

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 7143 OF 2007
WITH
CIVIL APPLICATION NO.154 OF 2015**

The Commissioner
Nashik Municipal Corporation .. Petitioner
Vs.
Ramnath Babanrao Sahane and another .. Respondents

Mr.M.L.Patil, Advocate for Petitioner.
Mr. Himanshu Kode, 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.
Himanshu Kode, 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. 105 of 2001. 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 deem 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 was appointed as a Helper by the then Nashik Municipal Council on 06/12/1979 in the pay-scale of 200-280. 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. In October, 1983, he passed Local Self Government Diploma (L.S.G.D.) examination. On 01/09/1984, he was promoted as a Junior Clerk in the scale of 260-495/-. On 13/08/1992, the Standing Committee and 17/09/1992, the General Body passed resolutions giving deemed date of promotion as a Junior Clerk with effect from 08/01/1979. In pursuance thereof, the Municipal Commissioner passed order on 06/11/1992. It is the case of the Complainant that he was entitled to be promoted as a Senior Clerk

with effect from 29/09/1989. By order dated 07/02/1996, he was promoted as a Senior Clerk. On 01/08/1996, he was promoted as an Assistant Superintendent. On 09/01/1997, order was passed giving him a deemed date of promotion as a Senior Clerk with effect from 29/09/1990 and Assistant Superintendent with effect from 07/02/1996. The difference in salary was however, not paid. The difference was paid on 07/02/1996 in respect of promotion to the post of Assistant Superintendent.

4. On 24/07/2000, the Chief Auditor gave a report and pointed out that the deemed date of promotion given to the Complainant was illegal. Similar report was given by the Chief Auditor on 24/01/2001. On 14/06/2001, the Municipal Commissioner passed order cancelling the deemed date of promotion as a Junior Clerk with effect from 08/01/1979 as also deemed date of promotion as a Senior Clerk with effect from 29/09/1989 and Assistant Superintendent with effect from 07/02/1996 and directed recovery of excess salary paid to the Complainant. The Commissioner also restored the date of promotion of the Complainant as a Senior Clerk with effect from 07/02/1996.

5. The Complainant instituted Complaint (ULP) No. 105 of 2001 before the Tribunal challenging the order dated 14/06/2001 passed

by the Municipal Commissioner. 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 the present petition under Article 226 of the Constitution of India.

6. In support of this petition, Mr.Patil submitted that the order of the Municipal Commissioner dated 14/06/2001 is legal and valid. He submitted that the order of the Municipal Commissioner passed on 06/11/1992 is illegal as Complainant was not working on the post of Junior Clerk with effect from 08/01/1979. By order dated 09/01/1997, the Complainant was given deemed date of promotion as a Junior Clerk on 29/09/1989 and as an Assistant Superintendent with effect from 07/02/1996. He submitted that this order is also illegal and it 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. Kode reiterated the submissions that were advanced before the Tribunal. He invited my attention to the affidavit-in-reply made by the respondent No.1. He submitted that on 13/08/1992, Standing Committee and on 17/09/1992, General Body passed resolutions giving him deemed date of promotion as a Junior Clerk with effect from 08/01/1979. In pursuance thereof, the Municipal Commissioner passed order on 06/11/1992. He further submitted that by order dated 09/01/1997, the Deputy Municipal Commissioner (Administration) gave deemed date of promotion as a Junior Clerk with effect from 29/09/1989 and as an Assistant Superintendent with effect from 07/02/1996. He submitted that the resolutions passed by the Standing Committee as also the General Body prevail over the orders passed by the Municipal Commissioner and Deputy Municipal Commissioner (Administration). He submitted that the promotion and the monetary benefits given to the

Complainant cannot be withdrawn as it was not fault of the Complainant. He further submitted that the appointment of the Complainant with the Corporation itself is a contract and / or an agreement, and therefore, failure to implement that agreement / contract amounts to commission of unfair labour practices under Item 9 of Schedule IV of the Act. He also submitted that the petition is also hopelessly barred by delay and laches. He, therefore, submitted that no case is made out for invocation of powers under Section 226 of the Constitution of India. For all these reasons, he submitted that the impugned order deserves to be quashed and set aside.

8. I have considered the rival submission made by the learned Counsel appearing for the parties. I have also perused the material on record. By order dated 14/06/2001 passed by the Deputy Municipal Commissioner (Administration), the deemed date of promotion given to the Complainant as a Junior Clerk with effect from 08/01/1979; as a Senior Clerk with effect from 29/09/1989 and as an Assistant Superintendent with effect from 07/02/1996 were cancelled. The moot question is whether the order passed by the Deputy Municipal Commissioner (Administration) is legal and valid. Mr. Patil submitted that the order dated 09/01/1997 amounted to creation of an imaginary post and making appointment

of a Complainant in that post with retrospective effect. I find merits in the submission of Mr. Patil. As noted earlier, the Complainant was promoted as a Junior Clerk with effect from 01/09/1984; as a Senior Clerk on 07/02/1996. Prior to that, he was working as a Junior Clerk. On 01/08/1996, he was promoted as Assistant Superintendent. In other words, prior to 07/02/1996, the Complainant was not working on the post of Senior Clerk. Thus, without working on the post of Junior Clerk between 08/01/1979 and 01/09/1984; Senior Clerk between 29/09/1989 and 07/02/1996, he was given deemed date of promotion as a Junior Clerk with effect from 08/01/1979 and as a Senior Clerk with effect from 29/09/1989. Similarly without working on the post of Assistant Clerk, from 07/02/1996, he was given that deemed date of promotion. I am, therefore, of the opinion that the order dated 09/01/1997 passed by the Deputy Municipal Commissioner (Administration) was illegal, null and void. In my opinion, the Municipal Commissioner was fully justified in canceling the deemed dates by passing the order on 14/06/2001.

9. Mr.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.

10. 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.

11. In the light of the aforesaid discussion, petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (b) and the Complaint (ULP) No. 105 of 2001 instituted by the Complainant stands dismissed. In the circumstances of the case, however, there shall be no order as to costs.

12. In view of the disposal of the Petition, nothing survives in Civil Application No.154 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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