

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10889 OF 2015

The Chief Officer,  
Municipal Council, Loha,  
District Nanded.

..Petitioner

Versus

Vitthal Laximan Timkikar  
Age 35 years, Occ. Nil,  
R/o Loha, Dist. Nanded.

..Respondent

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Advocate for Petitioner : Shri Bhumkar R.P.  
Advocate for Respondent : Shri Panpatte V.S.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: August 22, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment and order dated 22.6.2012 delivered by the Labour Court, Nanded by which, the complaint filed by respondent No.1, along with three other

complainants, was allowed.

5. Shri Bhumkar, learned Advocate for the petitioner submits that considering the judgment of this Court dated 7.3.2016, delivered in Writ Petition Nos. 3951 of 2015 and 4014 of 2015, the judgment of the Labour Court to the extent of the complainants - Mohan Venkati Rathod and Hari Madhavrao Avhad has been set aside. He submits that the Revision Petition filed by the petitioner before the Industrial Court has been rejected only to the extent of respondent No.1 herein. The Industrial Court has set aside the judgment of the Labour Court with regard to Hari M. Pawar, Madhukar I. Gondhale and Mohan V. Rathod. The petitioner is, therefore, aggrieved by the impugned judgment of the Industrial Court dated 19.1.2015, whereby, the appointment of respondent No.1 Vithal Laximan Timkikar has been upheld.

6. Shri Bhumkar has strenuously submitted that the appointment of the respondent is unsustainable. He was appointed on compassionate grounds by the passing of a Resolution by the Municipal Council. Though his father passed away, while on duty / in service, on 11.7.2006, the appointment of the respondent is an irregular appointment.

7. He further submits that the Collector has set aside the

appointment of the respondent on the ground that the same is against the Rules. He further submits that the Lad Committee recommendations do not apply to a Pump Operator and hence the respondent cannot be appointed on compassionate basis. He further submits that the Government Resolution dated 22.8.2005 would not be applicable to the case of the respondent and the subsequent circular dated 22.1.2008 would render the Government Resolution dated 22.8.2005 inapplicable to the case of the respondent.

8. He further submits that the appointment of the respondent was in opposition to Clauses 5(a-1) and 5(b-2) of the Standing Orders dated 14.10.2004. He further states that since the Collector has set aside the appointment, the Municipal Council, petitioner herein has issued the impugned termination order and relieved the respondent from service. He, therefore, contends that the Industrial Court could not have granted relief to the respondent herein and as such, the impugned judgment deserves to be quashed and set aside. He places reliance upon the judgment of this Court dated 7.3.2016 in the matter of Mohan V. Rathod (supra) and prays that the impugned judgment of the Industrial Court deserves to be quashed.

9. Shri Panpatte, learned Advocate for the respondent supports the impugned judgment by stating that the other employees like Mohan Rathod and Hari Pawar, who were before this Court, had

based their case on the illness of their father as a ground for compassionate appointment. This Court concluded that the Government Resolution dated 22.8.2005 is with regard to compassionate appointment being available only to those employees, whose parent has passed away. In the case of the other three complainants, their parents were alive and in the case of the respondent herein, his appointment is protected by the Court because his father has died while in service.

10. I have considered the submissions of the learned Advocates and the learned AGP and have gone through the petition paper book with their assistance.

11. This Court has dealt with a matter between Sanjay Jagannath Pardshi Vs. The Chief Officer, Municipal Council, Pachora - Writ Petition No. 6865 of 2015, dated 1.2.2016, wherein a similar issue was considered. However, in the said case, the issue of compassionate appointment was not involved. It was a clear case of illegal appointment made by the Municipal Council.

12. There were four complainants in Complaint (ULP) No.90 of 2009, as mentioned above. The judgment of the Labour Court allowing the Complaint was interfered with by the Industrial Court in the impugned judgment only to the extent of the first three

complainants. The respondent herein was the fourth complainant, who has succeeded before the Industrial Court. As such, I am not required to refer to the judgment of the Labour Court since the Industrial Court has revisited the entire facts and has upheld the appointment of respondent No.4.

13. There is no dispute that by a cryptic order dated 14.9.2009, the petitioner - Municipal Council has terminated the services of the respondent on the ground that the Collector has set aside the Resolution appointing him. The entire termination order is totally silent as regards the reasons for termination, save and except the statement that the Collector has set aside the Resolution.

14. It is strenuously canvassed by Shri Bhumkar that the Collector has set aside the resolution since proper procedure of appointment was not followed. The written statement filed by the petitioner before the Labour Court indicates that besides the above contention, no other ground has been canvassed, but the submission that the employee should approach the Director of Municipal Administration. It is nowhere stated as to what were the irregularities in the appointment of respondent so as to take away his appointment on compassionate basis notwithstanding that his father had passed away while in service.

15. The Industrial Court has noted in its conclusions that the respondent / employee had applied for compassionate appointment and he was appointed on the basis of the death of his father on 11.7.2006 by passing a resolution on 13.8.2008. The case of this respondent is therefore, distinguishable from the case of Complainant Nos.1 to 3 before the Labour Court.

16. The Industrial Court considered the two clauses pointed out by the petitioner from its Standing Orders and concluded that Clause 5(a-1) was with regard to internal appointments and absorption of excess temporary employees. Clause 5(b-2) was with regard to promotions. None of these two clauses were applicable to the case of the respondent in the backdrop of the contention of the Council that the respondent's appointment was against these provisions of the Standing Orders.

17. Since the Industrial Court has sustained the conclusion of the Labour Court to the extent of respondent / employee alone, Shri Bhumkar submits that 100 percent backwages have been granted by the Labour Court. The Municipal Council is not a profit making body. It has paucity of funds and the backwages will have to be paid from the Government exchequer. Shri Panpatte submits that since the termination has been set aside by concurrent judgments, backwages have been rightly granted and no interference is called for in the

supervisory jurisdiction of this Court.

18. The respondent had led evidence before the Labour Court and had stated that after the death of his father, he is the only earning member of the family, no other member is employed and the respondent is also not gainfully employed. So also, it cannot be overlooked that the petitioner is a Municipal Council which is not a profit making body and will have to pay the backwages from the State exchequer.

19. In this backdrop, I deem it proper to rely upon the ratio of the Honourable Apex Court in the matter of Gauri Shankar Vs. State of Rajasthan [2015 II CLR 497], wherein the Honourable Apex Court has held that grant of 25 percent backwages would reduce the hardships of the employee, whose termination is found to be illegal.

20. As such, this petition is partly allowed. The judgment of the Labour Court dated 22.6.2012 and of the Industrial Court dated 19.1.2015 stands modified in relation to the respondent / employee Vithal Laximan Timkikar only to the extent of grant of 100 percent backwages. Consequentially, the petitioner shall pay 25 percent of the last drawn wages to the respondent as back wages within a period of sixteen weeks from today, failing which the said amount shall carry interest at the rate of 6 percent from the date of the

judgment of the Labour Court.

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

( RAVINDRA V. GHUGE, J. )

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