

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

WRIT PETITION NO. 635 OF 2016

Mrs.Supriya Santosh Kasrung & Anr.	...Petitioners
vs.	
Raigad Zilla Parishad & Anr.	Respondents

Mr.Avinash Jalsatgi with R.R. Mishra for Petitioners.
Mr.Chindambar Ganesh Gavnekar with G.S.Hiranandani with Suhas Deokar for Respondent No.1.

CORAM : S.C. GUPTE, J.

29 APRIL 2016

P.C. :

Heard learned Counsel for the parties. Rule. By consent, the petition is taken up for hearing forthwith.

2 This petition challenges a revisional order passed by the Industrial Court, Thane, dismissing the revisions and upholding the orders passed by the Labour Court on complaints under Section 28 read with Item Nos. 1(a), 1(b), 1(d), 1(f) and 1(g) of Schedule IV of the MRTU and PULP Act, 1971. The Labour Court had dismissed the complaints on the ground that the complainants had failed to prove unfair labour practices complained of.

3 The Petitioners were appointed as Anganwadi Sevikas with the Respondent Zilla Parishad. They worked with the Respondent for about 20 years, after which they were promoted as Integrated Child Development Scheme ("ICDS") Supervisors in pursuance of an advertisement calling for applications from Anganwadi Sevikas for the post of supervisors on promotion and selection of the Petitioners in response to their application. After their selection and appointment to the post of ICDS Supervisors, the Petitioners were made to resign from their earlier posts of Anganwadi Sevikas. The Petitioners joined the new posts. Subsequently, in pursuance of show cause notices issued on 29 August

2012, the Respondent Zilla Parishad, by its letters dated 19 December 2012, terminated the services of the Petitioners on the ground that their appointments to the new posts on promotion were illegal. The reason for such illegality was that their names were included in the waiting list and all selected candidates having joined the employment, the Petitioners were wrongly offered employment. These terminations were challenged by the Petitioners before the Labour Court in two separate complaints under the MRTU and PULP Act. The Labour Court, by its order dated 23 September 2014, dismissed the complaints. The Petitioners' revision applications under Section 44 of the Act challenging the dismissal were rejected by the Industrial Court at Thane on 17 October 2015. The revisional orders have been challenged in the present petition.

4 It is apparent from the impugned orders of the courts below that the Petitioners' cases were clubbed with the cases of other employees, who were appointed as Peons of the Respondent Zilla Parishad. It appears that in the case of these other employees, namely, peons, to be selected from different categories, specific number of posts were advertised. In all those cases, the candidates in the select list for all advertised posts had actually joined the duties. Despite the selected candidates joining the duties and thereby filling up of the posts, candidates from the wait list were also appointed to the posts. These wait list candidates were subsequently dismissed from service, as in the case of the Petitioners herein, on the ground that their appointments were illegal. In the cases of peons, it was evident that there were specific number of posts advertised and those were filled in from amongst the candidates in the select list. The courts below, therefore, came to the conclusion that the appointments of candidates from wait list, in the premises, were illegal at the very inception and that the employees were subsequently dismissed rightly by the Respondent Zilla Parishad. Such was, however, not the case with the two Petitioners with whom we are concerned in the present petitions. In their case, the advertisements did not disclose any particular number of posts to be filled in unlike in the case of peons, where, for each category, a specific number of posts were advertised for being filled in. Though the select list and the wait list do indicate that there were five candidates in the select list and the two Petitioners in the wait list, there was

no specific plea on the part of the Respondent Zilla Parishad that there were only five posts of ICDS Supervisors, which were to be filled in in pursuance of the advertisement. This aspect of the matter does not appear to have been considered by the courts below. In fact, the courts below appear to have treated the matter of the two Petitioners herein, who were promoted as ICDS Supervisors, as being on par with the case of the peons, referred to above. The relevant aspect of the matter, namely, whether there were only five posts of ICDS Supervisors to be filled in and whether by reason of all five posts being filled in by the candidates from the select list, the appointments of the present Petitioners, who were on wait list, were illegal at the very inception, is not a matter considered by the courts below. The impugned orders of dismissal of the complaints will have to be, accordingly, set aside and the matter remanded to the Labour Court for a fresh hearing in accordance with law.

5 Accordingly, Rule is made absolute. The impugned orders of the Industrial Court and Labour Court dated 17 October 2014 and 23 September 2014 are quashed and set aside, and the complaints, namely, Complaint (ULP) Nos.8/2013 and 9/2013, are remanded to the Labour Court for a fresh hearing in accordance with law. The petition is disposed of accordingly. No order as to costs.

6 Both the parties are permitted to put in such additional or supplementary pleadings, as they may desire. After completion of such pleadings, the Labour Court shall hear and dispose of the complaints, in accordance with law, as expeditiously as possible and in any event, within a period of six months from today.

(S.C. Gupte, J.)