

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8731 OF 2015

The Aurangabad Municipal
Corporation, Aurangabad,
Through it's Commissioner = **PETITIONER**

VERSUS

Quazi Jaweed Ahmed Siddique,
Age: 43 Yrs., occu. Nil
R/o H.No.3/9/18, Kirana Chawdi,
Aurangabad. = **RESPONDENT**

Mrs. Deshpande Manjusha Advocate for Petitioner;
Mr. Kasliwal Ajit D., Advocate For Respondent.

CORAM : P.R.BORA, J.

DATE : 10th April, 2017.

ORAL JUDGMENT:

1) Heard. Rule. Rule made returnable
forthwith by consent of learned Counsel
appearing for the parties.

2) Order dated 26th December, 2013 passed by
Judge, Labour court (II) Aurangabad in Reference
(IDA) No.18/2006, is challenged in the present

petition. The respondent had filed the aforesaid Reference Application, seeking his reinstatement with continuity of services and full back wages w.e.f. 1st April, 2007. The learned Judge of the Labour court, vide the impugned order, has directed the petitioner Corporation to reinstate the respondent as Sub-Overseer within two months from the date of publication of the Award. The Labour court has not held the respondent entitled for the relief of continuity as well as back wages.

3) Smt. Deshpande, learned counsel appearing for the petitioner Corporation, has assailed the impugned order on various grounds. The learned Counsel submitted that the respondent was appointed on 'work charge basis' as Sub-Overseer for three months, vide order dated 7.5.1999 and thereafter was continued for next three months on similar conditions. The learned counsel submitted that the respondent was appointed on the project, which was funded by the

Central Government and it was clarified in the order issued in favour of the respondent that his appointment will automatically come to an end on expiry of the terms mentioned in the said appointment order.

. The learned counsel further submitted that since the appointment itself was for fixed period and was to end by efflux of time, the services of the respondent had automatically come to an end and as such, there was no question of commission of any unfair labour practice by the corporation.

. The learned counsel further submitted that, in fact, the respondent had accepted the said order and did not challenge the same for the period of about seven years. The learned counsel submitted that the respondent had approached to the Labour Commissioner much belatedly and the Dispute referred by him was referred for adjudication in the year 2006, i.e. after six years of his alleged oral termination. The learned Counsel further submitted that in fact

the Labour court ought not have entertained such Reference at the belated stage and no relief was liable to be granted in favour of the respondent.

4) The learned counsel further submitted that since the appointment of the respondent was for temporary fixed period, no recruitment procedure was followed before giving him the appointment. The learned counsel further submitted that the petitioner Corporation has its own recruitment Rules. However, since the post was not permanent and vacant, no recruitment process was followed while giving appointment to the respondent. The learned counsel further submitted that subsequently, the instructions were also issued by the State government for not making appointment without following due process of law. On all these grounds, it was the contention of the petitioner corporation that the order passed by the Labour Court is unsustainable and in fact no relief was liable to be granted in favour of the respondent.

5) The learned counsel has relied upon the judgment of the Hon'ble Apex court in the case of Bhavnagar Municipal Corporation Vs. Salimabhai Umarbhai Mansuri - AIR 2013 SC 2762. The learned Counsel submitted that the Labour court did not appreciate the legal provisions in its proper perspective. The learned counsel, therefore, prayed for allowing the writ petition and consequently to quash and set aside the order passed by the Labour court, which has been impugned in the present petition.

6) Shri Kasliwal, learned counsel appearing for the respondent, has resisted the contentions raised on behalf of the petitioner corporation. The learned counsel submitted that at the relevant time two other employees, viz. Sanjay Murlidhar Kombde and Amol Baburao Kulkarni, were also appointed by the Corporation on work charge establishment on the post of Sub-Overseer on similar terms and conditions. The learned counsel submitted that said Sanjay Kombde worked

with the Corporation for about nine months, whereas Amol Kulkarni had worked for about eight months.

. The learned counsel further submitted that after the services of these employees were orally terminated by the petitioner Corporation, on the same grounds on the basis of which respondent was terminated, they have approached the Labour court by filing Complaints under the provisions of M.R.T.U. & P.U.L.P. Act and the Complaints filed by these employees were allowed by the Labour court. The said decision was challenged by the petitioner Corporation, first in the Industrial Court and thereafter before this court by filing a Writ Petition. The learned counsel submitted that, however, neither the Industrial Court nor the High court gave any relief in favour of the petitioner corporation and eventually the orders passed by the Labour court were confirmed. The learned Counsel further submitted that both these employees have now been taken in service by the petitioner

Corporation. The learned counsel submitted that at present also, 32 posts of Sub-Overseers are lying vacant on the establishment of the petitioner Corporation. The learned Counsel submitted that the present respondent stands at par with the aforesaid two employees viz. Sanjay Kombde and Amol Kulkarni.

7) The learned Counsel further submitted that even otherwise, no such grounds are set out in the present petition in exception to the observations made and findings recorded by the Labour Court in the impugned order so as to cause interference in the said order. The learned Counsel further submitted that when the posts of Sub-Overseers were lying vacant on the establishment of the petitioner Corporation and the work was also perennially available, to issue an appointment order to the respondent and other similarly situated employees on a fixed period was a camouflage. The learned Counsel further submitted that in such circumstances merely because the appointment orders indicate that the

appointment will come to an end by efflux of time, no much importance can be attached to such a stipulation. The learned Counsel further submitted that there was thus no reason for discontinuing the services of the respondent. The learned Counsel, therefore, prayed for dismissal of the writ petition.

8) I have carefully considered the submissions advanced by learned Counsel appearing for the respective parties. I have also perused the impugned judgment and order as well as other material placed on record. I need not to enter into the detailed discussion as about the issues raised by the petitioner Corporation whether the recruitment process was followed or what was the nature of appointment issued in favour of the respondent as well as other two employees, referred to above. From the material on record it is quite evident that all the three persons, i.e. Sanjay Kombde, Amol Kulkarni and present respondent were appointed on similar terms and

conditions and all were appointed as Sub-Overseers. The appointment of all these employees were on Work charge establishment. It is further evident from the material on record that similar defenses were raised in the petitions filed against the orders passed in favour of the said two employees and these objections have been turned down by this court in Writ Petition Nos.1484/2008, 1485/2008 and 1486/2008. I deem it appropriate to reproduce herein below para 3 of the aforesaid order, which reads thus, -

"3. I have perused the order passed by the labour court, Aurangabad as well as order passed in revision application by the industrial court, Aurangabad. It is contended by learned counsel appearing for the petitioner that services of the employees were hired for a project which was sponsored by the State Government. It is contended that on completion of the project, respondents/employees were

discontinued from services. However, on perusal of the judgments passed by the labour court as well as industrial court. I do not find such a contention having been raised by the employer. It is for the first time in these writ petitions, a stand is being taken that the services of the employees were hired for completion of project funded by the State Government and on completion of such project, services of the employees were dispensed with. It is impermissible to raise such contention for the first time in writ petition presented by the employer in this court. I not find that the courts below have committed any irregularity which calls for interference by this court in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India. Petitions are devoid of merit. Petitions stands rejected summarily."

9) In view of the observations made and the findings recorded, as above, by this Court, the present writ petition also needs to be dismissed. The petitioner has placed on record the copies of the letter of appointment issued in favour of Sanjay Kombde and Amol Kulkarni. The petitioner has also placed on record the appointment orders issued in favour of these employees after dismissal of the writ petition Nos.1484/2008, 1485/2008 and 1486/2008 filed by the petitioner Corporation against the order of reinstatement passed in favour of the aforesaid two employees. The learned Counsel appearing for the petitioner Corporation has not disputed the aforesaid facts. It has also not been disputed by the Corporation that presently 32 posts of Sub-Overseers are lying vacant on the establishment of the petitioner Corporation. On making a query by the Court as about the vacancies of the posts of Sub-Overseers on the establishment of the petitioner Corporation, the counsel for the Corporation was fair enough to put on record a communication

received to her from the petitioner Corporation, evidencing that at present 32 posts of Sub-Overseers are vacant on the establishment of the petitioner Corporation.

10) From the aforementioned facts, there remains no doubt that the present Respondent stands at par with Sanjay Kombde and Amol Kulkarni. The petitioner corporation has already reinstated these two employees in pursuance of the order passed by the Labour court in favour of said employees after making unsuccessful attempts to challenge the said orders, first in the Industrial Court and thereafter by filing writ petition in the High court. Thus, the principles of parity would apply in the instant case. The petitioner Corporation cannot give discriminatory treatment to the present respondent.

. As has come on record, 32 posts of Sub-Overseers are still vacant on the establishment of petitioner Corporation. Even otherwise, it does not appear to me that the Labour court has

committed any error in directing the reinstatement of the respondent without the relief of back wages.

11) For the foregoing circumstances and for the reasons stated, as above, I am not inclined to cause any interference in the impugned order. The writ petition, therefore, stands dismissed, however without any order as to costs. Rule discharged.

(P.R.BORA,J.)

bdv/