

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2177 OF 1996
WITH
CIVIL APPLICATION NO. 5160 OF 2015

Mrs. Shubhada Dattatraya Phadake
an Indian Inhabitant of Nandurbar
residing at Behere Wada, Jayant Chowk,
Nandurbar, Dist. Dhule. ..Petitioner

Versus

1. President,
Nandurbar Nagar Parishad,
Nandurbar, District Dhule.

2. S.V.Vitkar,
Member, Industrial Court,
Nasik.

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Advocate for Petitioner : Shri R.R.Bangar
Advocate for Respondent 1 : Shri Y.B.Bolkar
h/f Shri R.B.Raghuvanshi
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2016
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 30.9.1993, by which, Complaint (ULP) No.1047 of 1989 has been dismissed.

2. Respondent No.2 is the Industrial Court and hence, stands deleted.

3. This petition was admitted on 28.8.1995 (filed on 7.3.1994) and Rule was expedited.

4. Grievance is that though the petitioner was working from 11.9.1975 as a Nurse with the Dispensary of the respondent - Municipal Council, she was illegally terminated on 8.7.1985. Her Complaint (ULP) No.54 of 1985 was allowed and she was granted reinstatement with continuity and full backwages. The Revision No. 27 of 1987 filed by the respondent was dismissed on 10.7.1987. She has been working continuously. Having completed 240 days in continuous service in each year, she deserves to be granted regularization. The Industrial Court has erroneously dismissed her complaint without proper application of mind.

5. The Industrial Court lost sight of the fact that the petitioner could not be deprived of permanency and regularization, considering her continuous employment. One Mrs. Anandi Jayakar has been made permanent and that establishes the malafide intention of the respondent. The impugned judgment, therefore, deserves to be quashed and set aside.

6. Learned Advocate for the respondent No.1 has supported the impugned judgment. He submits that as the petitioner had

approached this Court in Writ Petition No.6393 of 1987, the direction given by this Court was binding upon the petitioner. The Industrial Court has rightly considered the direction of this Court and has dismissed the complaint.

7. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

8. There is no dispute that the petitioner was the respondent before this Court in Writ Petition No.6393 of 1987. On 13.12.1989, this Court passed the following order:-

“ The petitioner shall continue the respondent in employment on daily wages muster roll without any break until she would be permanently absorbed as a Nurse in the hospital on her selection by the competent authority.

The respondent shall apply for the post of Nurse as and when such advertisement is given.”

9. It is informed by the respondent / management that after such an advertisement was published, the petitioner had applied and was not selected.

10. In my view, the Industrial Court had rightly refrained from granting an order of absorption in favour of the petitioner

considering the direction of this Court, reproduced above. When this Court had directed the petitioner to apply for the post of Nurse, as and when an advertisement was published, her non-selection would not have created a right for absorption and the Industrial Court had rightly refrained from granting her such absorption.

11. In the light of the above, this petition being devoid of merits is, therefore, dismissed. Rule is discharge.

12. Pending Civil Application would not survive in the light of this judgment and is, therefore, disposed off.

(RAVINDRA V. GHUGE, J.)

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