

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11790 OF 2017

Santosh Madhukar Jadhav

...Petitioner

Vs.

Bhiwandi Nizampura Municipal Corporation and Anr.

...Respondents

Mr. Mahesh Thorat, along with C.G. Jadhav, for the Petitioners.
Mr. N.R. Bubna for the Respondents.

CORAM: S. J. KATHAWALLA, J.

DATE: 1ST NOVEMBER, 2017

P.C.:

1. By the above Writ Petition, the Complainant has challenged the interim order dated 22nd September, 2017, passed by the Member, Industrial Court, Thane in Complaint (ULP) No. 253 of 2013 rejecting his application seeking restraint orders against the Respondent-Corporation from reverting him from his post of Peon to the post of Safai Kamgar and for other reliefs.

2. According to the Complainant, he is working as Peon since the date of his joining, but he is shown as Safai Kamgar in the order of appointment and further communications. As he is working on the said post continuously for years, it is

his right to continue to work on the said post. The Respondents have proposed to alter his service condition by informing him to work on the post of Sanitary Worker. The said act of the Respondents amounts to an illegal change. The Respondents are deliberately not promoting eligible Class IV employees to Class III cadre. As per the provisions of the Model Standing orders, on completion of 240 days continuous service as Peon, this employee is deemed to be permanent on the said post. The Complainant also moved an application seeking interim relief restraining the Respondents from reverting the employee from his post of Peon to the post of Safai Kamgar.

3. The Respondents filed their written statement (Exhibit C-8) as well as reply (Exhibit C-5) to the interim relief application before the Industrial Tribunal, Thane and denied commission of unfair labour practices alleged in the Complaint. The Respondents have admitted that they have issued order directing the employee involved in the present complaint to join his original duty. It is submitted that Safai Kamgar is his original post. Therefore, the order of the Corporation is valid and binding on him. It is specifically denied that the work of the Petitioner as Peon is continuous in nature and he is working on permanent vacant post. The Respondents submitted that the job of Peon was allotted to the Petitioner due to administrative exigencies of work, therefore, he is not at all

entitled to get permanency in the said post. It cannot be termed as a service condition because he joined as Safai Kamgar on permanent regular post. He is fully aware about his duties being Safai Kamgar. He anyhow managed postings to comparatively comfortable jobs. However, his posting is temporary and without following any selection procedure. Therefore, the Complainant has no right to continue on said post. Employment, recruitments, promotions etc. in the Corporation are governed by the provisions of the Maharashtra Municipalities Act, 1949 and the Maharashtra Civil Service Rules. Roster is prepared as per directions of the Government for filling vacant posts, caste-wise reservations etc. Complainant has not established prima facie case. Balance of convenience is also not in his favour and the interim relief application be rejected.

4. The Learned Member of the Industrial Court has whilst rejecting the Application of the Complainant seeking interim relief held as follows :

4.1 That undisputedly the employee involved in the Complaint is governed by the Municipal Rules and Regulations being permanent employees. He is claiming benefits of permanency over another post. He has produced documents on record to show that there are vacant sanctioned posts available in the category of Peon. However, it cannot be ignored that the

Corporation being a quasi-Governmental authority is bound by Rules and Regulations framed by the Government from time to time in respect of employment, recruitment and promotion.

- 4.2 That though it appears that this employee worked as Peon for some period and performed work other than his original work, it does not prima facie mean that he acquired any right over the said post.
- 4.3 That working on post of Peon temporarily, while holding another permanent post prima facie cannot create right of permanency over the said post. These instances at the most can be termed as allotment of work in administrative exigencies.
- 4.4 That therefore prima facie there is substance in the argument of the Respondents that it will not create any right over other vacant posts, particularly when the Complainant is working on regular permanent sanctioned post of Safai Kamgar.
- 4.5 That the contention raised by the Learned Counsel for the Complainant in respect of work done by this employee for 240 days and more, and the applicability of the Model Standing Orders to acquire permanency over said posts has to be decided on merits and on the basis of appropriate oral and documentary evidence at the appropriate stage. Further, applicability of Rule of 240 days, to employees who are already holding permanent

regular cadre post is necessary to be decided on merits. Hence, considering the peculiar facts of the case, interim relief cannot be granted only on the basis of work done for more than 240 days by the Complainant.

- 4.6 That the contention of the employee that he has relinquished his right of employment to legal heirs on compassionate ground, is not established by any documentary evidence. However, even if it is presumed that this worker has filled the proforma as required by the Corporation, the question that arises is whether the submission of the said form automatically entitles him to claim permanency in other post. No Rule/Regulation or Government Resolution is produced to show that by giving such consent, this worker will get benefit of the post of Peon as a matter of right.
- 4.7 That the employee involved in the present complaint has joined his services as permanent Safai Kamgar. It is a regular cadre appointment and he accepted it voluntarily with full knowledge about the status of the said post. After working on some other post for temporary period, now he cannot deny his original/permanent post on the ground of lowering of status.
- 4.8 That the decision of the Hon'ble Apex Court in *Secretary, State of*

*Karnataka vs. Umadevi and others*¹ is well applicable to the present case in which it is held by the Hon'ble Apex Court that jurisdiction of Court cannot be exercised on misplaced sympathy.

- 4.9 That the Complainant will not be benefitted by the G.R. dated 15th April, 1991 to establish a prima facie case of unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act and at this stage it is not established by the Complainant that the Corporation has violated the Government Resolutions.
- 4.10 That in view of the ratio laid down by the Constitutional Bench of the Hon'ble Apex Court in Umadevi's case (supra), working for some period on any particular post without following proper procedure of appointment, cannot confer any right over the said post. Therefore, prima facie, no violation of Item 9 of Schedule IV of the MRTU & PULP Act has taken place.
- 4.11 That the contention of the Complainant that the Respondents have committed unfair labour practices falling under Item 6 of Schedule IV of the MRTU & PULP Act, by using this employee as "badli, casual or temporary" and continued him as such for years, thereby deprived his status of permanency to the said post cannot be accepted. The

¹ [2006 II CLR 261 (SC)]

documents on record produced by the Respondents prima facie goes to show that this employee is appointed as Safai Kamgar on permanent vacant post, his appointment on said post is by following the due procedures and he is getting all the benefits, which are applicable to the said permanent post. The Complainant now cannot claim that the subsequent post is “badli, casual or temporary” and also cannot claim violation of provisions of Item 6 of Schedule IV of the Act in respect of the permanent post. The same would be a misuse of the said provision, which is meant for helping the actual badli, casual and temporary employees working for long time without getting benefits of the permanent post.

- 4.12 That the Counsel for the Corporation has submitted a copy of common judgment of the Industrial Court, Thane given in Complaint (ULP) No. 352 of 1997 and other 4 complaints dated 13th February, 2004 wherein similar type of cases were decided finally by the Industrial Court, Thane in which the claim of Safai Workers claiming post of either Clerk/Peon etc. was rejected. The said decision was upheld by this Court. The said decision is therefore binding on the Tribunal.
- 4.13 That the Complainant has not established prima facie case of unfair labour practices. No irreparable loss will cause if the employee will be again

directed to work on the same post for which he was permanently appointed. There is no question of lowering the status by doing the work of Safai Kamgar which is his original post and accepted by him with full knowledge. The balance of convenience lies in favour of the Corporation.

5. Therefore, in my view, the order passed by the Member, Industrial Court is a well reasoned order passed after appreciating the facts as well as law on the subject and needs no interference by this Court under Articles 226 and 227 of the Constitution of India. The above writ petition is therefore dismissed.

(S.J. KATHAWALLA, J.)