

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3588 OF 2008
AND
CIVIL APPLICATION NO. 799 OF 2016

Haridas Bhagwantrao Wagh,
Age 38 years, Occ. Service,
R/o N-12, D-14/4, T.V.Centre,
Hudco, Aurangabad,
Tq. and Dist. Aurangabad.

..Petitioner

Versus

1. The Collector,
Main Administrative Building,
Collector Office, Aurangabad.

2. The District Programme Manager,
Aurangabad District Blindness
Control Society, C/o Civil Surgeon,
Civil Hospital, Aurangabad.

3. Deputy Director Health Services,
Aurangabad Division, Aurangabad.

..Respondents

WITH
WRIT PETITION NO .5361 OF 2008

Aurangabad District Blindness
Control Society (Through
District Programme Manager)
Dr. Sunita Vijaykumar Golhait,
Age 38 years, Occ. Service,
R/o Civil Hospital, Aurangabad.

..Petitioner

Versus

Haridas Bhagwantrao Wagh,
Age 38 years, Occ. Service,
R/o N-12, D-14/4, T.V.Centre,
Hudco, Aurangabad,
Tq. and Dist. Aurangabad.

..Respondent

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Advocate for Applicant : Shri Dhage Vivek J.
AGP for Respondents 1 & 3 : Shri Shelke V.G.
Advocate for Respondent 2 : Shri Panale

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 22, 2016
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ORAL JUDGMENT :-

1. Both these petitions have been admitted by this Court, by order dated 8.9.2009. Interim relief was refused to both the petitioners.
2. In the first petition, the petitioner employee is aggrieved by the impugned judgment of the Industrial Court, dated 31.1.2008, only to the extent of the rejection of his claim for permanency. The Complaint (ULP) No. 262 of 2003 is partly allowed.
3. The petitioner in the second petition, which is the employer, has also challenged the impugned judgment, dated 31.1.2008.
4. Considering the fact that the employee as well as the employer, have challenged the same judgment, I have heard both these petitions by consent of the parties.
5. Learned AGP on behalf of respondent No.1 - Collector submits that in both these petitions, the Deputy Director, Health Services, Aurangabad Division, Aurangabad is a necessary party, since the District Blindness Control Society Programme ("BCSP" in short) is being implemented, earlier under the aid received from World Health Organization and thereafter with the aid of the Central and State Governments.

6. Learned Advocates for the employer and the employee submit that they would add Deputy Director, Health Services, Aurangabad Division, Aurangabad as respondent No.3 in both these petitions. Same is allowed. Addition be carried out forthwith. Learned AGP waives service for the added parties.

7. I have considered the strenuous submissions of the learned Advocates Shri Dhage for the employee, Shri Panale for the employer / respondent No.2 - Society and the learned AGP for respondent Nos.1 and 3.

8. I have gone through the petition paper book with the assistance of the learned Advocates. A host of factors have been canvassed by the learned Advocates. Suffice it to say, the order that I intend to pass, would not require adverting to the entire submissions of the learned Advocates

9. It is not in dispute that the BCSP is in operation even today. Same has been in operation for the past more than two decades. In my view, therefore, Section 2(oo)(bb) of the Industrial Disputes Act, 1947 would not be applicable.

10. It is also undisputed that the employee is working as a Driver of the respondent No.2 Society and getting his monthly salary from the aid and assistance received from the State / Central Governments. Both the learned Advocates have contended that unless the Deputy Director, Health

Services creates a post of a Driver and sanctions a particular scale for being allocated to the said post, the employee cannot be regularized. Shri Dhage hastens to add that though respondent No.2 / employer is a private society, it is getting funds and financial assistance from the State / Central Governments.

11. The employee is in service since 24.3.1998. Over the years, his daily wages were gradually increased. Presently, it is Rs.397/- per day. He is about 47 years old and has about 11 more years to go in employment. I find that it would be a mis-carriage of justice, if the employee is continued on daily wages till he retires, thereby putting in 28 years in employment and yet being unable to receive any retiral benefits which would keep his mind, body and soul together in his old age.

12. It is apparent that the Government of Maharashtra, through its Health Department have not taken a call for regularization of services of such employees, despite the programme being virtually perennial in character.

13. Considering the above, I am of the view that the Industrial Court has erred in directing the employer to continue the employees on daily wages as long as the BCSP continues and rejected his claim for permanency. If the programme is brought to an end, never to be resumed, the employer would be at liberty to follow the due procedure of law, in the event the services of the employee are to be dispensed with. Under the presumption that the

programme may be discontinued at any time, without there being any evidence on record, the Industrial Court could not have rejected the Complaint partly.

14. By the Civil Application, the employee points out that the 3rd respondent has published an advertisement for filling in several permanent posts. Seventeen posts of drivers are created. The petitioner employee's claim will be ignored on the ground that he was a temporary for eighteen years and is age barred. The employer has taken a stand that it has no role to play in this recruitment drive.

15. In the light of the above, both these petitions are partly allowed. The employer / society shall prepare a proposal of the petitioner, complete in all respects, and forward the same to respondent No.3, within a period of eight weeks from today. The third respondent - Deputy Director, Health Services shall consider the said proposal within a period of sixteen weeks thereafter and shall take steps for regularization of the services of the employee, who is in employment for the past 18 years. Respondent No.3 after considering the proposal, shall communicate its order to the employee expeditiously. In the event, the employee is aggrieved by the decision of respondent No.3, he shall be at liberty to assail the same.

16. The impugned judgment of the Industrial Court dated 31.1.2008 is, therefore, modified as above. Needless to state, the respondents and the employer shall not terminate the services of the employee solely on the

ground that he is a daily wager. This protection shall, however, not cover any act of indiscipline or disciplinary proceedings.

17. In the light of the conclusions arrived at in these two petitions by this order, the impugned advertisement dated 4.1.2016, assailed in Civil Application No.799 of 2016, which has been issued by respondent No.3, shall stand stayed to the extent of only one post of a driver. Respondent No.3 is at liberty to absorb the employee on the post of Driver (Advertisement No.07.2016), considering the directions of the Industrial Court, as well as the conclusion arrived at by this Court.

18. Civil Application No. 799 of 2016 is partly allowed.

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

20. The learned AGP shall communicate this order to respondent No.3 forthwith.

(RAVINDRA V. GHUGE, J.)

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