

JPP

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

CIVIL WRIT PETITION NO. 465 OF 2015

CEO, Pune Zilla Parishad and Ors. ... Petitioners.

V/s.

Mr. Rajendra Rambhau Kank. ... Respondent.

Mr. Sanjeev Rairkar a/w. Nikhil Vidwans for the Petitioners.
Mr. P.M. Patel for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 24 AUGUST, 2015.

P.C. :-

By this Petition, Zilla Parishad, Pune challenges the order passed by the Industrial Court, Pune in Complaint (ULP) No. 168 of 2008 filed by the Respondent and directing that the Respondent be granted benefits of permanency as a Launch Driver with effect from 1 September 2008.

2. The Respondent filed a Complaint (ULP) No. 168 of 2008 in the Industrial Court, Pune under Section 28 r/w. Item Nos. 4,6 and 10 of MRTU & PULP Act. According to the Respondent he was appointed as a Launch Driver for the floating hospital run by

the Petitioner – Zilla Parishad on Chasakaman Lake, Taluka - Khed, Rajgurunagar. According to the Respondent, he worked continuously on this post and the work was a perennial nature. Only with a view to deprive the Respondent the benefits of permanency, certain artificial breaks were given. According to the Respondent, the post of Launch Driver was sanctioned on 30 December 2006 by way of a Government Resolution and in spite of the fact that the post is sanctioned and the Respondent was working on the post for several years, he was not being made permanent. Accordingly, the Respondent sought permanency in the services of the Petitioner – Zilla Parishad. The Petitioners filed their written statement and contended that the appointment of the Respondent was purely temporary. As per the terms and conditions of his appointment, his services were to be automatically terminated for non-renewal of contract. It was contended that as and when work was available, it was given to the Respondent and the Respondent is not entitled to benefits of permanency as sought for. It was also contended that the cause of action arose, according to the Respondent, in February 2008 however, the complaint has been filed after period of 90 days and it is beyond period of limitation.

3. The Industrial Court after considering the evidence on record by the impugned order dated 7 April 2014 granted benefits of permanency to the Respondent with effect from 1 September 2008. Mr. Sanjeev Rairkar, learned Counsel for the Petitioner

submitted that the complaint filed by the Respondent making a grievance regarding Unfair Labour Practice is filed beyond period of 90 days taking the starting point of limitation as February 2008 as contended by the Respondent. Mr. Pankaj Patel, learned Counsel for the Respondent has rightly contended that the complaint is made by the Respondent of an unfair labour practice of keeping the Respondent temporary or badli for years, there is no question of the complaint being barred by limitation, as it is a continuous cause of action. Therefore, the complaint making an allegation that the Respondent is not made permanent and is kept temporary for years cannot be dismissed only on the ground of limitation as contended.

4. Mr. Rairkar then submitted that there is no finding that the Respondent had completed 240 days and there is no discussion in the impugned judgment in that regard. He submitted that in view of the decision in the case of *Administrative Officer, Municipal School Board and Ors. v/s. Mohan E. Jagtap [2006 (2) Bom. C.R. 873]* it is mandatory on the part of Industrial Court to render this finding. He submitted in fact since the case of the Petitioner was that the Respondent was terminated from service for non-renewal of his contract, the complaint ought to have been filed in the Labour Court. This submission cannot be accepted. The Respondent had asserted in his complaint that even though the period of service specified in the written order had come to an end, he was continued in service as per oral directions and he

continues to be in service. The Petitioner did not lead any evidence and nothing is brought out in the cross-examination to discredit the claim put forth by the Respondent that he continued to be in service. If that was the factual position, there was no question of termination of service and consequent finding of 240 days or directing the Respondent to file a complaint in the Labour Court. Though it is true that the Industrial Court in the impugned Judgment has not in so many words stated that the Respondent had continued in service on the date of the complaint, but the fact that the Industrial Court noted that the Petitioner had not led any evidence and nothing substantial was brought on record by the Petitioner by way of cross-examination, and that he is directed to be made permanent, it is implicit in this direction that the stand of the Respondent that he was working as on date was accepted.

5. Apart from this there is one more reason not to interfere with the impugned order in equitable Jurisdiction. The Respondent has been working as a Launch Driver for several years. The post was created on 30 December 2006. Prior to the creation of post, the Petitioner itself had recommended to the Government that the Respondent be made permanent on that post. It has come on record that there are no trained Launch Drivers available in Employment Exchange or in open market. The Respondent himself is recommended by Employment Exchange. The work of a Launch Driver is of specialized nature and since he already has experience and there are no other candidate available and that the

Respondent is also recommended by Employment Exchange, I do not find any warrant to interfere in equitable jurisdiction of this Court and deprive the benefits of permanency granted by the Industrial Court to the Respondent. It is also to be noted that even though the Respondent has been working for several years, he is being made permanent only with effect from 1 September 2008.

6. In the circumstances, the Writ Petition cannot be entertained and is accordingly rejected.

(N.M. JAMDAR, J.)