

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5289 OF 2009
WITH
CIVIL APPLICATION NO. 13117 OF 2016
AND
CIVIL APPLICATION NO. 10582 OF 2009

1. The State of Maharashtra
Through The Director,
Vocational Education and Training,
Nasik Division, Nasik-Agra Road,
Nasik.

2. The Principal,
Industrial Training Institute,
Shevgaon, Dist. Ahmednagar. ..Petitioners

Versus

Rajendra Kashinath Darandale,
Age major, Occ. Nil,
R/o Sonai, Tq. Nevasa,
District Ahmednagar. ..Respondent

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AGP for Petitioners : Shri Kaldade S.D.
Advocate for Respondent : Shri Shahane Parag P.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 30, 2016
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ORAL JUDGMENT:-

1. Considering that a short issue arises for adjudication in the Writ Petition, learned Advocates for the litigating sides prayed for taking up the petition for final hearing forthwith.

2. As such, Civil Application No.13117 of 2016 is allowed.

3. I have heard the submissions of the learned AGP, who has criticized the impugned judgment dated 24.7.2008. Grievance is that merely because the respondent / employee has completed 240 days in employment, the Industrial Court could not have invoked Section 4C of the Industrial Employment (Standing Orders) Act, 1946 for granting permanency. He further submits that petitioner No.2 / Principal, cannot create posts. The Department of Education for Vocational Education and Training will have to consider the proposal for regularizing the services of the respondent / employee.

4. He further submits that since the Principal and the Director do not have the power to create posts, the declaration of ULP under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ") is unsustainable.

5. Shri Shahane, learned Advocate for the respondent / employee places reliance upon the communication dated 19.11.2008, which is placed on record at Page No.16 in the Civil Application No.10582 of 2009. The respondent has been granted the scale as set out in the order and his services are continued subject to the result of this petition.

6. He further submits that he has worked continuously and as on date, has put in about 15 years in employment with the petitioners. He cannot be kept temporary for years together. He further submits that the Industrial Court noticed the ULP committed by the petitioners and has, therefore, rightly allowed Complaint (ULP) No.157 of 1997.

7. I find that the employee has been granted the pay scale and is presently working pursuant to the order dated 19.11.2008. It is not debatable that the employee cannot be continued as a temporary for years together. The petitioners and the Department of Vocational Education will have to consider his case for regularization. His 15 years of employment cannot be ignored on the ground that the petitioners do not have the powers to create posts.

8. It is pointed out by the learned AGP that the Maharashtra Civil Services Rules are applicable to the respondent and the petitioner. The Director of Vocational Education and Training, Maharashtra State, is the competent authority to decide whether any post is to be created. The decision of absorption shall also be taken by the said authority. Presently, there are no vacancies.

9. I find that the Director of Vocational Education and Training, Maharashtra State, Mumbai could be directed to decide the proposal

of the employee for regularization within a time frame considering the fact that this Court has time and again held that establishments, which are State instrumentalities or the limb of the State Government, cannot be directed to create posts and such a decision has to be taken by the competent authority.

10. In the light of the above, this petition is partly allowed. The declaration of ULP under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is set aside.

11. The petitioners shall prepare a proposal, recommending the regularization of the respondent, within a period of two months from today and shall forward the same to the Director, Vocational Education and Training, Maharashtra State, Mumbai indicating clearly that he has been working for several years and he has been granted the scale by communication dated 19.11.2008.

12. The proposal shall be decided by the said authority or any other competent authority within five months from the date of its receipt and shall communicate the decision to the respondent forthwith.

13. Needless to state, the petitioner shall continue the services of

the respondent and shall not dispensed with his services only on the ground that his proposal is pending. This protection shall not include any act of indiscipline or misconduct, if committed by the respondent.

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

15. Pending Civil Application No.10582 of 2009 does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d