

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11984 OF 2014

The Chief Officer,
Municipal Council Bhusawal,
Tq. Bhusawal, Dist.Jalgaon.

..Petitioner

Versus

Vijaykumar Dnyaneshwar Goralkar,
Age 43 years, occ.Service,
R/o 15, Pralhad nagar,
Varangaon Road, Bhusawal,
District Jalgaon.

..Respondent

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Advocate for Petitioner : Shri Wani Girish V.
Advocate for Respondent : Shri Patil S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 17, 2016

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ORAL JUDGMENT :-

1. Heard.
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 21.2.2014 delivered by the Industrial Court, Jalgaon, by which, Complaint (ULP) No.66 of 2008, filed by the respondent has been partly allowed.

5. Shri Wani, learned Advocate for the petitioner has strenuously criticized the impugned judgment. Contention is that though the respondent has been working as a Sanitary Inspector from 1.8.2002 and is in employment even today, his entry in service can be termed as being a back door entry. While responding to his ULP complaint before the Industrial Court, the petitioner has submitted its written statement denying that there was any post of Sanitary Inspector vacant or available with the petitioner. The petitioner can neither create posts nor appoint any person on such posts without following the due procedure of law. Shri Wani further submits that an employee can be appointed only through the District Selection Board or the Maharashtra Public Service Commission. Merely because the respondent has completed 240 days in continuous employment and has been working with the petitioner, would not entitle him to seek the benefit of regularization.

6. He further submits that the work of sanitation is performed by the petitioner through contracts. The basic appointment of the petitioner was without following any procedure. His temporary engagements were a result of political influence and such an appointment cannot be regularized.

7. He further submits that the Industrial Court should have considered these aspects before granting regularization. In fact, as the petitioner can neither create post nor independently appoint any person on a vacant post, the declaration of ULP made by the Industrial Court vide the impugned judgment is a perverse and erroneous conclusion. He, therefore, submits

that this petition be allowed and the impugned judgment be quashed and set aside.

8. Shri Patil, learned Advocate appearing on behalf of the respondent submits that though he was appointed on 1.8.2002 by the petitioner, till he made a claim for regularization, the petitioner had no grievance as regards the nature of his appointment. It is only after he made a claim for regularization after working for almost six years, that the petitioner suddenly realized that his appointment was made in an irregular manner.

9. He further submits that it is not the contention of the petitioner that the respondent is incompetent or is not qualified to work as a Sanitary Inspector. In short, the petitioner does not contend that his appointment is illegal. It is only contended that his appointment is irregular since he was appointed without following a particular procedure. He further states that as on date he has put in about 14 years in employment. His past record is unblemished and no disciplinary proceedings are pending against him.

10. I have considered the submissions of the learned Advocates.

11. This Court had called upon Shri Wani to respond to the document at Exhibit "X", which is the information received by the respondent from the petitioner under the Right to Information Act, indicating therein that newly created two posts of Sanitary Inspector are available. Shri Wani tenders across the Bar, a communication dated 29.2.2016, which is marked as

Exhibit “Y” for identification. It is indicated by Exhibit “Y” that presently, there are three posts in the Class III category of Sanitary Inspectors that are vacant. They have to be filled in by following the due procedure of law and the petitioner does not have the powers to issue any appointment order without the Selection Process having been conducted by the District Selection Committee.

12. In the light of the above, I do not find that there is any dispute as regards the fact of appointment of the respondent, his unblemished past service and his discharging of duties as on date. He has put in about 14 years in employment. The Industrial Court has considered the oral and documentary evidence and on the basis of which the Complaint filed by the respondent was partly allowed.

13. The Honourable Supreme Court in the matter of Secretary, State of Karnataka Vs. Umadevi & Others [(2006) 4 SCC 1], has held in paragraph No.44 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.”

14. It is thus apparent that the Honourable Supreme Court has considered the difference between the irregular appointments and illegal appointment. Directions have been issued to regularize the irregular appointments, in relation to those employees who have worked for ten years or more.

15. Considering the above, I deem it proper to direct the petitioner to regularize the petitioner on one of the three posts of Sanitary Inspectors, which are vacant from the date the said post has been created.

16. This petition being devoid of merits is, therefore, dismissed.

17. The petitioner shall accordingly submit the proposal of the

respondent for his regularization as Sanitary Inspector on one of the three posts that are available. The proposal shall be forwarded within one month from today and the concerned competent authority shall pass necessary orders within three months from the date of receipt of the proposal, thereby granting regularization with incidental benefits to the respondent from the date on which the post of Sanitary Inspector now available has been created.

18. Rule is discharged.

19. The petitioner shall act on the print out copy of this judgment obtained from the official website of the Bombay High Court.

(RAVINDRA V. GHUGE, J.)

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