

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8084 OF 2013

Ahmednagar Municipal Corporation,
Ahmednagar, Dist. Ahmednagar,
Through Commissioner

– PETITIONER

VERSUS

Makrand s/o Jagnath Joshi (died)
Through LR's

1. Madhuri Makrant Joshi,
Age-51 years, Occu-Household,
2. Pranamya Makrand Joshi,
Age-22 years, Occu-Education,
3. Sanika Makrand Joshi,
Age-15 years, Occu-Education,
All R/o 23, Venkateshkrupa,
Bhagyodaya Society, Savedi,
Tal. And Dist. Ahmednagar

– RESPONDENTS

Mr.K.N.Lokhande, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for respondent Nos.1 and 2.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 10/08/2018

ORAL JUDGMENT :

1. The petitioner/Municipal Corporation has challenged the judgment and order dated 06/02/2013 delivered by the Industrial Court, Ahmednagar in Complaint (ULP) No.5/2012 filed by the respondent/workman.

2. This Court (Coram : N.W.Sambre, J.) heard this matter extensively and had passed the following order on 29/10/2014 :-

“Heard.

2. Rule.

3. Learned Counsel for the petitioner submits that the impugned orders are liable to be stayed in view of the fact that there are 94 persons in seniority above the respondent. According to him, the post on which the promotion is ordered is reserved for Scheduled Castes category.

4. So far as the above referred contentions are concerned, both the Courts below have appreciated the same issue and have noted the conduct of the petitioner Municipal Corporation in granting promotion to the other similarly placed persons like that of the respondent. It has also been brought to the notice of the Courts below that since the post in question is an isolated post, the reservation is not applicable to the same. There is no dispute as regards the qualification of the respondent herein as he holds appropriate qualification which is required for the post of Publicity Officer.

5. The prayer for grant of interim relief made by the learned Counsel for the petitioner is liable to be rejected, in view of the fact that the Recruitment procedure or the Rules were not brought to the notice of this Court qua the claim made by the respondent herein and similarly placed persons are already granted promotion. Hence, interim relief is refused.”

3. Though this petition is of the year 2013 and was not ripe for a final hearing, a Civil application was moved praying for an early final hearing since the original complainant has passed away on 31/08/2017 and due to the pendency of this petition, the retiral benefits as well as gratuity of the complainant, has not been extended to him.

4. I have considered the strenuous submissions of the learned Advocates for the respective parties. With their assistance, I have gone through the petition paper book and the additional documents placed on record by the petitioner. I have also gone through the Service Rules of the petitioner/Corporation which are said to have been approved in 2016. I have also gone through the award dated 21/02/2005 between the same Municipal Corporation and its Union in Ref.(IT) No.2/1993, 03/1993 and 4/1993.

5 The learned Advocate for the petitioner has laid a heavy stress on the following aspects :-

[a] The respondent/original complainant could not have been picked up from Grade VI to be placed in Grade I as a Publicity Officer under the orders of the Industrial Court.

[b] There were 94 persons senior to the complainant and their seniority cannot be ignored.

[c] The Industrial Court could have directed the Corporation to consider the case of the complainant for promotion and could not have directed that he be promoted.

6. I have perused the impugned judgment in the light of the submissions of the petitioner. In paragraph No.12 of the judgment, the Trial Court has considered the representations made by the complainant in view of the Government Resolutions dated 21/05/2011 and 04/05/2006. In paragraph No.13, the cross examination of the petitioner's witness has been considered. The said witness has admitted on behalf of the Corporation that the Corporation is permitted to promote a person from a Higher Grade to a different Grade and from the Lower Grade to the Higher Grade. It was admitted that a person belonging to Cadre No.VI can be promoted to Cadre No.I in view of the GR No.28/07/2010. It is further admitted that the complainant was the only available employee from the Lower Grade having necessary qualifications for promotion to the post of a Publicity Officer in Cadre No.I and there is no other available employee. It is further admitted that the request made by the Corporation to the State Government seeking permission to resort to a direct recruitment for filling in the post of a Publicity Officer, was not accepted by the State Government until the

Industrial Court decided the complaint.

7. The Hon'ble Apex Court has laid down the law in Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], that unless the impugned order appears to be grossly perverse and erroneous, no interference can be caused merely because a different view could be taken.

8. In so far as the contention of the petitioner that the Industrial Court should not have directed the promotion and should have only issued a direction that the complainant be considered for promotion, is concerned, I find from the evidence recorded that though no case of super-cession had been put forth by the complainant, it was adequately established through oral and documentary evidence that the said post was to be filled in only by promotion and not by direct recruitment. The complainant was the only person available with the requisite qualification for being considered for such promotion.

9. In my view the Industrial Court could not have issued a direction that the complainant be promoted within one month and could have directed the Corporation to follow the procedure and promote the complainant as he was the only eligible candidate.

Learned Advocate for the respondent submits that even this exercise could be done in about 6 to 8 months' time and in any case by January 2014, the complainant would have been granted the promotion and benefits incidental to such promotion.

10. Considering the above and keeping in view that the complainant has passed away on 31/08/2017, I find that the equities would be balanced and the ends of justice would be met by extending the promotional benefits to the deceased from 01/01/2014 till his demise on 31/08/2017.

11. This petition is, therefore, partly allowed only to the above extent of modification. The Corporation shall ensure that the difference in the pay scale, gratuity which is still unpaid and the pensionary benefits, by considering the new pay scale as on 31/08/2017, shall be extended to the widow of the deceased complainant and these monetary benefits shall be paid within a period of 8 weeks from today.

Kranti
Hansraj
Shekatkar

12. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)

Digitally signed
by Kranti
Hansraj
Shekatkar
Date:
2018.08.14
15:58:53
+0530