

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9948 OF 2017

THE MUNICIPAL COUNCIL OSMANABAD
VERSUS
THE GENERAL SECRETARY MARATHWADA
LAL BAWTA LABOUR UNION LATUR

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Advocate for Petitioner : Shri Deshmukh Vivekanand B.
Advocate for Respondent : Shri Gaddime Arvind N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 4.5.2017, passed by the Industrial Court, Latur, by which, the petitioner is directed to allot work to daily rated Sevikas (all lady employees) mentioned in the Schedule annexed to Complaint (ULP) No.37 of 2017, maintain their attendance on the muster roll with thumb impressions and disburse their wages for the period they have worked.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. All these daily employees included in the Schedule to

Complaint (ULP) No.37 of 2017 had earlier filed Complaint (ULP) Nos. 137 and 144 of 2011. Having succeeded in the said Complaints by judgment dated 2.5.2012, this very petitioner / Municipal Council had approached this Court in Writ Petition Nos.1413 and 5091 of 2014. This Court had delivered an order on 1.10.2014, which reads as under:-

"1. Having heard the learned Advocates for the respective sides, the grievance of the petitioner Municipal Council, Osmanabad appears to be that they can not create posts, which is in the exclusive domain of the State Government. As such, a declaration of unfair labour practices could not have been made by the Industrial Court in the impugned judgment dated 02/05/2012.

2. Learned Advocate for the respondents submits that all the respondents are presently in employment. They have been performing their duties for about 15-20 years. Neither have they been granted permanency / regularization nor have they been granted benefits incidental and consequential to regularization.

3. A group of petitions (Writ Petition No.4557/2005 and other connected matters), decided by this Court on 01/02/2011 indicates that this Court has already taken a view in similar matters wherein the employer was the Municipal Council, Sawda, Tal.Raver, Dist. Jalgaon. This Court, in the said judgment, after considering the facts of

the case and the Law applicable, has come to a conclusion that the Industrial Court had erred in concluding that the petitioner employer was guilty of unfair labour practices and directing it to pay salaries at par with permanent employees. However, this Court has also noted that the respondents workmen were working for about 15-17 years and the Municipal Council, Sawda had forwarded their proposals for regularization and permanency to the State Government.

4. *The relevant paragraph Nos. 22 and 23 in the above referred judgment dated 01/02/2011 in the Municipal Council, Sawda case, are being reproduced as under :-*

"22. In view of this discussion, I find that Industrial Court has erred in directing the employer to pay to complainants before it salary and other benefits like that of other permanent employees from the date of filing of complaints. The said direction cannot be sustained. The findings of the Industrial Court that the petitioner-employer has indulged into unfair labour practices under Item 6 and Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act are also unsustainable. Same are accordingly quashed and set aside.

23. However, it cannot be ignored that the respondents are in employment since last about 15 to 17 years. The Municipal Council has forwarded the proposals for their regularization and permanency to

State Government. The Municipal Council shall therefore pursue those proposals and try to obtain the necessary directions from the State Government upon it at the earliest. The respondents are also given liberty to make representation independently to State Government in this respect."

5. *Learned Advocate for the respondents fairly submits that the employees are not interested in whether there is any declaration of ULP against the petitioner/employer. They are interested in the regularization of their services and earning salaries at par with other similarly situated permanent employees. The principal of equal wages for equal work is also being invoked in support of their case.*

6. *The Apex Court, in the case of Chief Conservator of Forest Vs. Jagannath Maruti Kondhare, reported at 1996 I. CLR 680, has dealt with a similar situation and had ordered the employer, which was a State instrumentality, to pay minimum wages to the concerned workers and at par with the permanent employees.*

7. *In my view, ends of justice would be met by modifying the impugned judgment and order only to the extent of setting aside the declaration that the petitioner employer has committed an unfair labour practice under the M.R.T.U. and P.U.L.P. Act, 1970. Such a declaration has its own effects including severe punishments / penalty as is provided for under the Industrial Disputes Act, 1947.*

8. *If the said declaration is set aside, the rest of the judgment can be maintained with a direction to the petitioner to refer to the appropriate authority / Government, which is the Divisional Commissioner, who is Regional Director of Municipal Administration to consider the proposals of the respondents in light of the judgment of the Industrial Court and take a decision at the earliest. The respondents are agreeable to such directions.*

9. *In the light of the above, the conclusions of the Industrial Court in the impugned judgment dated 02/05/2012 to the extent of holding the petitioners guilty of unfair labour practices, is set aside (the declaration of the ULP). Rest of the judgment is not interfered with in order to ensure that the concerned authority considers the proposal of the respondents for regularization and benefits incidental and consequential thereto.*

10. *As such, this writ petition is partly allowed only to the extent of setting aside the declaratory part of the impugned judgment of the Industrial Court of holding the petitioner guilty of unfair labour practices. The petitioner is, therefore, directed to submit the proposal of the respondents for regularization and benefits incidental and consequential thereto, alongwith the copy of the judgment of the Industrial Court dated 02/05/2012 to the Divisional Commissioner, Aurangabad, who is the Regional Director of Municipal Administrator, within a period of 4 (four) weeks from today. No further extension of time shall be prayed for by the petitioner. The concerned authority, upon receipt*

of the proposal from the petitioner alongwith the copy of the judgment of the Industrial Court dated 02/05/2012, shall decide the same within a period of 8 (eight) weeks.

11. Needless to state, the petitioner shall not alter the service conditions of the respondents or terminate them only on account of the pendency of their proposal. It is clarified that any act of mis-conduct, committed by any of the respondents, shall not fall within the protection of this order."

4. It is informed that, by order dated 31.8.2017 passed by the Honourable Supreme Court, Civil Appeals No. 8021 and 8022 of 2016 filed by the petitioner / Municipal Council were dismissed as like the earlier Special Leave Petitions, which were dismissed on 23.9.2016.

5. Considering the above, I find that the petitioner / Municipal Council has over stepped it's limits and should not have issued the notice dated 2.5.2017, by which, these employees were directed not to report for duties. In the backdrop of the judgment of this Court, dated 1.10.2014 and the order of the Honourable Apex Court dated 31.8.2017, the said direction is apparently unsustainable.

6. Considering the above, this petition is dismissed. The Sevikas, mentioned in the Schedule to Complaint (ULP) No.37 of 2017, cannot be terminated by the petitioner / Municipal Council, considering the earlier judgment of this Court and the order of the Honourable Apex Court.

7. In the above backdrop, the respondent / Union is at liberty to seek disposal of Complaint (ULP) No.37 of 2017, if so advised.

(RAVINDRA V. GHUGE, J.)

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