerk. He was again employed as such with effect from 17/12/1981 with continuity of service. He submitted that on 05/11/1982, Nashik Road Devlali Municipal Corporation terminated the services with effect from 05/11/1982. He approached the Urban Development Department of the State Government. He was thereafter reinstated with continuity in service with effect from 21/01/1982 as an Octroi Clerk on daily wages basis. He was absorbed as a regular Clerk with effect from 01/05/1984 in the scale of 260-495. He made several representations for absorbing him in the regular employment as a Clerk with effect from 17/12/1981. However, his request was not acceded to. The Complainant therefore, instituted Complaint (ULP) No.497 of 1989 before the Tribunal for directing the petitioner to confirm him in the post of Clerk with effect from 17/12/1981. On 14/07/1994, the Municipal Commissioner issued order No.631 treating him as a Clerk with effect from 17/12/1981 without payment of back-wages. Based on the order of 14/07/1994, the Deputy Municipal Commissioner (Administration) passed order on 25/07/1994 treating the Complainant on the post of Junior Clerk with effect from 17/12/1981 and accordingly, his pay-scale was also fixed. He accordingly, filed Purshis on 18/08/1994 before the Tribunal for

withdrawal of the complaint.

8. He submitted that on 07/02/1996, the Complainant was promoted as a Senior Clerk. By order dated 17/06/1998, he was given revised pay-scale for the post of Senior Clerk. He submitted that despite that, by order dated 30/12/2003, the Municipal Commissioner cancelled the deemed date of 17/12/1981 and fixed the the date of appointment as a Junior Clerk with effect from 01/05/1984. He submitted that the Tribunal rightly held that there was breach of agreement and accordingly held that the Corporation has committed unfair labour practice under Item 9 of Schedule IV of the Act. He also invited my attention to the affidavit dated 04/12/2008 made by the Complainant in this Petition. In paragraph 10, the Complainant has stated that the issue raised by him about an agreement between the parties was not considered by the Tribunal. He, therefore, submitted that no case is made out for invocation of powers under Article 226 of the Constitution of India.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Complainant was appointed as a Junior Clerk with effect from 01/05/1984. In September 1989, he passed L.S.G.D. examination. It is also evident from record that

the Complainant had earlier instituted Complaint (ULP) No.497 of 1989 before the Tribunal for directing the Corporation to confirm him in the post of Clerk with effect from 17/12/1981. On 14/07/1994, the Municipal Commissioner issued order No.631 treating him as a Clerk with effect from 17/12/1981 without payment of back-wages. Pursuant to that order, the Deputy Municipal Commissioner (Administration) passed order on 25/07/1984 treating the petitioner as a Junior Clerk with effect from 17/12/1981 and accordingly his pay-scale was fixed. The Complainant, therefore, filed Purshis for withdrawal of the complaint and accordingly, the complaint was allowed to be withdrawn.

10. Perusal of the impugned order shows that the Tribunal disposed of the complaints filed by the several employees by the common judgment. However, these aspects were not considered by the Tribunal. The Tribunal ought to have considered whether the order passed by the Municipal Commissioner on 14/07/1994 and the Deputy Municipal Commissioner (Administration) on 25/07/1994 were legal and valid. If the Tribunal comes to the conclusion that the said orders were not valid, it has to consider whether the Complaint (ULP) No.497 of 1989 deserves to be restored to the file of the Tribunal. If the Tribunal holds that the orders dated 14/07/1994 passed by the Municipal Commissioner

and 25/07/1994 passed by the Deputy Municipal Commissioner (Administration) are legal and valid then obviously, the question of restoration of the complaint will not arise.

11. Mr. M. L. Patil further relied upon decision of this Court in Writ Petition No. 4091 of 2007 dated 20/12/2007. He submitted that for the reasons set out therein, the impugned order deserves to be set aside. In paragraphs 10 & 11 of that judgment, this Court observed thus :

10. The learned Member of the Industrial Tribunal has held that Items 5 and 10 of Schedule IV of the said Act of 1971 are not attracted and only item which is attracted is Item 9 of Schedule IV. Therefore, the only question to be decided is whether item 9 of Schedule IV is attracted. In the present case it is obvious that there is no allegation in the complaint regarding the failure on the part of the Petitioner to implement any award, settlement or agreement. The learned Counsel for the Petitioner has relied upon a decision of this Court in the case of Divisional Manager v/s. Chimna Arjun Jadhav (2001 (4) Mah.L.J. 97). In paragraph 14 the learned Judge held thus:

"To attract item 9 of Schedule IV of the Act it was incumbent upon the complainants to establish that there was any award, settlement or agreement between the parties. In the absence of such evidence, it is not possible to conclude that the petition corporation had engaged in any unfair labour practice within the meaning of item 9 of Schedule IV of the Act".

11. Reliance has been placed by the learned Counsel for the Respondent on four different decisions of this Court, viz.:

1. 1996 (II) CLR 102, (Hindustan Lever Ltd. v/s. Hindustan Lever Mazdoor Sabha & others)
2. 1981 Mah.L.J. 316, (Petroleum Employees Union v/s. Industrial Court, Maharashtra, Bombay & anr.)
3. 2001 (4) Mah.L.J. 919, (Crest Communication Ltd. Mumbai & others V/s. Ms. Sheetal Shenoy.)

4. 2001 (4) Bom.C.R. 713, (Ceat Limited (Electronics Division) v/s. Anand Aba Saheb Hawaldar & others.)

Her submission based on aforesaid decisions is that an agreement between the parties will have to be inferred. It is very difficult to come to the conclusion that there existed any agreement between the parties which provided that the employment of the Respondent will be regularised right from the year 1976. In fact in paragraph 6 of the impugned Judgment and order, the learned Member has observed that the law does not provide for regularisation. In fact there is no finding recorded by the learned Member regarding existence of any agreement or settlement. The learned Judge has not drawn any inference regarding existence of any Agreement.

11. It is thus apparent that Item 9 of Schedule IV is not at all attracted. In the result the impugned order will have to be quashed and set aside.

12. Perusal of the complaint shows that there is no allegation as regards failure on the part of the petitioner to implement any award, settlement or agreement as contemplated by Item 9 of Schedule IV of the Act. In view thereof, I find that the decision in Writ Petition No. 4091 of 2007 squarely applies even to the facts of the present case.

13. In the light of the aforesaid discussion, petition succeeds and is allowed. The impugned order dated 17/08/2006 passed in Complaint (ULP) No.56 of 2004 is quashed and set aside and the Complaint is restored to the file of the Tribunal. All the contentions of the parties are expressly kept open. Rule is made absolute in the aforesaid terms. In the circumstances of the case, however, there shall be no order as to costs.

14. In view of the disposal of Writ Petition, nothing survives in Civil Application No.157 of 2015 filed by the Corporation for stay of the impugned judgment and order and the same is disposed of accordingly.

(R. G. KETKAR, J.)

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