

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

WRIT PETITION NO.3432 OF 2010

Shri Ramesh Uttamrao Patil

...Petitioner

vs

Chief Executive Officer,
Zilla Parishad, Nashik.

...Respondent

.....

Mr.Jayendra D.Khairnar for the Petitioner.

Mr.Ashwnikumar Ramchandra Kaladnis for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : AUGUST 8, 2016.

P.C. :

1. Heard learned Counsel for the parties.
2. The petition challenges an Award passed by the Labour Court at Nashik in a Reference under the Industrial Disputes Act. By the impugned Award, the Reference, which concerned the Petitioner's termination from service, was dismissed. The Labour Court held that the Petitioner was not entitled to reinstatement with continuity of service.
3. The Petitioner's case is that he worked with the Respondent Zilla Parishad as a Mishrak (Aushadh Nirmata) from April, 1995 to July, 1998 and he was illegally terminated by the Respondent Zilla Parishad on 30.7.1998. It is his case that though separate orders were issued for appointing him on an ad-hoc and temporary basis between the years 1995 and 1998, leaving a gap of a few days each time to show that the Petitioner was not in the regular employment of the Respondent, the Petitioner actually worked for a long period of nearly 3 years and that

he was wrongfully retrenched without due procedure of law or compliance with of section 25-F of the Industrial Dispute Act, 1947.

4. In the impugned Award, the Labour Court has considered both oral and documentary evidence on record. The Court, in the first place, noted that the Respondent Zilla Parishad had not published any advertisement stating that any post of Mishrak (Aushadh Nirmata) was vacant. The Court noted that there was nothing to show that the Petitioner was appointed after following due process, as in the case of other regular employees under the Zilla Parishad. The Court disbelieved the Petitioner's case that he was employed through the Employment Exchange. The Court noted that there was no record to that effect before the Court. The Petitioner's case that even after the last letter of appointment issued by the Respondent Zilla Parishad on 21.5.1997 engaging him till December, 1997, the Petitioner continued to be in the employment of the Respondent Zilla Parishad till his purported illegal termination with effect from 30.7.1998, was also not believed by the Labour Court. The Labour Court observed that the Petitioner had admitted in his cross-examination that he did not remember whether after December 1997, any appointment letter was issued by the Zilla Parishad to him. It is the case of the Zilla Parishad that the Petitioner ceased to be in their employment after December 1997 itself and that the reference was sought by the Petitioner as late as 2005 i.e. after nearly 7 years of his having ceased to be in the employment of the Respondent. On these facts, considering the law laid down by the Supreme Court in the cases of **State of Karnataka Vs. Umadevi and ors.**¹ and of **MSRTC Vs. Casteribe Rajya P. Karmachari Sangathana**,², the Petitioner could not have claimed regularization in the employment

1 (2006)4 SCC 1

2 (2009(III) CLR 262)

of the Zilla Parishad or to be treated as a permanent employee of the Zilla Parishad merely by reason of his having worked with the Parishad for a period of about 3 years. It is born out by the record that the Petitioner was appointed on an ad-hoc basis and not in any particular vacant post. His continuation thereafter on ad-hoc basis cannot be termed as either an act of unfair labour practice or exploitation of the Petitioner. Balancing of the principles of (i) avoidance of unfair labour practice in accordance with the judgment of Supreme Court in **MSRTC's case** and (ii) equality of opportunity in the matter of public employment in accordance with the decision in **Umadevi's case**, does not merit the order sought by the Petitioner.

5. Learned Counsel for the Petitioner relies on the decision of a Division Bench of our Court in the case of **Chief Executive Officer, Zilla Parishad Vs. Satish s/o Dnyanoba Gaikwad and anr.**³ He submits that in this decision, the Division Bench has held that even in the case of an ad-hoc employment under the State the principle of Section 25-F of the Industrial Disputes Act must be applied and non compliance with Section 25-F may amount to an illegal retrenchment. That was a case where the concerned workman had worked with a Zilla Parishad continuously between 1990 and 1998 and that he was orally terminated without following the provisions of law. The learned Judges came to a finding of fact that the Respondent workman in that case had been tired out by the Appellant Zilla Parishad in a continuous litigation from 1998 till date, i.e. till about 2011; and that the breaks given to the Respondent workman were decidedly artificial. Accordingly, there was a clear case of unfair labour practice and exploitation within the meaning of the law stated in the case of **MSRTC** (supra). Such is not the case here. As I have noted above, the facts in the present case

3 (2013(5) Mh.L.J. 762)

do not make out any such unfair practice or exploitation. Hence, reliance on the decision of **Chief Executive Officer, Zilla Parishad Vs. Satish s/o Dnyanoba Gaikwad and anr.** does not take the Petitioner's case any further.

6. There is, thus, no merit in the writ petition. Rule is accordingly discharged and the petition dismissed. No order as to costs.

(S.C.GUPTE J.)