

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1745 OF 2016**

Jaysinghpur Municipal Council

..Petitioner

Vs.

Balu Kalinga Shedbale

..Respondent

Mr. G. M. Savagave for the Petitioner

Mr. P. D. Dalvi for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 31st AUGUST, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 13-10-2011 passed by the Learned Member of the Industrial Court, Kolhapur, by which order, the complaint filed by the Respondent herein came to be partly allowed and the Petitioner herein was directed to pay wages of the post of fitter to the Complainant i.e. the Respondent herein during the period from 5-1-2005 till the date of the order for having worked as fitter pursuant to the interim order dated 5-1-2005.

2 The Respondent herein is in the employment of the Petitioner Municipal Council as a permanent valveman from 1-12-1984 in its water supply department. It appears that from the year 1989 he was directed to discharge the duties of fitter by issuance of orders in that regard from time to time. The two fitters who were in the employment of the Petitioner retired in

the year 2001 and 2002 respectively pursuant to which the Respondent was granted a time bound promotion to the post of fitter on he completing 12 years as per the Government Resolution dated 8-6-1995. The said time bound promotion was later on withdrawn and recovery was made from the salary of the Respondent which gave rise to the Respondent filing the instant complaint being complaint ULP No.321 of 2003. In the said complaint apart from seeking the relief of declaration of unfair labour practice against the Petitioner. The Respondent also prayed for directing the Petitioner herein to grant promotion to the Respondent to the post of fitter and extend the payable scale and benefits applicable to the said post from the date of the complaint. A further relief sought was a direction to the Petitioner to pay wages and benefits for the period during which the Respondent was discharging and performing the duties of fitter and difference of arrears arising therefrom.

3 In the said Complaint, the Respondent filed an application for interim reliefs. The said application came to be allowed and the Petitioner was directed to continue the Respondent in the post of fitter till the decision was rendered in the Complaint on merits. The Petitioner herein filed its Written Statement in the said complaint and denied that it had indulged in any unfair labour practice. It was also contended that the Respondent being not qualified for the post of fitter was not entitled to be promoted to the said post. It was denied that the Respondent was asked to hold charge of the post of fitter and

it was contended that the Respondent was merely asked to look after the work. The Learned Member of the Industrial Court proceeded to adjudicate upon the complaint. In so far as the Respondents claim for the right to promoted to the post of fitter is concerned, the Learned Member of Industrial Court held that since the Respondent was not having the requisite qualification and since his proposal which was submitted by the Petitioner Municipal Council was rejected by the Director of Municipal Administration, the Respondent was not entitled to be promoted to the post of fitter. The Learned Member accordingly held that the Petitioner Municipal Council has not committed any unfair labour practice. However, in so far as the relief sought by the Respondent that the Petitioner be directed to pay the Respondent the wages of the post of fitter for the period during which he has worked as such. The Learned Member of the Industrial Court held that since the Respondent was working as fitter pursuant to the interim order passed by the said Court on 5-1-2005 till the disposal of the complaint on 13-10-2011, the Respondent would be entitled to the wages of the said post of fitter for the said period and has accordingly partly allowed the complaint to the said extent by the impugned judgment and order dated 13-10-2011.

The above Petition has been filed in the year 2011 itself but appears to be numbered in the year 2012 and has been moved for admission only in the year 2016.

4 The principal contention urged on behalf of the Petitioner by the Learned Counsel Mr. Savagave is that the Industrial Court had erred in directing the Petitioner to pay the Respondent wages of the post of fitter for the period mentioned in the impugned order. It was the submission of the Learned Counsel that what was given to the Respondent was only the additional charge and therefore in terms of the Government Resolution dated 23-5-2006, the Respondent would be entitled to only 10% of the wages of the post of fitter as additional payment.

5 In my view, it is not possible to accept the said contention urged on behalf of the Petitioner. Though the Respondent had sought directions against the Petitioner that he should be paid wages of the post fitter right from the year 1989, the Learned Member of the Industrial Court has declined to grant the said relief but has granted the relief only for the period during which the Respondent was working as fitter pursuant to the interim order passed by the Industrial Court. It is required to be noted that the two regular fitters who were working with the Petitioner Municipal Council had retired in the year 2001-2002 and the Petitioner who was a valveman was intermittently discharging the duties of fitter and in fact was given a time bound promotion to the said post of fitter. However, the Learned Member of the Industrial Court has restricted the relief of the grant of wages to the post of fitter only for the period during which the Respondent worked as a fitter under the interim

orders of the Industrial Court.

6 In my view, the Respondent having worked so, would undoubtedly be entitled to the wages of the post of fitter for the said period. In so far as the Government Resolution is concerned, the same governs the grant of additional pay or special pay in government service and would therefore not apply to the employees of the Municipal Council. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 It is expected that the Municipal Council in fairness would clear the dues of the Respondent expeditiously.

[R.M.SAVANT, J]