

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

WRIT PETITION NO. 9086 OF 2005

The Deputy Director of Health Services, Thane ...Petitioner

Vs.

Smt.Kashibai Tukaram Mahabale ...Respondent

Ms.Vaishali Nimbalkar, AGP for Petitioner.

Mr.M.D. Parab for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 26 JUNE 2018

P.C. :

The present petition filed by the State through Deputy Director of Health Services, Mumbai Circle, Thane Mental Hospital Compound, Thane, challenges orders passed by the Labour Court at Mumbai on a complaint of unfair labour practice made by the Respondent herein and a revisional order passed by the Industrial Court at Thane.

2 The controversy concerns the termination of the Respondent's service purportedly in view of reduction of post. The complainant was in the employment of the Petitioner herein since 1994 as a ward-bai. In 1998, when the complainant anticipated an illegal termination on the part of the Petitioner herein, she filed the complaint of unfair labour practice before the Labour Court at Thane. The Labour Court, by its order dated 16 April 1999, allowed the interim application of the complainant and directed the Petitioner herein not to terminate the service of the complainant without following due course of law or till a suitable candidate was made available by a competent Staff Selection Board or till final order of the court,

whichever was earlier. It appears that on 25 August 2004, her service came to be discontinued in view of reduction of post. All this while, her complaint of unfair labour practice was pending before the Labour Court at Mangaon. The court, by its impugned order dated 27 December 2004, partly allowed the complaint and directed the Petitioner to reinstate the complainant with continuity of service but without backwages. This order was challenged by the Petitioner herein before the Industrial Court at Thane. The Industrial Court, by its impugned order dated 17 June 2005, rejected the revision application. The orders of the Labour Court and the Industrial Court are challenged by the Petitioner in the present petition. At the hearing of the interim application of the Petitioner, the Respondent indicated her willingness to work in the hospital at Mangaon run by the Petitioner. The Petitioner also indicated its willingness to accommodate her in the hospital, namely, Upzilla Rugnalaya, Mangaon as Kaksha Sevak / Ward-bai from 1 October 2007. The Respondent was, accordingly, directed to report for duty on 1 October 2007. Subject to compliance with these conditions, the impugned orders were stayed by this court. Throughout the pendency of the petition, the Respondent has worked, accordingly, under the interim orders of this court.

3 Learned AGP, on taking instructions from Dr.Ajit Gawli, Civil Surgeon, Raigad, states that the post of Kaksha Sevak / Ward-bai in Upzilla Rugnalaya, Mangaon is still vacant and that the Respondent can be accommodated in this post or any other post in Raigad district. The Respondent accepts such accommodation.

4 Accordingly, the petition is disposed of in terms of the following order :

(I) The Petitioner shall continue the Respondent in the post of Kaksha Sevak / Ward-bai either in Upzilla Rugnalaya, Mangaon or accommodate her in any other post of Kaksha Sevak / Ward-bai available in Raigad district.

(II) It is made clear that in case no scheduled caste post is available, the Respondent shall be accommodated in any open post. The Respondent's service shall be treated as continuous throughout the period.

(S.C. GUPTE, J.)