

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9648 OF 2017

Sunil Dhondiram Hajeri

...Petitioner

Vs.

Maharashtra State Powerlooms Corporation Ltd.
Through its Managing Director

....Respondent

Mr. Kedar Lad for the Petitioner.

Mr. P.P. Chavan, instructed by Mr. R.R. Chile for the Respondent.

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CORAM: S. J. KATHAWALLA, J.
DATE: 10TH OCTOBER, 2017

P.C.:

1. The above Writ Petition is filed by the Petitioner under Article 227 of the Constitution of India challenging the judgment and order passed by the Member, Industrial Court No.1, Kolhapur in Revision Application (ULP) No. 43 of 2012 dated 7th December, 2016, arising out of judgment and order passed by the Labour Court, Kolhapur in Complaint (ULP) No. 226 of 2002 dated 28th February, 2012.

2. According to the Petitioner, in the month of August, 1996, he was appointed on the post of Personal Assistant (P.A.) to the Chairman of the

Respondent—Maharashtra State Powerlooms Corporation Ltd. on a daily wage basis. Thereafter by an order dated 5th June, 2002, he came to be confirmed in the services of the Respondent Corporation. Thus from August, 1996 to September, 2002, he worked continuously with the Respondent. All of a sudden he came to be terminated by an order dated 27th September, 2002 on the ground that his appointment was co-terminus with the termination of the Chairman of the Respondent. According to the Petitioner, his services were regularised and governed by the Rules of Respondent Corporation which Rules did not provide termination of the employment of a Personal Assistant to the Chairman after the end of his tenure as Chairman. According to the Petitioner, in the said termination order it was recorded that he was not possessing the required educational qualification for the concerned post and at the time of joining services he was age barred. The Petitioner has submitted that in the said letter it was also contended that as the new Chairman of the Respondent Corporation Shri Rashid Shaikh had preferred the services of another person of his own choice and the Petitioner's services stood terminated along with the termination of the then Chairman. He submitted that in fact the new coalition Government came into force in the year 2002 and he was confirmed on the said post by an order dated 5th June, 2002, so the reasons given in the termination order are not just and proper. According to the petitioner, he was not given retrenchment

compensation as provided under Section 25-F of the Industrial Disputes Act, 1947, before his termination. The termination was therefore by way of victimisation and not in good faith. The Respondent has therefore engaged in unfair labour practice. He therefore filed Complaint (ULP) No. 226 of 2002 before the Second Labour Court at Kolhapur under Section 28 read with item Nos. 1 (a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act) seeking reinstatement in his original post with continuity of service and full back wages. However, his complaint has been dismissed by a judgment dated 28th February, 2012.

3. Being aggrieved by the said judgment dated 28th February, 2012, he filed a Revision Application being (ULP) No. 43 of 2012 before the Industrial Court, Maharashtra at Kolhapur, under Section 44 of the MRTU & PULP Act which revision is also dismissed.

4. Being aggrieved by the judgment passed by the Labour Court dismissing his complaint and the judgment passed in revision by the Industrial Court dated 7th December, 2016, dismissing his revision application, the Petitioner has filed the above Writ Petition.

5. The Learned Advocate appearing for the Petitioner has submitted that his

services have been illegally terminated by the Respondent-Corporation without following the due process of law and the Lower Courts have by the impugned judgments and orders erred in rejecting the claim of reinstatement of the Petitioner without considering the applicable provisions of law.

6. The Learned Advocate appearing for the Respondent has taken me through the judgment passed by the Labour Court dated 28th February, 2012 dismissing the Complaint of the Petitioner and also the judgment passed by the Member, Industrial Court dismissing the revision application. It is submitted that the Petitioner admits that his services were governed by the Staff Rules. There is a provision in Rule 27 of Staff Rules to terminate the services of any confirmed employee at any time. It is submitted that both the Labour Court as well as the Industrial Court have observed that the appointment of the Petitioner was nothing but a backdoor entry only because of political influence, in violation of the Staff Rules of the Corporation. It is submitted that the Industrial Court has in fact correctly held that the appointment of the Petitioner as Personal Assistant to the Chairman, the letter of probation issued to him and the confirmation of his services were in violation of the Recruitment Rules and, therefore, his appointment was illegal and as per established principle of law there can be no illegal termination for an illegal appointment. It is therefore

submitted that the Labour Court and the Industrial Court have not committed any illegality, error of law or error of jurisdiction in passing their respective judgments and therefore the same requires no interference by this Court under Article 227 of the Constitution of India.

7. I have perused the impugned judgments passed by the Second Labour Court and the Member of the Industrial Court respectively.

8. It is an admitted fact that in the year 1995-96, Government of Shiv Sena and BJP came to power in the State of Maharashtra. Shri Pundlikrao Jadhav, one of the leaders of Shiv Sena came to be appointed as the Chairman of the Respondent Corporation. The Petitioner at the relevant time was working as Personal Assistant to Shri Pundlikrao Jadhav in his personal capacity since over 10 years. At the instance of Shri Jadhav, the Petitioner moved an application to the Respondent Corporation to appoint him as Personal Assistant to Chairman. Accordingly, the petitioner came to be appointed as a Personal Assistant to the then Chairman on daily wage basis at the rate of Rs. 85/- per day. On 3rd December, 1998, the then Chairman Shri Pundlikrao Jadhav wrote a letter to the Managing Director of Respondent Corporation to absorb the Petitioner in the services of the Respondent. Accordingly, by a letter dated 23rd December, 1998, the Petitioner was absorbed in the services of the Corporation and he was put on

probation. Thereafter till the end of 1999 i.e. till the expiry of the tenure of the then Chairman Shri Jadhav, the Petitioner was not made permanent. In the year 1999-2000 a new coalition Government came into power. The Petitioner thereafter also served for two years and by an order dated 5th June, 2002, he came to be confirmed in the said post. However, the Petitioner continued on the said post only for three months since by an order dated 27th September, 2002, his services came to be terminated from 30th September, 2002. The Learned Judge, Second Labour Court, Kolhapur has recorded in his judgment that the Petitioner during his cross-examination has admitted that his services were governed by the Staff Rules prepared by the Respondent Corporation and in the year 1995-96 when he was appointed as Personal Assistant, he was more than 35 years in age and had not even cleared his S.S.C. examination. As per the Staff Rules, the age for management and non-management staff is between 19 years and 30 years. Though the proviso attached to the relevant Rule gives discretion to the Management to relax or waive the age limit for the reasons to be recorded, there is no reasoned order on record relaxing the age limit of the Petitioner. In other words, though he came to be appointed to the post impliedly relaxing the age limit, the same was done without any reasoned order. The Petitioner also admitted in his cross-examination that when he came to be absorbed in the services he was put in the pay scale of a Senior Clerk. He has not denied that the

educational qualification required for that post was S.S.C. which qualification he admittedly did not have. The Labour Court therefore correctly held that the Petitioner's appointment to the concerned post was by violating the Staff Rules of the Corporation. There was no advertisement, no examination was conducted but he got his appointment through back door entry only because of political influence. The Labour Court has further correctly held that though the Petitioner states that he should not have been terminated by the Respondent Corporation without following the provisions of Section 25-F of the I.D. Act, 1947, the fact is that the Petitioner has admitted that his services were governed by the Staff Rules and Rule 27 of the Staff Rules provides termination of service of any confirmed employee at any time. The Rule further provides that the services of non-management staff can be terminated by giving one calendar month's notice or salary. Admittedly, the Petitioner's post was a non-management post and by paying him one month's salary in lieu of notice his services came to be terminated on the ground that he was not having required educational qualifications and he was age barred at the time of appointment. His appointment was under political influence and further co-terminus with the termination of Chairman.

9. The learned Member of the Industrial Court No.1, Kolhapur also

concurring with the judgment of the First Labour Court, Kolhapur and held that the appointment of the Petitioner was illegal and if the appointment itself is illegal, there is no reason to go into the question as to whether the termination is legal or illegal. The Learned Member has further also held that the Management of the Corporation has every right to set aside the illegality committed by them which they have done in the present case by confirming the Petitioner and giving him pay scale of Senior Clerk which he was not entitled to under the prescribed Rules. Paragraphs 11, 12 and 13 of the judgment of the Learned Member of the Industrial Court No.1, Kolhapur are relevant and reproduced hereunder:

“11. The above narrated facts make it very clear and obvious that the initial appointment of the Complainant since August 1996 was in the capacity of P.A. to Chairman and it existed as long as the tenure of Chairmanship existed. Admittedly, there is no post of P.A. to Chairman which is sanctioned as per the staffing pattern of the Respondent Corporation. The documents on record especially the statement showing the sanctioned posts as per the roster shows that two posts i.e. P.A. to Chairman and Driver to Chairman are excluded from the sanctioned posts as per G.R. dated 18.10.1991 as per guidelines referred facilities to be extended to the Chairman and the Directors. Therefore it cannot be said that the Complainant was initially appointed as a regular employee of the Respondent Corporation. Even otherwise, no recruitment rules as provided

under the staff rules of the Respondent Corporation were adhered to prior to his appointment. Again, the subsequent appointment of the Complainant as a probationer and thereafter his confirmation into the services was as per the directions of the Chairman. Therefore, simply because the Complainant was to be on probation and thereafter confirmed and given pay-scale of Senior Clerk, without adhering to the recruitment rules applicable to the Respondent Corporation, does not regularise his services.

12. Therefore, since the further probation and confirmation of services of the Complainant was in violation of recruitment rules, it amounts to illegal appointment and, therefore, as per established principle of law there cannot be an illegal termination for a illegal appointment. Therefore if the appointment itself is illegal there is no reason to go into the question of termination, whether legal or illegal. Such termination automatically amounts to legal termination, since the management of the Corporation has every right to set aside the illegality committed by them, which they have done in this case by confirming the Complainant and giving him pay-scale of Senior Clerk.

13. On perusal of the impugned order the Labour Court has discussed each and every aspect in detail and has based its findings on reasoned order with total application of mind and there is no legal error apparent on the face of record nor any perverse finding so as to interfere in the revision jurisdiction

under Sec. 44 of the said Act.

10. In the circumstances, I am of the view that neither the Learned Judge, First Labour Court, Kolhapur nor the learned Member of the Industrial Court No.1, Kolhapur have committed any illegality, error of law or error of jurisdiction in passing the respective judgments/orders and therefore the same need no interference from this Court under Article 227 of the Constitution of India. The Writ Petition is therefore dismissed.

(S.J. KATHAWALLA, J.)