

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4386 OF 2004

1. The State of Maharashtra,
Through the Joint Director,
(Old Deputy Director)
Technical Education,
Regional Office, Nashik Road,
Nashik,

2. The Principal,
Government Polytechnic,
Ahmednagar

-- PETITIONERS

VERSUS

Yogini Balwant Kulkarni,
Age-Major, 444, Hudco Colony,
Savedi Road, Ahmednagar

-- RESPONDENT

Mr.N.T.Bhagat, AGP for the State/petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/05/2017

ORAL JUDGMENT :

1. This petition was admitted by order dated 01/12/2004.

Interim relief was not granted.

2. I have heard the learned counsel for the respective sides at length.

3. The petitioner has challenged the impugned judgment dated 23/09/2003 delivered by the Industrial Court in Complaint (ULP) No.234/1993 thereby allowing the said complaint of the respondent. By the impugned judgment, the petitioners were held guilty of unfair labour practices under Items 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971 and the respondent was granted seniority from 05/08/1993 in addition to the order of regularization dated 19/01/2000 w.e.f. 01/09/1999.

4. There is no dispute that the respondent, whose name was recommended by the Employment Exchange in 1982, was appointed by the petitioner on 06/03/1991. She was terminated on 27/08/1993. Her ULP complaint was allowed by the Labour Court and she was reinstated in service on 16/02/1994 with continuity and full back wages. By the judgment of this Court dated 03/09/2015 delivered in WP No.4175/1994, the challenge to the reinstatement of the respondent was allowed only to the extent of reducing the full back wages granted by the Labour Court to 50% back wages. The respondent/employee has refunded the excess amount received by her towards full back wages, to the petitioner/department.

5. It is equally undisputed that a Government Resolution dated

01/09/1999 was issued by the petitioner thereby granting regularization to the employees like the respondent w.e.f. 01/09/1999. By order dated 19/01/2000, the respondent was granted all benefits incidental to regularization w.e.f. 01/09/1999.

6. In the impugned judgment dated 23/09/2003, the Industrial Court has granted regularization to the respondent and seniority w.e.f. 05/08/1993 on the ground that she has completed 240 days in continuous employment in a calendar year in the service of the petitioner.

7. Mr.Barde, learned Advocate for the respondent has strenuously defended the impugned judgment and has vehemently canvassed that this Court would have limited jurisdiction under the writ of certiorari while dealing with such cases under Article 227 of the Constitution of India.

8. I am unable to accept the submissions of the Mr.Barde in the light of the law laid down by the learned Division Bench of this Court in case of Municipal Council, Tirora and another Vs. Tulsidas Baliram Bindhade [2016(6) Mh.L.J.867] wherein the learned Division Bench, while dealing with a reference by the learned Single Judge,

has concluded that completion of 240 days, as enunciated under the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 would not be applicable to state instrumentalities. So also, the respondent has accepted her regularization on the basis of the GR dated 01/09/1999 during the pendency of the complaint before the Industrial Court.

9. The learned Single judge of this Court (Coram : Ravindra V. Ghuge, J.) in the matter of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao and other connected matters [2015(5) Mh.L.J.75] and by judgment dated 26/02/2015 in Municipal Council Tuljapur Vs. Baban Hussain Dhale (Dead), through his LR and others has also concluded that the concept of completion of 240 days as a foundation for granting regularization would not be available in state instrumentalities.

10. Considering the above, this petition is partly allowed and the direction of the Industrial Court declaring unfair labour practices in clause 2 and 3 of the impugned order is set aside. The direction in clause 4 stands modified and the respondent/employee would therefore be entitled to all the benefits flowing from the GR dated 01/09/1999 with effect from the said date.

11. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)