

two months from the date of the order. Government is to consider the said proposal as early as possible and in accordance with law.

3. In support of this Petition, Ms Deshmukh submitted that by order dated 23.07.1997, complainant was appointed on temporary basis as a wireman for the period of 6 months. He was appointed for the period from 21.07.1997 to 20.01.1998 on daily wages basis. On 31.08.2001, he was transferred to Pandit Vishnu Paluskar Sanskrutik Bhawan as an electric operator. Petitioner had submitted proposal to the State Government and in pursuance thereof, by order dated 24.05.2003, complainant was made permanent on the post of Bigari in regular pay-scale of Rs.2750-70-3800-75-4400/- subject to conditions set out in that order. Complainant accepted the said appointment and instituted the present complaint in the year 2010 challenging his appointment on the post of Bigari. She submitted that complainant having accepted that appointment as far as back in 2003, it is not open for him to challenge that appointment, that too in the year 2010. She submitted that Section 28(1) of the Act lays down that complaint is to be instituted within 90 days of the occurrence of such unfair labour practice before the Court competent to deal with such complaint either under Section 5, or as the case may be, under Section 7 of the Act. As the complaint is instituted merely after 7 years and not within 90 days, the Tribunal was not justified in entertaining and trying the complaint on merits. The Tribunal ought to have dismissed the complaint on the ground of gross delay and laches as there is no explanation for approaching the Tribunal belatedly.

4. She further submitted that even otherwise, complainant cannot be appointed on the post of 'wireman' or 'electric operator' as he does not possess the requisite qualification. She invited my attention to

paragraph 7 of the impugned order wherein complainant admitted that for the post of 'wireman', minimum qualification is S.C.C. and he should have passed wireman course. The minimum qualification for appointment to the post of wireman by promotion is 3 years experience as assistant wireman. She submitted that complainant has passed 7th Standard and therefore he does not possess requisite qualification.

5. Lastly, Ms Deshmukh submitted that by the impugned order, the Tribunal directed the petitioner to submit proposal to the State Government for making him permanent on the post of wireman from January, 2003. As the petitioner had earlier submitted the proposal, the Tribunal was not justified in directing the petitioner to submit fresh proposal. She, therefore, submitted that Petition requires consideration.

6. On the other hand, Mr. Patil supported the impugned order. He submitted that complainant has passed wireman's examination and to that effect, certificate is issued by the State Government, which is at exhibit-D, page 38. Complainant also possesses wireman's licence, which is at page 39 of the Petition. He submitted that in the complaint and in particular in paragraph 4, complainant specifically asserted that he was working as a wireman and thereafter as an electric operator continuously. In paragraph 8, it is asserted that cause of action to file complaint is continuous as it is binding on the petitioner to make complainant permanent in service after completion of two years service. He further submitted that no contention was advanced before the Tribunal as regards delay in approaching the Court. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that petitioner did not examine any witness in this matter. In paragraph 3 of the complaint, complainant specifically asserted that he has completed certificate course of wireman and possesses wireman's licence. In paragraph 4, complainant asserted that by order dated 31.08.2001, he was transferred to Pandit Vishnu Paluskar Sanskrutik Bhawan as an electric operator and worked as such upto 22.06.2009. By order dated 17.06.2009, complainant was transferred to Kalidas Kala Mandir and joined as per the transfer order with effect from 23.06.2009 as an Electric Operator. From 2001 onwards, he is doing the work of Electric Operator. Though the petitioner denied these contentions in paragraph 5 of the written statement, no evidence was adduced by the petitioner.

8. In paragraph 11, the Tribunal has considered the fact that complainant has completed wireman's course from I.T.I. and also possesses licence of wireman. Tribunal thereafter observed that complainant was appointed on the post of wireman on 21.07.1997 and continued in the employment of the petitioner for the years together and was absorbed on the post of Bigari as per order dated 24.05.2003. In paragraph 13, the Tribunal observed that petitioner ought to have submitted proposal to the Government for making complainant permanent in the employment as a wireman. The Tribunal observed that the evidence adduced by the complainant went unchallenged. The Tribunal was of the view that petitioner ought to have absorbed the complainant as a wireman after completion of 240 days of his service or at least after completion of two years of service. By continuing complainant for years together, petitioner has deprived him the benefits and status of permanency and thus committed unfair labour practice within the meaning of Item 6 of Schedule IV of the Act. Employees

junior to the complainant and not having qualification of S.C.C. were made permanent by the petitioner as a wireman, which also attracts Item 5 of Schedule IV of the Act. The Tribunal also came to the conclusion that Items 9 and 10 of Schedule IV of the Act are also attracted.

9. For the reasons recorded by the Tribunal in paragraphs 11 to 13, I do not find that the Tribunal committed any error in passing the impugned order. Ms Deshmukh submitted that complainant having accepted the appointment on the post of Bigari in the year 2003 was precluded from challenging the appointment by filing complaint in the year 2010. I do not find any merit in this submission as well. Section 28(1) of the Act reads thus,

“28. Procedure for dealing with complaints relating to unfair labour practices:- (1) Where any person has engaged in **or is engaging** in an unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act:

Provided that the Court may entertain a complain after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(emphasis supplied)”

10. The very fact that for years together, complainant was continued on the post of 'Wireman', itself amounts to unfair labour practice, which is a continuing cause of action. Ms Deshmukh submitted that Tribunal was not justified in directing the petitioner to submit fresh proposal. I do not find any merit in this submission as well. In fact, in paragraph 13, the Tribunal observed that petitioner ought to have submitted proposal for making him permanent as a wireman. However, it appears that on the basis proposal submitted by the petitioner, Government gave

approval for appointment of the complainant on the post of Bigari. In view thereof, the direction issued by the Tribunal is fully justified. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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