

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4447 OF 2001

Sangamner Nagar Palika,
Sangamner, Dist. Ahmednagar
through its Chief Officer.

..Petitioner

Versus

Sau.Sunanda Bhagwan Saskar,
Age 40 years, Occ. Service,
R/o Devi Galli, Sangamner,
District Ahmednagar.

..Respondent

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Advocate for Petitioner : Shri V.S.Bedre
Advocate for Respondent : Shri A.S.Shelke h/f Shri S.K.Shelke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 08, 2016

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the judgment and order dated 17.8.2000, by which, Complaint (ULP) No.59 of 1996 filed by the respondent has been allowed and the respondent is granted permanency as a Full Trained Nurse from January 1992.

2. The operative part of the Industrial Court's order (*in verbatim*) reads as under:-

“1. The complaint is allowed.

2. It is hereby declared that the respondent has been

engaging into unfair labour practice under items 6 & 9 of Schedule IV of the M.R.T.U. & P.U.L.P Act, 1971.

3. The respondent is hereby desist from engaging into unfair labour practices as declared.

4. The respondent is directed to issue permanency order giving status of permanency to the complainant as Trained Nurse from January, 1992 and pay the arrears of wages arising on application of 4th Pay Commission.

5. The respondent is further directed to release the yearly increments and pay the arrears of the wages after application of increment and fixing the pay scale of the complainant at par with the other Trained Nurses.”

3. By an order dated 11.12.2001, while admitting this petition, this Court stayed Clause (4) reproduced above.

4. By order dated 3.5.2013 in Civil Application No.534 of 2013, this Court directed the petitioner to adhere to Rule 44 of the Maharashtra Civil Services (Pay) Rules, 1981 and make the payment accordingly and in terms of the time scale payable.

5. Both the learned Advocates submit that the respondent is a Full Trained Nurse working in the Cottage Hospital in the Sangamner Municipal Council and she would be superannuating on 31.12.2016.

6. I have considered the strenuous submissions of Shri Bedre and Shri Shelke for the petitioner and the respondent. There is no dispute that the respondent is a Full Trained Nurse and has been working with the petitioner from 13.3.1989. She would thus be retiring on 31.12.2016 after having put in 27 years with the petitioner.

7. There is no dispute about the manner of selection and appointment of the respondent. The only ground raised is that her name was not recommended by the Regional Selection Board at the time of her appointment in 1989.

8. In my view, considering the peculiar facts as above and in the light of paragraph No.44 of the judgment of the Honourable Apex Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], no interference is called for in the impugned judgment to the extent of grant of permanency.

9. However, it is settled law that in State instrumentalities like the petitioner, regularization can be ordered only if there is a permanent vacant post. Though Shri Shelke strenuously submits that the post of Full Trained Nurse has been available right from the date of appointment of the respondent, it cannot be ignored that the

complaint was filed on 26.2.1996. As such, Clause (4) of the impugned judgment needs to be modified so as to be made effective from the date of filing of the complaint, which is 26.2.1996.

10. The petitioner shall, therefore, forward the proposal of the respondent expeditiously, within a period of four weeks from today, to the Director of Municipal Administration, who shall accordingly, decide the same with utmost urgency and expeditiously, not later than four weeks from the date of receipt of the proposal and shall accord approval to the regularization of the respondent / employee with effect from 26.2.1996, keeping in view the award of the Industrial Tribunal, dated 25.1.1967, delivered in Reference (IT) No.195 of 1966. No extension of time shall be prayed for by the petitioner or the Director of Municipal Administration.

11. The petition is partly allowed and the Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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