

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

WRIT PETITION NO. 9296 OF 2014

KSHTRIYA MAHARAJ WADIYAR SHIKSHAN SANSTHA, BARSHI.
THROUGH IT'S SECRETARY,
VANDANA LAXMANRAO JAGTAP
VERSUS
SAMAJ KALYAN ADHIKARI AND OTHERS

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Advocate for Petitioner : Shri Urgunde Suhas P
Advocate for Respondents 1 and 2 : Shri P.P. More.
Advocate for Respondent 4 : Shri Kadam Kailas A.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd August, 2016

Per Court:

1 The Petitioner challenges the judgment and order dated 10.04.2014 delivered by the Industrial Court by which Complaint (ULP) No.123/2011 filed by Respondent No.4 herein/ original Complainant has been allowed only to the extent of the Petitioner Institution and has been dismissed as against Respondent Nos.1 and 2. Respondent No.3, Headmaster of the said Institution, was party to the proceedings before the Industrial Court.

2 None appears for Respondent No.3, despite service of notice.

3 I have heard the learned Advocates for the respective sides at
length.

4 Respondent No.4 had filed the complaint before the Industrial
Court on 16.08.2011 alleging therein that she was working as a Cook with
the Petitioner Institution from 2005 till 2009. She has not been paid her
wages. A direction be issued so as to ensure that the said employee is
granted compassionate appointment w.e.f. 2005 along with unpaid wages.

5 The Petitioner Institution was represented by the Headmaster
before the Industrial Court, who is Respondent No.3 herein and has
chosen to remain absent.

6 The Industrial Court by the impugned judgment, has passed
the following order:-

- “1. The Com/ULP/No.123/2011 stands dismissed against the respondent No.1 and 2.*
- 2. The Com/ULP/No.123/2011 is allowed against the respondent No.3.*
- 3. It is hereby declared that the respondent No.3 has engaged in unfair labour practice within the scope of Item Nos.9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 and respondent No.3 is directed to cease and desist from unfair labour practice.*
- 4. The respondent No.3 is directed to appoint the complainant in the employment on compassionate ground as per Government Resolution on suitable*

post and also pay her earned wages to which she is entitled under law for the period from 2005 to 2009.

5. *The respondent No.3 is further directed to pay cost of Rs.2,000/- (Rs.Two Thousand) to the complainant.*
6. *No order as to cost against the respondent No.1 and 2.”*

7 The learned Advocate for the Petitioner submits that since the Petitioner Institution was arrayed through the Headmaster, the Chairperson of the Petitioner Institution was not aware that the Headmaster had acted in collusion with Respondent No.4/ original Complainant and had neither led any evidence nor cross-examined the original Complainant. It is further submitted that the complaint is dismissed as against Respondent Nos.1 and 2 herein and has been allowed against Respondent No.3 herein which in effect would bind the Petitioner and mandate the Petitioner to appoint Respondent No.4/ original Complainant on compassionate basis on any suitable post and pay her wages from 2005 to 2009.

8 Shri More, learned Advocate appearing for Respondent Nos.1 and 2, submits that the Government Resolution dated 04.07.2009 has been referred to in the complaint. No relief can be sought against Respondent Nos.1 and 2 and therefore, the complaint has been rightly

dismissed as against them.

9 Shri Kadam, learned Advocate for Respondent No.4/ original Complainant, submits that the Government Resolution dated 04.07.2009 mandates the Petitioner to appoint Respondent No.4 on compassionate basis considering that her husband, who was an Assistant Teacher in the special school, had passed away while in service on 11.03.2002. He, therefore, prays that the petition be dismissed.

10 I find from the complaint that the pleadings are quite vague and put forth in a slipshod manner. On the one hand, the Government Resolution dated 04.07.2009 is cited as being the basis on which Respondent No.4 could be appointed on compassionate ground and a reference is also made to the Government Resolution dated 31.12.2002. On the other hand, in the prayer clause, the relief sought is put forth in a different manner in the sense that unpaid wages for the period of work in between 2005 to 2009 be paid and compassionate appointment is sought from 2005. The Industrial Court has allowed the complaint against the Petitioner Institution.

11 In my view, the Industrial Court should have first considered as to which is the Government Resolution applicable to the case of the

Complainant on account of death of her husband, who was an Assistant Teacher and would entitle her for appointment on compassionate basis.

12 It is crystallized law that a person does not have a right to compassionate appointment. Such entitlement flows from the Government Resolution or Rules or some Settlement applicable to the deceased employee and the employer. I do not find from the impugned judgment, any conclusion drawn by the Industrial Court as to which is the Government Resolution or Settlement on the basis of which the Complainant could have pressed her claim for compassionate appointment after her husband had passed away. It is not disputed that Respondent No.4/ Complainant is only 9th standard qualified.

13 Insofar as the Government Resolution dated 04.07.2009 is concerned, the same has been introduced in relation to such persons who are legal heirs of the deceased employee, who was working in special schools whether, grant in aid or on no grant basis. Clause (4) of the said Government Resolution indicates that since this scheme has been introduced for the first time, all such candidates whose parent has passed away prior to the introduction of the Government Resolution, would be permitted to stake their claims within one year from the date of the said Government Resolution. It is informed that the original Complainant filed

an application on 03.08.2009 which is within one month from the date of the Government Resolution dated 04.07.2009.

14 It was expected that the Industrial Court should have considered the effect of the Government Resolution dated 04.07.2009 and dealt with the matter looking to the oral and documentary evidence adduced before it. Without considering these aspects, the Industrial Court concluded that the complaint deserves to be allowed as against the Petitioner Institution since the Government Resolution dated 04.07.2009 obliges the Petitioner to appoint the original Complainant on compassionate ground.

15 The Industrial Court also lost sight of the fact that a direction could be issued only for enlisting the candidates in the list of eligible candidates for compassionate appointment since the concerned employer has to follow the list which is prepared on the basis of the dates of applications filed by the candidates. Nevertheless, if a single candidate is the only applicant and eligible for appointment on compassionate basis, such a direction could be sustained.

16 The Petitioner is before this Court contending that as the Headmaster of the special school kept the Petitioner/ Secretary away from

the proceedings, the Petitioner could not agitate its cause before the Industrial Court. Shri Urgunde, learned Advocate for the Petitioner, hastens to clarify that in fact the Complainant did not make the special school a party Respondent through the Secretary, but arrayed the Headmaster of the School. This was aimed at keeping the Petitioner away from the proceedings.

17 In the light of the above, I deem it proper to partly allow this petition and direct the remittance of the complaint to the Industrial Court for a decision afresh along with the direction to Respondent No.4 herein to array the Petitioner as Respondent No.4 in the said complaint. So also, I am imposing costs on the Petitioner as it has not been diligent in representing its case though the Head Master was a Respondent.

18 As such, this Writ Petition is partly allowed. The impugned judgment dated 10.04.2014 is quashed and set aside and Complaint (ULP) No.123/2011 is remitted back to the Industrial Court, Latur on the following conditions:-

- (a) The Petitioner shall deposit an amount of Rs.5000/- (Rupees Five Thousand) as costs before the Industrial Court within a period of FOUR WEEKS from today.
- (b) The Respondent No.4 herein/ original Complainant shall

withdraw the said amount without conditions on producing tangible evidence of her identity.

- (c) Respondent No.4/ Complainant shall array the Petitioner herein as Respondent No.4 in the said complaint within a period of FOUR WEEKS from today by filing an application.
- (d) The litigating sides shall appear before the Industrial Court, Latur on 08.09.2016 and hence, formal notices need not be issued.
- (e) In the event, the Complainant desires to amend her complaint, she may accordingly, file an application which the Industrial Court shall consider on its own merits after hearing all the parties.
- (f) All the litigating sides are at liberty to lead oral and documentary evidence in addition to the evidence already on record before the Industrial Court.
- (g) All contentions of the litigating sides are kept open.

19 Looking to the issue involved in the complaint, I deem it proper to direct the Industrial Court to decide the complaint as expeditiously as possible and preferably on or before 31.03.2017.