

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11084 OF 2017

Ram Anandrao Rokde
Age 37 years, Occ. Service
R/o Rokda Savargaon,
Tq. Ahmedpur, Dist.Latur.

..Petitioner

Versus

1. Vibhag Niyantrak,
Maharashtra Rajya Marg
Parivahan Mahamandal,
Latur Vibhag, Latur.

2. Mahavyavasthapak (P & I.R.)
Rajya Parivahan Madhyavarti
Karyashala, Maharashtra Rajya
Marg Parivahan Mahamandal,
Maharashtra Vahatuk Bhavan,
Mumbai 400008.

..Respondents

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Advocate for Petitioners : Smt. Bodke Patil Poonam V.
Advocate for Respondents : Smt. Reddy Ranjana D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 04, 2018

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment of the Industrial Court dated 25.11.2014, by which, his Complaint (ULP) No.86 of 2012 has been dismissed.

5. While issuing notice to the respondents, I have recorded the submissions of the petitioner in my order dated 12.9.2017, which reads as under:-

“1 The Petitioner is aggrieved by the judgment and order dated 25.11.2014 delivered by the Industrial Court, Latur by which Complaint (ULP) No.86/2012 has been dismissed.

2 The Petitioner is working as a Bus Conductor and based on certain circulars, had filed Complaint (ULP) No.115/2010 before the Industrial Court seeking reclassification on the post of Traffic Controller. The said complaint was dismissed on its merits and the judgment has attained finality.

3 In Complaint (ULP) No.86/2012, the Petitioner sought reclassification as a Clerk. The Industrial Court has dismissed the complaint on the

ground that the earlier claim was based on the same circulars seeking reclassification as a Traffic Controller and the prayer for reclassification as a Clerk on the basis of the same circulars would be hit by the principle of res judicata.

4 Prima facie, I find that as the prayer for reclassification as a Clerk was made, the said prayer had to be considered on its own merits as it was not a repeat prayer keeping in view that the earlier prayer was for reclassification as a Traffic Controller.

5 Issue notice before admission to the Respondents returnable on 11.10.2017.”

6. Learned counsel for the respondent / Corporation has strenuously supported the impugned judgment. Contention is that a circular was introduced in 2006 by the Corporation. On the basis of the said circular, the petitioner has preferred Complaint (ULP) No.115 of 2010 putting forth a claim for his classification as a Traffic Controller. By judgment dated 25.11.2014, the Industrial Court concluded that as the complainant had not made an application in accordance with clause (1) of the subsequent circular dated 10.1.2011, he was not entitled to seek an appointment to the post of a Traffic Controller.

7. It is further contended that the petitioner has again relied upon the same circular of 2006 and has put forth a claim for classification to the post of a Clerk with retrospective effect. It is, therefore, contended that as similar pleadings are found in both the complaints, reliance is placed upon the same circular and since the earlier complaint was dismissed, the subsequent complaint was struck by the principle of *res judicata*.

8. I find from the record that after the 2006 circular was introduced, this petitioner has made an attempt to seek his classification as a Traffic Controller, since he felt that he was eligible and entitled to the said position. After the complaint was dismissed, he filed his new complaint in 2012 and put forth his claim for classification as a Clerk, keeping in view that the Industrial Court has delivered certain judgments in Complaint (ULP) No.98 of 2008 (Sunita Bhausaheb Bhosale), Complaint (ULP) No.102 of 2010 (Ram Mohan Suryavanshi), Complaint (ULP) No.103 of 2010 (Rupsen Shivaji Jadhav) and also Complaint (ULP) No.129 of 2012 (Balaji Nagnath Jadhav), by which, the Industrial Court has allowed the said complaints and granted benefits to those complainants who were similarly situated.

9. I do not find that the Industrial Court has applied its mind to the earlier judgments delivered, wherein, similarly situated persons had put forth their claims of a somewhat similar nature. Though the foundation of the subsequent complaint of this petitioner may be the same circular, it cannot be lost sight of that the claim in the second complaint was with regard to seeking classification as a Clerk, which the Industrial Court could have dealt with on its merits.

10. In the light of the above, this petition is partly allowed. The impugned order dated 25.11.2014 is quashed and set aside. Complaint (ULP) No.86 of 2012 is restored to the Industrial Court at Latur. The litigating sides shall appear before the Industrial Court on 21.7.2018 and formal notices need not be issued.

11. As the litigating sides have led oral and documentary evidence, the Industrial Court would consider the oral / written submissions of the litigating sides and shall decide the said complaint on its merits on/or before 31.12.2018. Needless to state, in the event the Industrial Court comes to a conclusion

that despite a recurring cause of action, the complainant has belatedly approached the Court, which would create excess financial burden on the respondent / Corporation, it would be at liberty to consider whether the benefits for a reasonable period of three years prior to the date of filing of the complaint could be granted.

(RAVINDRA V. GHUGE, J.)

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