

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3406 OF 1997

Ahmednagar Municipal Council,
Ahmednagar, through its
Chief Officer, Ahmednagar. ..Petitioner

Versus

Shaikh Manzur Ahmed Shamshoddin
Age 35 years, Occupation Nil,
R/o 5904, Takhti Darwaja,
Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri V.S.Bedre
Advocate for Respondent : Shri Yuvraj S Choudhari
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 20, 2016
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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and order dated 22.6.1995 delivered by the Industrial Court, by which, Revision (ULP) No.38 of 1992, filed by the respondent was partly allowed and he was granted reinstatement with continuity and 50% backwages. By the same judgment, Revision (ULP) No.51 of 1992, filed by the petitioner was dismissed.

2. This petition was admitted and the direction to pay backwages was stayed on 28.8.1997. Consequentially, the respondent was reinstated in service on 16.9.1997. It is informed by the respondent

that he worked from 16.9.1997 and retired upon attaining the age of superannuation as a Sanitary Inspector in 2015.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides.

4. The respondent had approached the Labour Court in Complaint (ULP) No.8 of 1987 on the ground that though he was engaged as a Sanitary Inspector on 10.7.1980, he was not granted permanency. He filed Complaint (ULP) No.370 of 1986 before the Industrial Court for seeing permanency, on 28.11.1986. Due to the interim orders of the Industrial Court, he had continued in service after being reinstated on 3.12.2086. Later on, the said relief was vacated and he was terminated on 5.1.1987.

5. In his Complaint (ULP) No.8 of 1987 before the Labour Court, the issue as to whether he is a workman or not being a Sanitary Inspector, was not gone into. Nevertheless, the Labour Court concluded that the petitioner has to recruit Sanitary Inspectors by following the procedure of selection conducted by the Regional Selection Board. Several candidates were selected and the respondent was not selected. Considering this aspect, the Labour Court concluded that an amount of Rs.10,000/- (as on 7.7.1992) was sufficient compensation towards retrenchment compensation.

6. The Industrial Court, by the impugned judgment, concluded that in an interview, the respondent was selected though he was temporarily engaged. He continued for about 5 years and was disengaged. It was further concluded that though the candidates have to be selected through the Regional Selection Board, some of the candidates were appointed through agreements. It was observed by the Industrial Court in paragraph No.7 (*in verbatim*) as under:-

“ If we perused the findings given by the learned labour court it appears that on going through the various appointment letters on record it will be seen the Resp. has mentioned in it that the appointment is subject to the selection of Regional Selection Board. If it so, then the orig. Resp. ought to have wait till the candidates comes from Regional Selection Board. Secondly, the candidates who were appointed referred above have not recruited through Regional Selection Board. There is no documentary evidence on record to show that the orig. Resp. had obtained permission from Govt. to appoint Sanitary Inspector after forming Local interview committee and Resp. has exempted from appointing a candidate through Regional Selection Board. In such circumstance, there is clearly violation of seniority list. It is also clear that Rajendra Ramdin is junior to the orig. comp. It is also material to note that the comp. was initially appointed after holding his interview. All these aspect of evidence, if considered then the conclusion is that, the labour Court has not considered the evidence, on record properly. Due to non-consideration the findings of the Labour Courts amounts perverse. Therefore, I have no

alternative except to accept the submission of the Adv. for the orig. complainant. i.e. the reinstatement follows continuity of service & back-wages.....”

7. I find that the findings of the Industrial Court cannot be sustained for the reason that the non-selection of the respondent for regular appointment as Sanitary Inspector, would not entitle him to a relief of reinstatement on the ground of violation of seniority list. When the Regional Selection Board was to select candidates for regular appointments as Sanitary Inspectors, disengagement of temporary Sanitary Inspectors and violation of seniority list would not make the case of the respondent any better. It is not brought on record that junior persons, who have also been temporarily engaged as Sanitary Inspectors have been regularized in service without being selected through any selection process. In fact, the similarly placed colleagues of the respondent were selected through a selection process and the respondent herein was not selected in that process.

8. The impugned judgment of the Industrial Court is, therefore, perverse and erroneous since the view taken by the Industrial Court cannot be sustained in matters of public employment. However, since this Court did not stay the direction of reinstatement on 20.8.1997, the respondent was reinstated on 16.9.1997, he continued upto his superannuation in 2015 and it is stated that he was also given time bound promotions and all service benefits. In this

backdrop, it would be harsh to conclude that the respondent was not entitled to these benefits and more so, when he is now leading a retired life.

9. In the light of the above, I deem it proper to deprive the backwages granted by the Industrial Court to the respondent, since the impugned judgment is unsustainable.

10. In the light of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 22.6.1995 is set aside. Revision (ULP) No.51 of 1992 filed by the petitioner stands allowed and Revision (ULP) No.38 of 1992 filed by the respondent stands dismissed. Nevertheless, the direction of the Labour Court granting Rs.10,000/- compensation shall stand merged in the retiral benefits paid to the respondent. Needless to state, the petitioner shall be precluded from depriving the respondent of his retiral benefits and there shall be no recovery of any sort from the respondent, pursuant to the conclusions of this Court.

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

(RAVINDRA V. GHUGE, J.)

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