

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8168 OF 2014

Rajeshree Deepak Mahajan,
Age 29 years, Occ. Nil
R/o Mali Galli, Near Malgangadevi
Temple, Taluka Rahuri,
District Ahmednagar.

..Petitioner

Versus

1. State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. Deputy Director of
Municipal Administration,
3rd Floor, Govt. Transport Building,
Sir Pochkhanwala Marg, Worli,
Mumbai.

3. Municipal Council Rahuri,
Taluka Rahuri, Dist. Ahmednagar
Through its Chief Executive Officer.

..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
AGP for Respondents 1 & 2 : Shri Bhagat N.T.
Advocate for Respondent 3 : Shri Naiknavare Ramesh V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 28, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment of the Labour Court dated 28.11.2012, by which, Complaint (ULP) No.13 of 2007, filed by the petitioner has been dismissed. She is equally aggrieved by the judgment dated 13.11.2013, delivered by the Industrial Court, by which, her Revision (ULP) No.119 of 2012 has been dismissed.

5. I have heard the learned Advocates for the respective sides at length. The undisputed factors emerging from the record are as under:-

(a) The mother-in-law of the petitioner was Sweeper and was inducted on daily wages in employment from 2.8.1981.

(b) By order dated 1.7.1985, she was granted permanency in the service of the respondent / Municipal Council.

(c) On 31.8.2004, she was declared medically unfit and on account of the same, she was retired on medical grounds.

(d) The Lad Commission's recommendations, which are

commonly understood as Vashila Padhat or Varasa Padhat, is applicable to the category of Sweepers.

(e) The petitioner / daughter-in-law applied for compassionate appointment in the light of the Lad Committee recommendations and was appointed in place of her mother in law on 17.11.2004.

(f) There is no dispute that various Government Resolutions permit appointment of the daughter in law on compassionate basis.

(g) On 27.10.2006, the petitioner was terminated by payment of retrenchment compensation on the ground that the service of her mother in law cannot be considered from 2.8.1981 till 1.7.1985 and she had completed 19 years and 2 months, falling short of the required 20 years' qualifying period by 10 months for entitling the petitioner to be appointed on compassionate basis.

(h) By GR dated 10.9.2007, the condition of 20 years has been removed.

(i) As on 10.9.2007, Complaint (ULP) No.13 of 2007, filed

by the petitioner was pending before the Labour Court.

(j) The Labour Court has dismissed the complaint, purely on the ground that the mother in law did not complete 20 years in service and the GR dated 10.9.2007 cannot be granted retrospective effect.

(k) For the same reasons, the Industrial Court has dismissed the Revision Petition.

6. Considering that the petitioner otherwise could have been appointed on compassionate basis, it is stated that there was no other legal impediment to her appointment, except that her mother in law had not completed 20 years in service.

7. It requires no debate that an employee is granted permanency on the basis of the earlier service rendered as a temporary or a daily wager or even a probationer. It is on the strength of that portion of the service that a candidate is granted permanency. So also, considering the Maharashtra Civil Services (Pension) Rules, 1982, this Court has laid down the law in Writ Petition No. 8000 of 2015 (Mahatma Phule Krushi Vidyapeeth Vs. Ganpat Kisan Karle), by judgment dated 3.3.2016, that the temporary or daily wage services of an employee rendered prior to his confirmation have to be

reckoned with for calculating the qualifying service of 20 years for pensionary benefits.

8. In the instant case, the mother in law of the petitioner has been working with the respondent / establishment from 2.8.1981 and on the basis of her temporary service, she was granted regularization on 1.7.1985, which cannot be construed to mean that 1.7.1985 was her first day in service. The respondents are unable to point out from the Lad Committee recommendations that only permanent service of an employee is to be taken into account while granting compassionate appointment. They have not pointed out any provision or condition from the said recommendations which permits ignoring the entire duration of temporary service of an employee for considering a case for compassionate appointment. It is on these premises that I can conclude that there is no specific bar prescribed under the Lad Committee recommendations or the earlier Government Resolutions so as to indicate that the temporary service is not to be computed while calculating 20 years qualifying service.

9. The impugned judgment of the Labour Court as well as the judgment of the Industrial Court is not based on any particular clause from any GR or the Lad Committee recommendations by which, it could be concluded that the temporary service of the petitioner's mother in law from 1981 to 1985 cannot be reckoned with for

calculating 20 years qualifying service. If any such specific exclusion or a clause which would permit ignoring of the temporary employment could have been pointed out by the respondents, in that case, the petitioner would have been rendered ineligible for employment as her mother in law would then be construed to have completed 19 years and 2 months in service purely as a permanent employee.

10. Shri Barde, learned Advocate for the petitioner submits on instructions that the petitioner is willing to waive the past period of employment and unemployment and is willing to rejoin the services as a fresh employee. The said statement is noted.

11. In the light of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 13.11.2013 is quashed and set aside and Revision (ULP) No.119 of 2012 is disposed off. The impugned judgment of the Labour Court dated 28.11.2012 stands modified in the following terms:-

(A) Complaint (ULP) No.13 of 2007 stands partly allowed.

(B) The impugned termination of the petitioner dated 27.10.2006 is set aside.

(C) The petitioner shall be appointed w.e.f. from the date of this judgment on compassionate basis in place of her mother in law on the same post on which she was appointed earlier.

(D) Her service shall be considered to have commenced from the date of this judgment.

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

(RAVINDRA V. GHUGE, J.)

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