

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1237 OF 2017

Smt. Mangala Gawali	]	Petitioner
Vs.		
Zilla Parishad, Solapur & Ors.	]	Respondents

.....
Ms. Seema Sarnaik, for petitioner.

.....
CORAM : R.G. KETKAR, J.

DATE : 24th JULY, 2017.

P.C.

Heard Ms. Seema Sarnaik, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 4th January, 2017 passed by the learned Member, Industrial Court, Solapur [for short 'Tribunal'] below Exhibit-U-2 in Complaint [ULP No. 55 of 2016. By that order, Tribunal rejected the application made by the petitioner, hereinafter referred to as 'complainant' for injunction restraining the respondents from demoting the complainant from the post of 'Arogya Sahayika' [Health Assistant] to the post of 'Arogya Sevika' [Health Worker].

3. In support of this Petition, Ms. Sarnaik strenuously

contended that the petitioner was appointed as 'Arogya Sevika' on 8th September, 1997. The petitioner belongs to 'Kokana Community' which is recognized as a scheduled tribe. She had produced her Caste validity certificate on 22nd June, 2006. She was promoted as 'Arogya Sahayika' by order dated 15th October, 2011. Smt. C.B. Kale and Smt. M.B. Uike though are senior to the complainant and belong to backward class, they did not produce Caste validity certificate. She submitted that it is only when these two ladies produced Caste certificate, respondents intended to demote the complainant from the post of 'Arogya Sahayika' to the post of 'Arogya Sevika'. She submitted that complainant is continuously working on the post of 'Arogya Sahayika' for 4 to 5 years. During this period, she has also acquired requisite qualification for appointment to the post of 'Arogya Sahayika'. The Tribunal, however, rejected the application on the ground that; [1]Order of promotion dated 15th October, 2011 was issued by imposing conditions and it was a temporary promotion till such time, two senior employees obtain Caste Validity Certificate.

[2]the complainant suppressed material facts.

She submitted that though the complainant had produced order of promotion dated 15th October, 2011 along with the complaint Tribunal held that the complainant has suppressed material facts and did not come to the Court with clean hands. She submitted that this finding is wholly unsustainable.

4. I have considered submissions advanced by Ms. Sarnaik. I have also perused material on record. As noted earlier, the complainant was appointed on the post of 'Health Worker'

[Arogya Sevika] on 8th September, 1997 and she belongs to Kokana Community which is a scheduled tribe. She has obtained Caste Validity Certificate on 22nd June, 2006. As senior employees Smt. Kale and Smt. Uike did not produce Caste Validity Certificate, she was temporarily promoted by order dated 15th October, 2011. A perusal of that order shows that reference is made to Appendix-V-A of the Maharashtra Zilla Parishads District Services [Recruitment] Rules, 1967 [for short 'Rules']. Rule-5 thereof lays down qualifications and methods of appointment as specified in Appendices IV-XII. Appendix-5-A deals with posts of Health Supervisor, Health Assistant and Health Worker. Order also refers to Government Resolution dated 16th June, 2008 issued by General Administration Department. The said Government Resolution provides that in case employees belonging to reserved category cannot be promoted for want of Caste Validity Certificates, junior employee next to the concerned employee may temporarily be promoted for 11 months subject to following conditions:

- [1] Junior employee must have obtained Caste Validity Certificate.
- [2] Order of promotion should specifically mention that promotion is on the temporary basis and will automatically come to an end upon senior employee producing Caste Validity Certificate.
- [3] Promotion shall be given for 11 months or till such time, senior employee produces Caste Validity Certificate, whichever is earlier.
- [4] Junior employee shall not claim seniority on account of temporary promotion.

[5] Senior employee should be promoted upon production of Caste Validity Certificate by revoking temporary promotion given to the junior employee. Seniority of the senior employee shall not be disturbed.

5. A perusal of the order dated 15th October, 2011 promoting the petitioner shows that it contains conditions No.1 to 6. Condition No.1 stipulates that complainant is promoted on temporary basis and the order of will come to an end automatically upon senior employees producing Caste Validity Certificate. Condition No.3 stipulates that complainant shall not claim seniority on the basis of temporary promotion.

6. The Tribunal observed that the complainant has accepted the terms and conditions stipulated in temporary promotion order dated 15th October, 2011. Senior employees Smt. Kale and Smt. Uike have produced their Caste Validity Certificates . Temporary order of promotion was based upon the provisions of the Rules as also Government Resolution dated 16th June, 2008. Thus, decision taken by the respondents is well-founded on the policy of promotion avenues to be given to the deserving and senior employees.

7. In paragraph 18, the Tribunal observed that upon perusing the pleadings in the complaint, it is seen that status of temporary/ad-hoc promotion given to the complainant was concealed by her. Having regard to the entire pleadings, it becomes explicit that the complainant did not mention anywhere regarding

her temporary promotion given by the respondents subject to terms and conditions. The Tribunal, therefore, held that complainant had concealed the material facts. The complainant does not have prima facie case, balance of convenience does not lie in her favour and that she will not suffer heavy loss as in future she can be considered for promotional post of Arogya Sahayika.

8. Ms. Sarnaik has invited my attention to ground No. Viii of the Petition wherein it is asserted that order of promotion dated 15th October, 2011 was annexed to the proceedings and, therefore, there is no question of suppressing material facts. Even if, I accept this submission that promotion order was produced along with the proceedings, fact remains that order of promotion was conditional and that the complainant accepted the conditions. The complainant did not protest the terms and conditions stipulated in the order. The petitioner cannot claim promotion on one hand and on the other disown the terms and conditions. The petitioner cannot pick and choose what is favourable to her and challenge the part of the order which is against her.

9. Ms. Sarnaik submitted that complainant has invoked Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971[for short 'Act']. Giving temporary promotion for years together amounts to commission of unfair labour practice under Item 6 of Schedule IV of the Act.

10. The Tribunal has considered this aspect in paragraphs

16 and 17. Prima facie, I do not find any merit in this submission. Promotion was given to the complainant on the basis of Appendix-5-A of the Rules as also Government Resolution dated 16th June, 2008. The Tribunal has considered that posts cannot be kept vacant on account of senior employees not producing Caste Validity Certificate and in order to meet this exigency, Appendix-5-A as also Government Resolution provide promotion on temporary and ad-hoc basis. In view thereof, prima facie, I do not find any merit in the submission of Ms. Sarnaik that there is commission of unfair labour practice as per Items No. 6,9 and 10 of Schedule IV of the Act. Hence, Petition fails and the same is dismissed. The Tribunal will decide the complaint on the basis of evidence on record and on its own merits and in accordance with law uninfluenced by the observations made herein. Order accordingly.

11. At this stage, Ms. Sarnaik orally applies for continuation of ad-interim order for a period of 8 weeks from today. She submitted that after impugned order was passed, by order dated 19th January, 2017 as and by way of last chance, stay was continued till 30th January, 2017 and stay order was continued by this Court from time to time.

12. Having regard to the fact that the complainant was given temporary promotion and that admittedly Smt. Kale and Smt. Uike who are senior to the complainant have produced Case Validity Certificate, no case is made out for extension of ad-interim order. Hence, oral request is rejected.

[R.G. KETKAR, J.]