

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8094 OF 2016

Mahesh Laxman Patil,
Age-43 years, Occu-Service,
R/o Morane Pr.Laling,
Tal. And Dist. Dhule

– PETITIONER

VERSUS

The North Maharashtra University,
Jalgaon, Dist.Jalgaon,
Through its Registrar

– RESPONDENT

Mr.B.R.Waramaa, Advocate for the petitioner.
Mr.A.B.Girase, Government Pleader for the State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/12/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the judgment dated 17/03/2016 by which Complaint (ULP) No.10/2014 filed by the petitioner has been dismissed by the Industrial Court, Jalgaon.
3. I have considered the submissions of the learned Advocates for the respective sides for quite some time.

4. The petitioner who was working as a Peon, had approached the Industrial Court by filing Complaint (ULP) No.10/2014 seeking regularization from 31/08/1995. He was granted regularization w.e.f. 02/02/2002 on a post of Peon-cum-Hamal which was vacant. The complaint was based on Standing Order 4(C) and it was therefore contended that the petitioner deserves regularization in service from 31/08/1995 when he completed one calendar year of service.

5. The Industrial Court dismissed the complaint for two reasons. Firstly, that the petitioner had preferred Complaint (ULP) No.2394/1999 seeking the same relief of regularization under Standing Order 4(C) from the date he had completed 240 days in continuous employment in a calendar year and the said complaint was withdrawn by him subsequently. It appears that since the petitioner was granted regularization on 02/02/2002, the complaint was withdrawn.

Secondly, the Industrial Court noticed that the petitioner failed to place on record evidence which would indicate that there were permanent vacant posts available prior to 02/02/2002 or in 1995.

6. In so far as the claim for regularization upon completion of one calendar year of service under Standing Order 4(C) is concerned, this

Court, in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and others, [2015(5) Mh.L.J.75] and in the matter of Municipal Council, Tuljapur Vs. Baban Hussain Dhale in WP No.1843/2015 and connected matters decided on 26/02/2015, has concluded that Industrial Court cannot direct regularization from a particular date unless a permanent vacant post is proved to be available and the claimant is legally entitled to be absorbed on the said post. The learned Division Bench of this Court, in the matter of Municipal Council, Tirora Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867], has concluded that the State instrumentalities and establishments of the Governments, unless the posts are vacant, cannot be directed to absorb employees under Standing Order 4(C) which would have no applicability. As such, the claim of the petitioner on the basis of Standing Order 4(C) was unsustainable and the same has been rightly rejected by the Industrial Court.

7. The petitioner has placed on record information received by him on 28/06/2016 to contend that there are 72 posts of Peon-Hamal with the respondent/University. The documents placed before the Court though indicate that there are 72 such posts, it does not indicate that there were vacant posts available in 1995.

8. In the light of the above, it is obvious that Standing Order 4(C) cannot be pressed into service in such matters. The petitioner has already been granted regularization from 02/02/2002 and his earlier Complaint No.2394/1999 seeking same relief of regularization from 31/08/1995 having been unconditionally withdrawn, I do not find that the Industrial Court has committed any error in dismissing his second Complaint No.10/2014.

9. As such, this petition, being devoid of merit, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)