

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.6012 OF 2001

Dinkar Appaji Thakare

.... Petitioner

vs

1. Superintending Engineer
and Administrator,
Command Area Deve. Authority,
Jalgaon

2. Executive Engineer
Palkhed Irrigation Division, Nasik

3. Sub Divisional Engineer
Palkhed Irrigation Sub-Division
no.1 Yeola Dist Nasik

4. The Member, Industrial Court, Nasik .. Respondents

Mr. N. V. Bandiwadkar with Mr. Vinayak Kumbhar
for Petitioner
Ms. Vaishali Nimbalkar Asst. Govt. Pleader
for Respondent nos. 2 and 3.

***Coram : S.C. GUPTE, J
Date : 15th JUNE, 2018***

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Heard learned counsel for the petitioner and learned
Assistant Government Pleader for the State.

2. The petition challenges an order passed by the Industrial

Court, at Mumbai on a complaint of unfair labour practice filed by the petitioner employee. By the impugned order, the Industrial Court dismissed the employee's complaint filed under item 4 of Schedule II and Item 9 of Schedule IV of MRTU and PULP Act, 1971.

3. On 11.3.1980, the petitioner was employed as a labourer under respondent no.2 on daily wages. On 27.2.1985, respondent no.2 submitted a proposal to the Superintending Engineer, Nasik Irrigation project circle, Nasik recommending the petitioner's appointment as a Mukadam on 'Converted Regular Temporary Establishment' (CRTE), since the petitioner was effectively working as a Mukadam since 1981. (After about a year of his appointment, he started working as a skilled labourer and was thereafter made to work as a Mukadam.) On 12.10.1988, the Irrigation Department of the State issued an order appointing the petitioner as a Mukadam in the pay scale of Rs.205-355. After more than seven years of this order, during which he worked as a Mukadam on CRTE, by an order dated 2.2.1996, respondent no.1 suddenly reverted the petitioner from the post of Mukadam to the post of Mazoor (labour) and ordered the excess salary paid to him in the post of Mukadam to be recovered. The reversion order was challenged by the petitioner in a complaint of unfair labour practice, being Complaint No.407 of 1996, in the Industrial Court at Nasik. During the pendency of the complaint, by an interim order, the order of reversion was stayed and the petitioner was asked to be given the work of Mukadam and

pay as per the salary and benefits of that post. The Industrial Court held that the petitioner's appointment as a Mukadam was by mistake and the government had every right to rectify the mistake, which it did by means of a corrigendum of 4.12.1995 by which he was reverted to the post of Mukadam. The Court held that this corrigendum was not challenged by the complainant before the government or before the department. The Court observed that despite challenge to the corrigendum dated 4.12.1995, before it, the government was not made a party to the proceedings. The Industrial Court, in the premises, dismissed the petitioner's complaint and vacated the interim order granted earlier in favour of the petitioner. That was in 2001. This was challenged by the petitioner in the present petition. Thereafter, during the pendency of this petition, by virtue of an interim order passed by this Court, execution of the impugned judgement of the Industrial Court was stayed and the State was directed to allow the petitioner to work as a Mukadam. By the time this petition has reached final hearing before this Court on 31.5.2018 the petitioner has already superannuated.

4. In the first place, the very basis on which the complaint was decided by the Industrial Court, namely, the petitioner's challenge was to the corrigendum of 4.12.1995, was contrary to the record of the case. The petitioner had challenged the order of reversion issued to him on 2.2.1996. The so-called corrigendum of 4.12.1995 was never served on the petitioner. There was no

occasion for the petitioner to challenge the same and since the corrigendum was not challenged, there was no reason why the government should have been joined as a party to the proceedings. As for the State's case of mistake in the original appointment of the petitioner as a Mukadam, there is nothing on record to suggest that there was any such mistake. Apart from the oral statement by the State's witness, the only reference to the mistake on record is in the corrigendum. That is a bare assertion of the State. The reversion order also does not refer to any mistake. It instead refers to the corrigendum issued by the State.

5. In the premises, there was no material before the Court to conclude that there was indeed any mistake in the original appointment of the petitioner as a Mukadam in CRTE. It is, thus, apparent that the Industrial Court misdirected itself in its inquiry into the complaint and its conclusions are not supported by the evidence on record. The impugned order, in the premises, cannot be sustained.

6. Accordingly, Rule is made absolute by quashing the impugned order dated 7.11.2001 and allowing complaint (ULP) No. 407 of 1996 in terms of prayer clauses (a) and (b).

7. All parties to act on an authenticated copy of this order.

(S.C.GUPTE, J)

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