

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4618 OF 2016

The Commissioner,
Jalgaon City Municipal
Corporation, Jalgaon.

..Petitioner

Versus

Smt. Sunanda Kashinath
Choudhari, age 49 years,
Occupation Nil, r/o Joshi Peth,
Near Panjarpole Water Tank,
Jalgaon.

..Respondent

...

Advocate for Petitioner : Shri Swamy M.C. h/f Shri Gunale V.D.
Advocate for Respondent : Shri Patil S.R.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: August 30, 2016

...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment and order dated

7.12.2015, delivered by the Industrial Court, Jalgaon by which Complaint (ULP) No.5 of 2014, filed by the respondent / employee has been allowed.

5. Shri Gunale, learned Advocate for the petitioner has strenuously criticized the impugned judgment. He relies upon the judgment of the Honourable Supreme Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], to contend that the respondent is a back door entrant and, therefore, she could not be regularized in the employment by the impugned judgment.

6. He further submits that though the proposal dated 13.6.2001, forwarded by the petitioner to the Government for seeking regularization of daily wagers inclusive of the respondent is pending, the earlier proposal has been rejected.

7. He further submits that since the petitioner does not have the authority of creating posts, it cannot be held guilty of unfair labour practice. The proposal of the respondent dated 13.6.2001, at Exhibit U-19 before the Industrial Court was forwarded by the petitioner and hence, there can be no declaration of unfair labour practice against the respondent.

8. Shri Patil, learned Advocate for the respondent has supported the impugned judgment. He clarifies that the proposal of the respondent forwarded earlier was rejected because she was terminated, her termination was set aside by the Labour Court and the matter was subjudice. However, the present proposal Exhibit U-19 is pending and the directions to decide the same urgently, since it is pending for more than 15 years, needs to be issued in this matter.

9. I find that the respondent has been working with the petitioner from 1988 as an Aaya in the hospital operated by the Corporation. She has put in about 28 years in service. Exhibit U/17, which is a communication dated 10.8.2013, by the Establishment Superintendent to the respondent employee would indicate that 3 posts of Aaya and 9 posts of Peons are vacant.

10. The proposal with regard to the respondent, Exhibit U-19 is pending decision for the last 15 years. Considering the above facts, there can be no dispute that the respondent / employee deserves to be regularized in service on the post of Aaya and the date of regularization should be from the date when the first post of Aaya amongst the three, mentioned in Exhibit U-17 has fallen vacant.

11. Paragraph No.44 of the judgment of the Honourable Apex Court in the Umadevi's case (supra) reads as under:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of

the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

12. As such, this petition is partly allowed only to the extent of setting aside the declaration of ULP, only under item 6 of Schedule IV against the petitioner, since the petitioner has taken efforts in forwarding the proposal of the respondent for regularization. The impugned judgment would, therefore, be modified with the direction that the petitioner and the appropriate State authorities / department shall accord approval to the regularization of the respondent from the date on which the first post amongst the three available posts of Aaya has fallen vacant. The respondent shall, therefore, be entitled to all incidental and consequential benefits, inclusive of monetary benefits from the said date.

13. This direction shall be complied with by the petitioner and the State authorities within a period of sixteen weeks from today. The petitioner shall be under an obligation to place a copy of this judgment along with the communication Exhibit U-17 before the Director of Municipal Administration as expeditiously as possible and within a period of three weeks from today.

14. Rule is made partly absolute in the above terms.

15. No costs.

(RAVINDRA V. GHUGE, J.)

...

akl/d