

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 4151 OF 1995

The President,
Municipal Council,
Parola, Dist. Jalgaon.

... PETITIONER
(Ori. Party No.1)

VERSUS

Ashok Sitaram Patil,
C/o : Khandesh General Kamgar Union,
Trade Union Centre, Amalner,
Dist. Jalgaon.

... RESPONDENT
(Ori. Party No.2 – Workman)

WITH

WRIT PETITION NO. 5716 OF 1995

Ashok s/o. Sitaram Patil
(Died through Legal representatives)

- 1(a) Shrimati. Aprukbai w/o Ashok Patil,
Age:- 55, Occu:- Household,
- 1(b) Shri. Ganesh s/o Ashok Patil,
Age:- 27, Occu:- service,
- 1(c) Shri Nilesh s/o Ashok Patil,
Age:- 25, Occu:- Education,
- 1(d) Sou. Manisha w/o Pramod Patil,
Age:- 35, Occu:- Household,
- 1(e) Sou. Shital w/o Sonap Patil,
Age:- 33, Occu:- Household,

All Resident of 41-B, Parvati Sadan,
Vidyanagar, Swami Narayan Road,
Deopur, Dhule, Tq:- & District : Dhule.

... PETITIONERS

VERSUS

1. The Municipal Council, Parola,
(through its Chief Officer),
Tq. Parola, District – Jalgaon.

2. The Labour Court, Jalgaon.

... RESPONDENTS

...
Mr. R. L. Kute, Advocate h/f Mr. R. N. Dhorde, Senior Counsel,
for Municipal Council (Employer)

Mr. A. S. Shelke, Advocate for the Employee.
...

CORAM : **P. R. BORA, J.**

DATE : 28th June, 2016.

ORAL JUDGMENT:

. Since in both these writ petitions the challenge is to the order passed by the Labour Court, Jalgaon in reference (IDA) No.26 of 1994 on 18th April, 1995, I deem it appropriate to decide both these writ petitions by a common reasoning.

2 Writ Petition No.4151 of 1995 is filed by the employer i.e. original Respondent, whereas Writ Petition No.5716 of 1995 is filed by the employee i.e. original Complainant.

3 In the petition filed by the employee, it is his contention

that the learned Labour Judge ought to have allowed his reference in toto and must have directed his reinstatement with continuity of service and with full back-wages. Whereas in the petition filed by the employer, the contention raised is that the reference was liable to be dismissed and even no direction could have been passed by the learned Labour Judge directing the employer to pay the compensation amounting to Rs.27,000/- to the employee.

4 On a dispute raised by the employee in regard to his alleged termination by the employer, a reference was made by the Deputy Commissioner of Labour, Nasik and was forwarded to Labour Court, Jalgaon for its adjudication.

5 It was the contention of the employee before the Labour Court that though he has worked with the employer / Municipal Council for continuous period of more than 240 days, his services were abruptly terminated without giving him any notice or retrenchment compensation. It was further contended by him that no seniority list was published before terminating his services and the employees junior to him, were retained and his services were terminated. As against it, it was the contention of the employer /

Municipal Council that the present employee was appointed on purely temporary basis and he had never worked continuously for the period of more than 240 days. Though it was admitted by the employer that the employee worked with the Municipal Council with effect from 23rd May, 1977 to 25th November, 1978, it was the further contention that, during the said period, three appointment orders were issued to him and there were gaps in between the appointments. It was thus contended that in none of the spell, the employee has worked continuously for more than 240 days, and therefore, there was no question of issuing a notice to the said employee or paying him retrenchment compensation. It was further contended that a clear understanding was given to the employee that his appointment will continue till a duly selected candidate is recommended from the State Selection Board, Aurangabad. It was also the contention of the employer / Municipal Council that since the duly selected candidate from the State Selection Board was made available and was accordingly given appointment on the post of Naka Karkun, the employee was relieved from the services.

6 The learned Labour Judge after having assessed the oral as well as the documentary evidence brought before it, allowed the

said reference in part. The Labour Court did not accept the request of the employee for his reinstatement with continuity of service and back-wages, but find it appropriate to grant him compensation of Rs.27,000/- and directed the employer / Municipal Council to pay the said amount of compensation to him. Against the order so passed, as mentioned hereinabove, the first party and the second party in the said reference, both have approached this Court by filing the respective writ petitions.

7 Shri R. L. Kute, learned counsel holding for Shri R. N. Dhorde, Senior Counsel, for the Municipal Council (employer) submitted that despite ample evidence being brought on record showing that the appointment of the employee was on purely temporary basis and further that he had never worked continuously for the period more than 240 days in one year, the Labour Court instead of rejecting the reference, has cast burden on the Municipal Council of paying compensation to the tune of Rs.27,000/- to the employee. The learned counsel submitted that there was no vested right in the employee so as to claim any relief invoking the provisions of the Industrial Disputes Act. The learned counsel further submitted that the employer has brought on record ample evidence showing that the

Municipal Council was not empowered directly to recruit the post of Naka clerk and was required to fill the said post by giving an appointment to a person recommended from the State Selection Board, Aurangabad. The learned counsel further submitted that the evidence was brought on record showing that such candidate was recommended by the State Selection Board and was accordingly appointed by the Municipal Council on the post of Naka clerk. The learned counsel further submitted that from the evidence on record, it was quite clear that no unfair labour practice was committed by the employer / Municipal Council, and as such, no relief could have been granted by the Labour Judge against the Municipal Council. The learned counsel, therefore, prayed for setting aside the impugned order.

8 I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. I have perused the impugned judgment and the material on record. The employee was admittedly appointed on temporary basis. Though it is the contention of the employer that the employee did not continuously work for more than 240 days in one calender year, the evidence on record shows that the employee had worked with the Municipal

Council from 23rd May, 1977 till 25th November, 1978 with two technical breaks. It is further not in dispute that the Municipal Council was not having right or authority to carry out recruitment for the appointment to the post of Naka Karkun. The said post was required to be filled in by inviting the names from the State Selection Board, Aurangabad. The evidence on record shows that after the employee in the present matter was terminated, the Municipal Council has appointed a person by name Pawar, who was duly selected by the State Selection Board, Aurangabad and was recommended to be appointed on the post of Naka Karkun, in the Municipal Council, Parola. In view of the fact that the post on which the employee claims to have worked could not have been filled in by the Municipal Council or Council could not have absorbed the disputant employee on the said post, it is difficult to accept that by giving temporary appointment to the employee, any unfair labour practice was committed by the Municipal Council. The employee concerned in his cross-examination before the Labour Court has admitted that he was appointed on temporary basis and that two times technical breaks were given to him. The employee concerned has further admitted that the person who was appointed on the post of Naka Karkun was a selectee from

the State Selection Board, Aurangabad. Considering the admitted facts on record, it does not appear to me that the Labour Court has committed any error in recording a finding that the employee concerned was not entitled for the relief of his reinstatement. In view of the fact that, the learned Labour Court has rightly struck the balance by awarding compensation of Rs.27,000/- to the employee, there appears no merit in the petition filed by the employee and the same deserves to be dismissed.

9 The employer has challenged the order so far as it relates to the award of compensation to the tune of Rs.27,000/- to the employee. As has been noted hereinabove, it is the contention of the employer that when no unfair labour practice is proved against the employer, there was no reason for the Labour Court to award compensation. The contention so raised cannot be accepted in view of the reasons recorded by the Labour Court in the impugned judgment. The Labour Court has observed that though it was the case of the employer / Municipal Council that the appointments time to time given were with a specific stipulation that the services of the employee would come to an end on the appointment of a regularly appointed candidate recommended by the State Selection Board,

Aurangabad, no such appointment order was produced on record. The Labour Court has further observed that the breaks given in service to the employee were technical and the employee must be held to be in continuous service of the employer / Municipal Council during the period from 23rd May, 1977 to 25th November, 1978. It is further observed by the learned Labour Judge that some junior persons were retained in the services by the employer / Municipal Council and the services of the employee came to be terminated. In the circumstances, though the learned Labour Judge refused the relief of reinstatement to the employee, find it just and appropriate to award the compensation of the amount equivalent to three years pay on the basis of last drawn wages by the employee. It does not appear to me that in awarding the compensation, as such the learned Labour Judge has committed any error. In the circumstances, the petition filed by the employer / Municipal Council also deserves to be dismissed.

10 During the course of arguments, it was brought to my notice that at the time of admitting the petition filed by the employer, the employer was directed to deposit a sum of Rs.25,000/- in this Court. The record shows that accordingly the said amount was

deposited and was permitted to be withdrawn by the employee. In view of the fact that the petition filed by the Municipal Council has been rejected, the legal heirs of the deceased are entitled to receive the balance amount in terms of the impugned order. It would be in the fairness of things if the employer / Municipal Council at its own makes the payment in terms of the impugned order to the legal heirs of the deceased employee. In the result, the following order –

ORDER

- I. Both the aforesaid writ petitions stand dismissed without any order as to the costs. Rule discharged.
- II. Pending civil application stands disposed of.

[P. R. BORA, J.]

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