

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

WRIT PETITION NO. 3438 OF 2012

The Commissioner,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nasik,
through the Commissioner.

... Petitioner

v/s

1. Rajesh Pandharinath Khare
2. Nandkishor Bapu Devare,
3. Nitin Laxman Parmar,
4. Suresh Kacharu Pawar,
5. Vikrant Arvind Gonge,
6. Kailas Prabhakar Bhagwat,
7. Gokul Bhika Aaware,
8. Rajendra Vasantryao Kshirsagar,
9. Bapu Sampatrai Bhoj,
10. Ratilala Tukaram Bachhav,
11. Rajesh Prabhakar Sali,
12. Vilas Ramdas Kharde,
13. Vikram Balkrishna Tidake
14. Sunil Vasantryao Kadam
15. Milind Balkrishna Pagare,
16. Deepak Dinkar Puri,
17. Abhijit Vilas Vispute
18. Sahebrao Eknath Bhosale,
19. Anil Lotan Kapadnis,
20. Smt.Bharti Shantilal Wagh,
21. Rajendra Sambhaji Ogale,
22. Rajendra Pandurang Bhorkade,
23. Jagannath Kisan Kokane,
24. Sachin Murlidhar Bhorse,
25. Vasant Nivrutti Kushare,

26. Smt.Nisha Khairatilal Kumar,
27. Ravindra Himmatrao Patil,
28. Gopinath Bhikaji Hivale,
29. Jagdish Laxmikant Mohta
30. Narendra Ravsaheb Gunjal
31. Santosh Murlidhar Kanhe
32. Manohar Hiranman Pagare
33. Vinayak Madhukar Jadhav
34. Smt.shilpa Sanjay Datrange
35. Raju Kaitik Chavan
36. Mahendra Bramhdev Pawar
37. Bapu Bhata Ishi
38. Vaibhav Ganpat Hire
39. Deepak Shantaram Midhe
40. Anilkumar Sahebrao Kadam
41. Sunil Krushnakant Kothmire

(All at Sr.Nos.1 to 41
C/o.Rajesh Pandharinath Khare,
R/at Saptarang Society, Flat No.32,
Peth Road, Next R.T.O. Office,
Panchvati, Nashik.

42. The Secretary,
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai.

43. The member,
Industrial Court, Nashik.

... Respondents
(Resp. Nos.1 to 41
original complainants.
Resp.No.42 Ori. Resp.No.2)

Mr.M.L.Patil for the petitioner.

Mr.S.A.Sawant along with Sachin Kadam for Resp. Nos.1 to 41.

Ms.Vaishali Nimbalkar, A.G.P for Resp. No.42.

CORAM: N.M. JAMDAR, J.

DATED : 12 JANUARY 2016

ORAL JUDGMENT:

The Petitioner Municipal Corporation challenges the order passed by the Industrial Court, Nasik, in Complaint (ULP) No.82 of 2009 dated 5 January 2012.

2 Respondents, 41 in number, had filed Complaint (ULP) No.82 of 2009 in the Industrial Court, Nasik. It was a grievance of the Respondents that they had worked between 1995 to April 2000 on daily wages. They had requisite qualification of degree and L.S.J. Diploma. They were given work as a clerk, however, they were given wages as a daily wage worker. It was their case that they had worked for almost ten years and therefore they have acquired status of permanency. They contended that when they were working in Class III post, instead of absorbing them in Class III post, they were absorbed in Class IV by resolution dated 19 September 2002 which was in violation of Model Standing Orders. The Respondents also contended that the Petitioner Corporation had submitted a proposal to the State Government, however, by the order dated 10May 2003, they were absorbed in Class IV post instead of Class III.

3 The Petitioner Corporation filed its written statement and contended that all the Respondents did not possess requisite

qualification, and they were not from fiddling cadre. The proposed regular absorption in Class IV post in respect of 57 employees who had worked as clerk, was submitted to the State Government, however, the State Government, by letter dated 4 March 2006 had directed that absorption in Class III post of clerk is not possible and pursuant to this decision, the Respondents were absorbed in Class IV post.

4 The Industrial Court considered the evidence on record. The Industrial Court held that the Respondents were working with the Petitioner Corporation on daily wages in Class IV post. They were not given any appointment orders on the post of clerk. The Industrial Court held that the Respondents were not entitled to be made permanent in Class III post. The Industrial Court held that it was not the case of the Respondents that they were appointed on temporary basis as a clerk and kept on that post for years. The Industrial Court categorically rendered finding that there is no breach of Items 6 and 9 or 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The Industrial Court, however, held that there was breach of Item 5 of Schedule IV of the Act. The Industrial Court, thereafter, held that the Respondents cannot be made permanent in Class III post, however, they are entitled to be paid as a clerk for the years they have worked. Thereafter the Industrial Court directed the Petitioner to pay the amount payable to the post of clerk on which the Respondents worked, within three months and take a decision regarding their appointment to the post of clerk as per their experience and qualification. Accordingly, the Complaint

was disposed of by an order dated 5 January 2012.

5 Thereafter, the petition has appeared on board from time to time. Various interim orders were passed exploring the possibility whether the grievance of the Respondents could be satisfied. The Petitioner Corporation constituted a Departmental Promotion Committee and decision was taken that 29 Respondents/employees, out of 41 Respondents/employees, were qualified for being promoted as junior clerks in regular cadre and they were so promoted. Respondent Nos.3, 5, 9, 17, 23, 26, 30, 31, 32, 33 and 37, were held not qualified for promotion as they did not possess requisite qualifications.

6 I have heard learned counsel for the parties.

7 The impugned order passed by the Industrial Court is cryptic. In the first part, the Industrial Court holds that the Respondents are not entitled to be made permanent in Class III post. However, proceeded to pass certain directions in their favour. Once it is categorically held by the Industrial Court that the Respondents were not entitled to be made permanent in Class III post as the Petitioners have committed no unfair labour practice and that the Respondents have not challenged the findings, there is no question of automatic absorption of the Respondents in Class III post by way of an affirmative action. The Respondents have been absorbed and made permanent in Class IV post and that they will have to establish they are entitled to be appointed in Class III post as per

rules. Even the Industrial Court, in the impugned order, has directed the Petitioner to take action as per the rules. As referred to earlier, there is no right of the Respondents for absorption in Class III post on the ground that there has been an unfair labour practice. If however the Respondents are entitled to be appointed/promoted to the post of clerk, in the regular course in view of their service in Class IV post, as per rules, then it cannot be denied to them. If a decision is taken by the Petitioner Corporation, pursuant to the direction of the Industrial Court, not to promote some of the Respondents by following the methodology laid down of holding a Departmental Promotion Committee, then that would be a fresh cause of action which the aggrieved Respondents will be entitled to challenge.

8 As regard the direction to pay the amount payable to the post of clerk on which the Respondents have stated to have worked, learned counsel for the Petitioner has relied upon a decision of the Apex Court in the case of *State of Orissa & anr. v/s Mamata Mohanty*, reported in *(2011) 3 SCC 436*. More particularly, para 19 of the said decision. Learned counsel for the Respondents submitted that this decision may not be applicable to the facts of the present case as the Respondents have been made permanent in Class IV post.

9 The fact that the Industrial Court has held that there is no unfair labour practices on the part of the Petitioner under Items 6, 9 and 10 and that the Respondents cannot claim any right to Class

III post on the ground that there has been unfair labour practice, the payment as ordered by the Industrial Court under the provisions of M.R.T.U. & P.U.L.P. Act, cannot be sustained. However, if the Respondents are entitled to claim this benefit under some other provision of law, it will be open for them to claim the same. In the circumstances, since the decision pursuant to the impugned order has been taken by the Petitioner Corporation, which gives fresh cause of action to the Respondents and that the direction to pay the difference, cannot be sustained in this proceeding, the impugned order will have to be quashed and set aside. It is obvious that those Respondents who have been given benefit in regular course by Departmental Promotion Committee and their benefits which are accrued to them under the regular channel, will not be affected by these orders.

10 It is clarified that, as regard the challenge to the decision taken by the Petitioner including the decision of Departmental Promotion Committee constituted not to grant promotion to some of the Respondents in regular course, the remedy of these aggrieved Respondents is kept open and all contentions of parties in that regard are left open.

11 In view of the above, Rule is made absolute in terms of prayer clause (b). No order as to costs.

(N. M. JAMDAR, J.)