

• • • • •

● ● ● ● ● ●

Municipal Corporation and Respondent No.2 - Pradhikaran, to which the recognized union of employees of Respondent No.2 was also a party, confirming transfer of the water supply scheme in Kolhapur to Respondent No.1 Corporation and permanent transfer of all employees on the establishment of Respondent No.2 to Respondent No.1 with continuity of service and by protecting their service conditions. The Petitioner was also transferred to Respondent No.1 Corporation with effect from 1 January 1992 and continued to work as a junior clerk with Respondent No.1. Sometime thereafter, the Petitioner made an application to Respondent No.2 through Respondent No.1 for taking him back in the services of Respondent No.2 Board. Even Respondent No.1 supported this request. Vide its letter dated 11 June 1992, Respondent No.2, however, refused to do so, since the Petitioner had stood permanently transferred to Respondent No.1. About three years thereafter, i.e. in 1995, Respondent No.1 suspended the Petitioner and issued him a charge-sheet concerning an alleged misconduct. The suspension was, however, revoked on 14 September 1999 and the Petitioner was reinstated, the enquiry against him having found only a minor misconduct proved against him. A few years thereafter, vide order dated 4 July 2005, Respondent No.1 terminated the Petitioner's services. The Petitioner, thereupon, filed a complaint, being Complaint (ULP) No.45 of 2005, before the Labour Court challenging his termination. The complaint was allowed by Labour Court vide its order dated 3 March 2008 holding the termination to be illegal. It is the case of the Petitioner that Respondent No.1 did not, however, allow the Petitioner to join duties in spite of the order of the Labour Court and that Respondent No.1 insisted that the Petitioner should go back to Respondent No.2. It is the

Petitioner's case that on 12 March 2008, he, accordingly, made a request to Respondent No.1 to relieve him of his duties so that he could join Respondent No.2. Vide letter dated 25 March 2008, the Petitioner's request was accepted by Respondent No.1 and he was permanently discharged from the duties of Respondent No.1 to enable him, as per his request, to join Respondent No.2. Respondent No.1, however, made it clear that the responsibility to obtain a proper appointment order from Respondent No.2 was of the Petitioner alone. It appears that the Petitioner, thereafter, applied to Respondent No.2 to allow him to join duties. Respondent No.2, however, refused to do so on the ground that he was already permanently transferred to Respondent No.1. The Petitioner, thereupon, tried to go back to Respondent No.1, who refused to allow him to do so. The Petitioner, thereupon, filed the present complaint, Complaint (ULP) No.133 of 2008, before the Industrial Court alleging unfair labour practice under Section 28 of the MRTU & PULP Act read with Item Nos. 3, 9 and 10 of Schedule IV thereof. The Petitioner's application for interim relief was rejected by the Industrial Court. That order was challenged by the Petitioner before this Court in a writ petition. The writ petition was, however, disposed of with a direction to the Industrial Court to decide the complaint within six months. The Industrial Court, thereupon, heard the Petitioner's complaint and dismissed the same on the ground that there existed no employer-employee relationship between the Petitioner and any of the Respondents, i.e. Respondent No.1 (for having already applied for and granted discharge) or Respondent No.2 (for want of any appointment order by it).

3. In support of his challenge to the impugned award of the Industrial Court, learned Counsel for the Petitioner submits that the Petitioner holds a lien over his original post. Learned Counsel submits that since discharge was obtained an express footing that the Petitioner would like to join Respondent No.2 Board and the latter had refused to take him, the Petitioner should be allowed to go back to his original post. Learned Counsel could not point out any legal provision or precedent in support of this submission. The Petitioner's letter addressed to Respondent No.1 seeking discharge is on record and is admitted as such by the Petitioner. The action of Respondent No.1 in response to this request is reflected in its communication dated 25 March 2008, which is also on record. The communication makes it clear that the Petitioner was discharged from the service of Respondent No.1 in response to his own request and that the responsibility to obtain a suitable appointment order from Respondent No.2 was entirely of the Petitioner. After this discharge, the master-servant relationship between the parties stood effectively snapped, after which the Petitioner was free to apply to Respondent No.2 for an appointment, which he in fact did. As for the response of Respondent No.2 to such application, there is nothing in law to make it obligatory on its part to accede to the Petitioner's request for appointment or resumption in its service. Respondent No.2 refused to appoint the Petitioner or take him back in service on the ground that his services had already stood permanently transferred to Respondent No.1. Again as far as his transfer of service to Respondent No.1 is concerned, there is no dispute whatsoever concerning it. It is the Petitioner's own case that after this transfer, that is to say, with effect from 1 January 1992, the Petitioner was an employee of Respondent No.1 and worked

with it till his termination on 4 July 2005.

4. In the premises, there is no merit in the petition. The petition is dismissed. No order as to costs.

**( S.C. GUPTE, J. )**