

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2671 OF 2003

Malegaon Municipal Council,
Malegaon, Dist. Nasik.

... Petitioner

v/s

1. Smt.Latabai Ashok Bacchav,
House No.41, Motinagar,
Sangameshwar, Malegaon, Dist.Nasik.

2. Shri S.S. Hirurkar, Member,
Industrial Court, Nasik.

... Respondents

Mr.M.S.Topkar for the petitioner.

Mr.A.S.Pandire i/by Mr.M.S.Karnik for the Resp. No.1.

CORAM: N.M. JAMDAR, J.

DATED : 7 JANUARY 2016

ORAL JUDGMENT:

The Petitioner Council challenges the order dated 3 May 2000 passed in Complaint (ULP) No.787 of 1991 and order dated 10 January 2002 in Complaint (ULP) No.215 of 2000.

2 Complaint (ULP) No.787 of 1991 was filed by one Ashok Sahadu Bachhav under Items 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971, against the Petitioner. It was the

contention of the Complainant that he was appointed as a ward-boy on 22 September 1990 and he was working when the Complaint was filed. He sought permanency in service of the Petitioner Council on the basis of provisions of the Model Standing Orders. The Industrial Court, by an order dated 3 May 2000, directed that benefit of permanency be given to the Complainant as a Labour in Class IV category from 1 September 1991 with consequential benefits. However, it was not brought to the notice of the Industrial Court, even though the Complainant was represented by an advocate, that the Complainant had expired before the order was passed on 13 April 2000.

3 Complaint (ULP) No.215 of 2000 was filed by the wife of Ashok Bacchav, under Items 5 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. In this complaint, the wife of Ashok Bacchav claimed benefits of permanency, which accrued to her husband in her favour and also of appointment on compassionate basis, as Ashok Bacchav died during the course of the employment. The Industrial Court, by an order dated 10 January 2002 allowed Complaint (ULP) No.215 of 2000 and directed benefits of permanency payable to Ashok Bacchav to be paid to his wife and also considered giving appointment to her on compassionate basis. These orders are challenged in the present petition.

4 At the time of admission of the petition, following order came to be passed on 18 December 2013:

“The order passed by the Industrial Court in Complaint (UL)) No. 787 of 1991 has been challenged in this Petition as also the order passed in Complaint (ULP) No. 215 of 2000. The Industrial Court had passed an order in the former complaint on 3rd May 2000 declaring that the Petitioner had committed an unfair labour practice under Items 5,6 and 9 of Schedule IV of the Maharashtra Labour Practices Act, 1971. The Petitioner Council was directed to give benefits of permanency to the Complainant i.e. Ashok Bachhav as labour in Class IV category from 1st September 1991 with other consequential benefits. The Petitioner was directed to comply with the order within two months. Despite this order being passed, there was no compliance and it has been challenged by filing the present Petition on 1st November 2002. There is a delay of two years in filing the Petition. No explanation has been tendered for the inordinate delay. Mr. Bukhari on behalf of the Petitioner in the Petition submits that this delay occurred because the first Respondent had filed the second complaint and the same relief was sought by her. This submission can hardly explain the inordinate delay in the Petitioner's challenging the order dated 3rd May 2000. Hence, the Petition qua that Complaint is rejected.

2. However, the Petition also challenges the order passed in Complaint (ULP) No. 215 of 2000 which has been filed by the wife of the workman after her husband's demise. In this complaint, the first Respondent herein had claimed the benefits of permanency which were payable to her husband while he was in service. A further prayer was made that she be given appointment on compassionate ground as her husband had expired due to tuberculosis during the course of employment. Prima-facie, the complaint filed by the first Respondent does not appear to be maintainable as she was not an employee of the Petitioner.

3. *Hence, Rule qua order in Complaint (ULP) No. 215 of 2000.*

4. *There shall be no stay as regards the benefits of permanency payable to Ashok Bachhav. However, the order is stayed to the extent that the Industrial Court directs the Petitioner to give appointment to the first Respondent on compassionate grounds within two months or the date of the order. If the first Respondent is entitled to appointment on compassionate grounds as per the seniority maintained by the Petitioner, she may be given such appointment in accordance with the prevailing Rules.”*

5 As regard the challenge to the order passed in Complaint (ULP) No.787 of 1991, the same stands concluded by an order dated 18 December 2003. The Respondent being the wife of Ashok Bachhav, therefore, as a heir, will be entitled to the benefits of the grant of permanency accrued to her husband under the order of the Industrial Court dated 3 May 2000.

6 As regard the order passed on 10 January 2002 in Complaint (ULP) No.215 of 2000, learned counsel for the Petitioner is justified in making the grievance that such complaint was not maintainable since there was no employer-employee relationship between the Complainant therein and the Petitioner. At the time of admission of the Petition, this Court has clarified that, if the Respondent No.1 is entitled to appointment on compassionate ground as per the seniority, she may be given appointment as per the prevailing Rules. This Court has taken note that the Petitioner is a public body and the Court was exercising writ jurisdiction. Therefore, I am not

inclined to disturb this direction issued by this Court on 18 December 2003.

7 Therefore, the challenge to the order passed on 3 May 2000 stands concluded, and as an heir (if there are no other claimants), Respondent No.1 will be entitled to the benefits accrued to her husband under order dated 3 May 2000. If these benefits are not paid to the Respondent No.1, after ascertaining that she is the only claimant, the Petitioner Council will pay the benefits within twelve weeks from today.

8 It is clarified that the above indulgence in favour of Respondent No.1, is in peculiar facts and circumstances of the case and in view of the order passed on 18 December 2003.

9 In view of the above observations and the order passed on 18 December 2003, no further orders are required to be passed.

10 The writ petition is accordingly disposed of in above terms.

(N. M. JAMDAR, J.)