

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1751 OF 2000

1. Zilla Parishad, Beed,
Through its Chief
Executive Officer,
Beed.
2. The Executive Engineer
Irrigation Division
Zilla Parishad, Beed.
3. The Deputy Engineer,
Minor Irrigation
Sub Division, Z.P.
Georai, Tq. Georai,
Dist. Beed

-- PETITIONERS

VERSUS

Marathwada Sarvajanik
Bandhkam Va Zilla Parishad
Kamgar Union, Registration No.AWB/684
through its Secretary
Rajeshwar Sadashivrao Vihire,
Trade Union Centre,
Medical College Premises,
Ambajogai, Dist. Beed

-- RESPONDENT

Mr.H.K.Munde, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/03/2018

ORAL JUDGMENT :

1. The petitioner/Zilla Parishad is aggrieved by the judgment and order dated 25/02/1999 by which the Industrial Court has partly

allowed the complaint and has directed the petitioners to forward the proposal of the complainant so as to bring him on Converted Regular Temporary Establishment (C.R.T.E.) as he has completed 5 years in service.

2. I have heard the strenuous submissions of the learned Advocate for the petitioners. None has appeared on behalf of the respondent though Court notice has been served.

3. The complainant was before the Industrial Court alleging that the petitioners have deliberately continued the concerned worker, namely Alimuddin, on temporary basis and has not granted the benefits of permanency. The petitioners took a stand that in the absence of posts, the complainant cannot be granted regularization. It was also stated that Alimuddin was working on E.G.S. and as such he could not be granted regularization.

4. The Industrial Court, while dealing with the said Complaint (ULP) No.97/1994, noted that the papers produced on record indicate that there is no post of "Typist" in the Department. The letter Exh.U-21 indicates that Alimuddin can type and he could be considered for doing the typing work. Evidence was before the Industrial Court that

Alimuddin had typed 9 letters in August 1999. It was, however, noticed that there was no written order indicating that Alimuddin is appointed on the post of a "Typist".

5. According to the petitioner and the evidence brought on record, Alimuddin was working as a labourer on a Percolation Tank. He was never appointed as a Typist. However, due to non-availability of a typist, he was intermittently called upon to do typing work. In so far as the stand of the petitioners that Alimuddin was working on EGS was concerned, there was no evidence brought before the Industrial Court to establish that he was working on EGS. It is in this backdrop that the Industrial Court has declared unfair labour practice under Item 9 Schedule IV and directed the petitioners to send the proposal of Alimuddin to the Government for considering his conversion to C.R.T.E.

6. While admitting this petition on 24/09/2001, interim relief in terms of prayer clause "D" was granted and as such the impugned judgment of the Industrial Court was stayed.

7. It is settled law that when a State Instrumentality as like the petitioner/Zilla Parishad cannot create posts and cannot issue orders

of permanency or regularization, there cannot be a declaration of ULP against the Zilla Parishad. In the instant case, the Industrial Court has concluded that the Zilla Parishad has continued Alimuddin on daily wages and hence ULP has been declared under Item 9 Schedule IV. When it was beyond the jurisdiction of the Zilla Parishad to create the post of a Typist or grant regularization to Alimuddin as a Typist, the declaration of ULP by the Industrial Court is unsustainable. For these reasons, the declaration of unfair labour practice under Item 9 Schedule IV against the Zilla Parishad is quashed and set aside.

8. In so far as the direction of the Industrial Court to the Zilla Parishad to send the proposal of Alimuddin to the Government for considering him to be brought on CRTE is concerned, I do not find that the said direction could be termed as being perverse or strenuous. All that the Industrial Court has done is that it has directed the Zilla Parishad to send the proposal of Alimuddin for being considered on CRTE. The competent authority, which would deal with such a proposal, would consider the nature of employment and the applicability of the Kalelkar Award and would thereafter consider the said proposal

9. In this backdrop, I do not find that the direction of the Industrial Court, to send the proposal of Alimuddin for consideration, could be termed as being perverse or erroneous. This petition is, therefore, partly allowed only to the extent of setting aside the declaration of ULP under Item 9 Schedule IV against the Zilla Parishad. Rule is made partly absolute in these terms.

(RAVINDRA V. GHUGE, J.)