

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11934 OF 2014

The Dhule Municipal Corporation,
Dhule, District Dhule.
Through it's Chief Officer.

...PETITIONER

-VERSUS-

Shri Natha Uda Pawar,
Age : 60 years, Occ : Retired,
R/o 116, Shivaji Colony,
Highway Crossing, Deopur,
Dhule, District Dhule.

...RESPONDENT

...

Advocate for Petitioner : Shri Desale Nilesh N.

Advocate for Respondents : Shri Patil Shrikant S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner Municipal Corporation is aggrieved by the impugned judgment and order dated 27.11.2013 delivered by the Industrial Court, Dhule by which Complaint (ULP) No.17/2007 filed by

the Respondent has been partly allowed.

3 Shri Desale, learned Advocate for the Petitioner, submits that the Respondent was initially appointed as a Sanitary Clerk in 1981 and he was promoted as a Head Clerk in 1993. In 1997, he was promoted as an Accountant.

4 He further submits that the Respondent was given temporary charge of the Nagar Sachiv (Secretary) in the Petitioner Corporation since the said post had fallen vacant and was yet to be filled in. For appointing a regular Secretary (Nagar Sachiv), the Petitioner Corporation has to follow a particular procedure. The qualification for appointment as a Secretary (Nagar Sachiv) is Graduation with 10 years of experience in the employment of the Petitioner Corporation. The said post has to be sanctioned by the State Government. The Respondent was SSC with Diploma in Agriculture (two years). He was, therefore, not qualified to be appointed as a regular Secretary.

5 Shri Desale then submits that the Respondent was given an additional charge of Secretary from 29.06.2006. He preferred the above referred complaint on 05.09.2007 invoking Items 6 and 9 of Schedule IV of the MRTU & PULP Act, 1971. The Respondent prayed in the said

complaint that he should be granted regularization as a Secretary and be bestowed with all benefits incidental and consequential thereto. By the impugned judgment, the Industrial Court has partly allowed the complaint and has directed the Petitioner Corporation to grant benefits and status of Secretary to the Respondent. Shri Desale, therefore, submits that this relief could not have been granted by the Industrial Court considering the fact that merely holding an additional charge of the said position would not entitle the Respondent to seek regularization on the said post.

6 Shri Desale submits that there is no provision by virtue of which an employee could be granted additional remuneration if he is holding an additional charge of a superior post for some duration.

7 Shri Patil, learned Advocate for the Respondent, has strenuously supported the impugned judgment. The contention is that though the Respondent sought voluntary retirement (VR) on 26.08.2009 and has retired since then, he was working as Secretary from 29.06.2006 to 26.08.2009. He frankly submits that the Respondent was not appointed through a proper selection process to the said post. He had held the charge for the said post and has discharged his duties as a Secretary.

8 Shri Patil further submits that the Rules do not provide

additional remuneration to any employee who holds additional charge of a higher post and discharges his duties. He, therefore, submits that the impugned judgment is neither erroneous nor perverse and does not call for any interference.

9 I have considered the submissions of the learned Advocates as have been recorded herein above.

10 It is undisputed that the qualification for regular appointment as a Secretary is Graduation and 10 years of experience in the employment of the Petitioner Corporation. It is also undisputed that the Respondent has acquired the qualification of SSC and Diploma in Agriculture. In the light of the Rules, the Respondent was not entitled for being appointed as a Secretary through the selection process.

11 The Industrial Court while partly allowing the complaint has issued the following direction to the Petitioner :-

“(3) Respondent is hereby directed to give the benefits, status and the pay scale of the post of Nagar Sachiv (Secretary) and the consequential monetary benefits of the said post to the Complainant with effect from 29.06.2006 till 26.08.2009 within the period of 3 months from the date of this order.”

12 The Industrial Court in paragraph 17 of the judgment has

concluded as under:-

“17. The record indicates that, the Complainant is getting pay-scale of the Accountant though his qualification is merely SSC and Diploma in Agriculture. If he is getting the said pay scale of the Accountant though he is not qualified for the said post, then there is no difficulty for the Corporation to give him pay-scale of the post of Nagar Sachiv (Secretary) as he has actually worked on the said post from 29.06.2006 to 26.08.2009.”

13 It is trite law that merely because an employee has been given an additional charge of a superior post in view of the said post having fallen vacant and not filled in by following the procedure of recruitment, would not entitle such employee to seek regularization on the said post. The Industrial Court has accepted the contention of the Petitioner that the Respondent was not qualified to be appointed for the post of Secretary. In the light of the same, though the Industrial Court granted monetary benefits to the Respondent, it could not have granted him the status of a Secretary.

14 In the light of the contentions of the learned Advocates, the Rules do not provide for any additional remuneration to be paid to an employee who temporarily holds additional charge of any other post and performs his duties on the said post as well, along with his regular duties in view of his occupying the said post. As such, to this extent, the

Industrial Court cannot be faulted for having granted monetary benefits to the Respondent so as to entitle him to earn salary of the Secretary.

15 As such, this petition is partly allowed. Clause 3 of the impugned judgment reproduced above, shall stand modified and shall read as under:-

“(3) The Respondent/ Municipal Corporation is hereby directed to give monetary benefits to the original Complainant at par with the pay scale of the post of Secretary (Nagar Sachiv) only for the period 29.06.2006 till 26.08.2009. This scale of salary shall not be in addition to the salary earned by him as an Accountant, but would be inclusive of the salary payable to an Accountant, thereby only the difference between the two posts.”

16 Rule is made partly absolute in the above terms.