

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11094 OF 2015

Raju Dashrath Paikade (deceased) through LR's

1. Reema Raju Paikade,
Age-25 years, Occu-Household,
R/o Behind Town Hall, Aurangabad
 2. Rohan Raju Paikade,
Age-11 years, Occu-Education,
Through Natural Guardian,
Legal Heir No.1 mother,
 3. Rajat Raju Paikade,
Age-8 years, Occu-Education,
Through Natural Guardian,
Legal Heir No.1 mother,
 4. Rashmi Raju Paikade,
Age-9 years, Occu-Education,
Through Natural Guardian,
Legal Heir No.1 mother,
 5. Vishakha Raju Paikade,
Age-7 years, Occu-Education,
Through Natural Guardian,
Legal Heir No.1 mother,
 6. Dashrath Narayan Paikade,
Age-63 years, Occu-Pensioner,
All R/o Behind Town Hall,
Aurangabad
- PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary
Urban Development Department
Mantralaya, Mumbai - 400 032,

2. The Municipal Corporation,
Aurangabad
Through its Commissioner

RESPONDENTS

Mr.A.D.Soman, Advocate for the petitioners.
Mr.S.W.Munde, AGP for respondent No.1.
Mr.Deelip N.Patil-Bankar, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/08/2016

ORAL JUDGMENT :

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

2. The petitioners, by this petition, pray for quashing and setting aside the judgment of the Industrial Court dated 21/04/2015, by which Revision (ULP) No.59/2013 filed by the respondent/ Corporation has been allowed and the judgment of the Labour Court dated 15/06/2013 has been set aside. Complaint (ULP) No.37/2010 has, therefore, been dismissed.

3. I have heard the strenuous submissions of Mr.Soman, learned Advocate for the petitioner and Mr.Patil, on behalf of the respondent / Corporation.

4. The deceased Raju was appointed as per the Lad Committee Recommendations on 10/02/2006 after his father Dashrath Paikade retired as a "Coolie" on 27/05/2005. He was served with a show cause notice dated 04/12/2006 seeking explanation as to why his appointment should not be set aside since the Lad Committee Recommendations permit appointment of a ward/legal heir if the retiring parent was working either as a "Bhangi" or a "Safai Kamgar". The deceased Raju replied on 12/12/2006 and was terminated on 18/01/2007 considering the fact that his father was working as a "Coolie".

5. Complaint (ULP) No.37/2010 filed by the deceased Raju was allowed by the Labour Court. The termination was set aside and considering that Raju had passed away during the pendency of the complaint, compensation of Rs.30,000/- was awarded to the legal heirs of the deceased Raju, who are petitioners before this Court. Back wages were also awarded from the date of termination till his death.

6. The revision petition filed by the Corporation was allowed since the Corporation strenuously stated that Raju could not have been appointed since his father was a Coolie. It was also canvassed that

Sections 40, 45 and 52 of the Bombay Provincial Municipal Corporations Act was not complied with. These aspects were not considered by the Labour Court and hence the Industrial Court set aside the order of the Labour Court and dismissed the complaint.

7. It cannot be overlooked that this Court, while dealing with a group of 7 writ petitions Nos.2614/2009 with WP No.2615/2009, 2616/2009, 2617/2009, 2618/2009, 3714/2009 and 3715/2009, has, by an interim order 03/07/2009, protected the services of 7 workmen identically situated with the deceased Raju. The writ petitions are admitted and are pending final hearing.

8. The order dated 03/07/2009 needs to be reproduced hereunder :-

“1] Rule.

2] Heard learned counsel on the issue of grant of interim relief.

3] Interim relief in terms of prayer clause (F) reads thus :-

“(F). Pending the hearing and final disposal of the present writ petition, the respondent may kindly be directed to reinstate the petitioner in service as ‘Sweeper, Labourer (‘Safai Mazdoor’) forthwith and pay him the wages regularly.”

4] Shri Pagare, learned counsel appearing on behalf of the respondent-Corporation vehemently opposes the grant of interim relief. He submits that the interim relief which is sought is in the

nature of a mandatory injunction, which cannot be granted at this stage. He further submits that the interim relief, which is in the nature of final relief, cannot be granted at this stage.

5] No doubt, this Court is very slow in granting interim relief in the nature of mandatory injunction. Unless compelling and exceptional circumstances are made out, this Court would not grant interim relief in the nature of a mandatory order.

6] A specific case is made out by the present petitioner that out of 89 employees only the petitioners who are 7 in numbers are singled out. Since the affidavit in reply filed by the respondent dated 24/06/2009 was silent in this respect, an additional affidavit in reply was directed to be filed. Accordingly the same is filed by the respondent corporation on 30/6/2009. The only submission made in the said reply is that after examining each and every case of such employees, appointment of 10 persons was found to be illegal and therefore action against the present petitioners has been initiated. Reliance is sought to be placed on the report of the Committee constituted by the Corporation. The said report states that since the recommendation of the Lac Committee are only applicable to the Safai Mazdoor and Bhangi Kamgars, the present petitioners do not fall in that category and, therefore, they should not be continued.

7] However, a perusal of the entire list at Page Nos. 68 to 72 in W.P.No.2614/2009 would reveal that only 13 employees in whose place their legal heirs have been appointed are either Safai Mazdoor or Bhangi Kamgars. Rest of the employees in the said list are either Mazdoor Mali, Maleria Major, Naka Jawan, Watchmen etc. Surprisingly, one of the employees whose legal

heirs have been appointed was working as an Assistant Teacher.

8] It is thus clear that the stand taken by the Corporation is totally inconsistent with the record. I find that the case of the present petitioners is similar with the case of the rest of the employees whose legal heirs have been appointed and continued. In that view of the matter, I am of the considered view that the petitioner has been in a position to make an exceptional case for grant of interim relief, which is in the nature of mandatory injunction.

9] Interim relief is, therefore, granted in terms of prayer clause (F) in all these petitions. Needless to state that the orders of reinstatement shall be issued within a period of a fortnight from today.”

9. It, therefore, cannot be ignored that the issue as regards whether the respondent/Corporation has complied with Section 40, 45 and 52 of the Act is subjudice in the 7 writ petitions admitted by this Court. The issue as to whether the Corporation has resorted to legal and factual victimization by granting appointments to such wards of such parents who never worked as “Bhangi” or “Safai Kamgar”, will be dealt with in the said petitions. Nevertheless, even if the order of the Labour Court is to be sustained, the petitioners would stand to earn those monetary benefits as have been directed by the Labour Court.

10. Mr.Soman submits on instructions from the petitioners present in the Court that the Corporation has paid an amount of Rs.3,30,000/- to the legal heirs and the judgment of the Labour Court has been fully complied with.

11. In the light of the above, since the respondent/Corporation has been unable to establish in this petition that not a single ward of a parent, who retired from the service of the Corporation after working in any category other than “Bhangi” or “Safai Kamgar” was appointed, I find that the impugned judgment of the Industrial Court, in its revisional jurisdiction is rendered perverse and erroneous. No such material was placed either before the Labour Court or even before the Industrial Court by which the Industrial Court could conclude that all appointments made by the Corporation were as per the Lad Committee Recommendations and that only wards of the parents who worked specifically as “Bhangi” or “Safai Kamgars, were appointed.

12. This petition is, therefore allowed. The impugned judgment of the Industrial Court dated 21/04/2015 is quashed and set aside. Revision (ULP) No.59/2015 filed by the Corporation stands dismissed. Judgment and order dated 15/06/2013 passed by the Labour Court

is sustained.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)