

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11042 OF 2015

1. Vijay Rangnath Dhanedhar,
Age-36 years, Occu-Labour,
 2. Somnath Arjun More,
Age-33 years, Occu-Labour,
 3. Chandrakant Kisan Patekar,
Age-42 years, Occu-Labour,
All are R/o Katore Galli, Rahuri Nagar,
Parishad Colony, Rahuri,
Dist. Ahmednagar
- PETITIONERS

VERSUS

1. Director of Municipal Administration,
Government Transport Service
Building, 3rd floor,
Sir Pochkhanwala Marg,
Warali, Mumbai,
 2. Municipal Council, Rahuri,
Taluka Rahuri, Dist.Ahmednagar,
Through its Chief Executive Officer
- RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioners.
Mr.S.P.Tiwari, AGP for respondent No.1.
Mr.R.V.Naiknavare, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the judgment of the Labour Court dated 31/01/2009 by which Complaint (ULP) No.48/2006 filed by the petitioners has been dismissed. They are aggrieved even by the judgment of the Industrial Court dated 09/06/2015 by which Revision (ULP) No.6/2009 has been dismissed.

3. I have heard the learned Advocates for the respective sides for quite some time.

4. There is no dispute that either of the parents of these petitioners were working with the Rahuri Municipal Council. Their designation was shown to be 'Kamgar'. After the retirement of 2 persons and 1 on account of VRS on medical ground, these petitioners were appointed on compassionate basis on 10/06/2004 considering the Lad Committee Recommendations. On 25/09/2006, they were retrenched on the ground that they were not entitled to the benefits of the Lad Committee Report. They preferred Complaint (ULP) No.48/2006. By an interim order, they were granted reinstatement and subsequently when the matter reached this Court in WP No.6944/2007, the interim relief was vacated by order dated 01/07/2008.

5. The Labour Court has concluded that the parents of these petitioners were working as 'Kamgar' and not 'Safai Kamgar'. As the complaint was dismissed, the petitioners approached the Industrial Court u/s 44 of the MRTU and PULP Act, 1971.

6. Submission is that the documents at Exhibit U-45 to U-62 indicating the nature of work to be done by the parents of the petitioners, was sufficient proof that they were actually working as 'Safai Kamgar' and were cleaning the garbage and the gutters though their nomenclature was 'Kamgar'. Neither the Labour Court nor the Industrial Court has considered these documents. Exhibit U-44 is a transfer order issued to one of the parents namely Rangnath Dhanedhar who was moved from the Health Department to the Construction Department. U-45 is the nature of work to be performed pursuant to the transfer and which indicates that they were required to clean up the garbage and the gutters. All these documents have been ignored by the Labour Court and the Industrial Court. Few of these documents have been referred to and read out in the Court by the learned Advocate for the petitioners.

7. I find that though the Industrial Court has written a 30 pages

judgment, it has only dealt with the contentions of the parties and especially the contention of the Municipal Council which has concentrated more on the designation of the parents of the petitioner which is 'Kamgar' and has taken a stand that since they were not appointed as 'Safai Kamgar', they would not be entitled to the benefits of the Lad Committee Recommendations.

8. In my view, it is trite law that the designation of a person may at times be a camouflage and the worker concerned may be performing different work. What was expected of the Industrial Court in the Revision was that it should have gone into the actual work performed by the parents of the petitioners than being guided merely by their designation. From the judgment of the Industrial Court, the learned Advocates have not been able to point out as to whether it has dealt with the actual work performed by the parents of the petitioners and the cross-examination of Mr.Hadap who deposed on behalf of the council stating that they were working as 'Safai Kamgar'.

9. In the light of the above, this petition is partly allowed to the extent of quashing and setting aside the judgment of the Industrial Court dated 09/06/2015. Revision (ULP) No.6/2009 is remitted to

the Industrial Court to be considered afresh on the following conditions :-

[a] The litigating sides shall appear before the Industrial Court on 24/02/2017 and formal notices need not be issued by the Industrial Court.

[b] The Industrial Court shall call for record and proceedings from the Labour Court, Ahmednagar in Complaint (ULP) No.48/2006 and consider all the documents exhibited and proved by oral evidence.

[c] It shall scrutinize the evidence recorded by both the sides including the cross-examination of Mr.Hadap.

[d] The Industrial Court shall consider whether the parents of the petitioners were regularly discharging their duties as 'Safai Kamgar' and only on such conclusion, it shall scrutinize the claims of these petitioners, considering that there is a possibility that the parents of the petitioners may have occasionally or intermittently worked as 'Safai Kamgar' which will not make their nature of duties as those of a 'Safai Kamgar',

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

(RAVINDRA V. GHUGE, J.)