

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3440 OF 2016

BHAGWAN DHUDKU PATIL
VERSUS
CHIEF OFFICER, MUNICIPAL COUNCIL, JALGAON & ANR

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Advocate for Petitioner : Shri Patil Sandesh R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 28, 2016

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PER COURT :-

1. The petitioner is aggrieved by the judgment and order dated 25.3.2014, by which, his Complaint (ULP) No.54 of 2005 has been partly allowed and he has been granted lump sum compensation of Rs.4,68,000/- in lieu of reinstatement and backwages. The petitioner is also aggrieved by the judgment and order dated 20.6.2015, delivered by the Industrial Court by which his Revision (ULP) No.11 of 2014 has been dismissed.

2. Shri Patil, learned Advocate for the petitioner vehemently contends that though he was serving as a Compounder in the Health Department of the respondent Municipal Council from 29.1.1992, he has been retrenched on the ground of abolition of the post by the order made effective from 24.10.2005.

3. His further grievance is that he was in fact compulsorily retired from service on grounds of proved mis-conducts with effect from 24.3.2005. He

could have earned his retiral benefits. Subsequently, since the post of Compounder was abolished, the Municipal Council resolved to retrench his services by treating him in service from 24.10.2005. It is, therefore, contended that the respondent could not have retrenched the petitioner on the ground that the post was abolished. Other employees, though not working as Compounders, have been absorbed elsewhere on equivalent posts, since the Hospital at issue, operated by the Municipal Council, has been closed down.

4. Shri Patil further submits that in the event equivalent posts are vacant with the respondent, he could be absorbed on the said post even in future. He further submits that the petitioner has gathered some information under the Right to Information Act, which would indicate that there are a few vacant posts available with the respondent / Municipal Council.

5. I have considered the submissions of the learned Advocate and have gone through the impugned judgments.

6. There is no dispute that on account of the closing down of the Dispensary of the respondent and the abolition of the post of Compounder, the petitioner has been retrenched from service. It is also not in dispute that he was earlier compulsorily retired by order dated 24.3.2005 since he was held guilty of the charges levelled upon him, in an enquiry.

7. Though I find it quite unusual, the Municipal Council in its wisdom has recalled the order of compulsory retirement and has retrenched the petitioner w.e.f. 24.3.2005. The Labour Court has granted compensation to the petitioner for an amount of Rs.4,68,000/- in lieu of reinstatement and backwages. Apparently, the respondent / Council has accepted the judgment of the Labour Court in the light of the fact that it did not file a Revision Petition for challenging the said judgment, inasmuch as, it has not filed a Writ Petition before this Court.

8. I also find from the judgment of the Industrial Court that reinstatement has not been granted to the petitioner on account of the abolition of the post. Since the Labour Court was convinced that the law of retrenchment was not fully complied with, considering the 13 years of service put in by the petitioner, compensation of Rs.4,68,000/- has been awarded.

9. It is trite law that on abolition of a post, the person who is said to be occupying the said post or the junior most in the said category of employees, has to be retrenched. It is to be left to the establishment to accommodate an employee in the event any equivalent post is vacant. No such evidence was brought before the Labour Court or the Industrial Court.

10. In the light of the above, considering the substantial compensation awarded by the Labour Court, I do not find that the impugned judgments could be termed as being perverse or erroneous. It is stated that the

petitioner has not accepted the said amount of compensation, which has been offered to him by the Municipal Council. Needless to state, the petitioner is at liberty to accept the said compensation amount without prejudice to his rights.

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

12. At this juncture, learned Advocate for the petitioner submits that he may make a representation to the Municipal Council for absorption, if any equivalent post is available at any time in future. This Court is not required to express any opinion on the said contention since it is an issue between the petitioner and the Municipal Council.

(RAVINDRA V. GHUGE, J.)

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